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

[2025] SGHC 65

Originating Application No 1147 of 2024

Between

Vikramathithan a/l Rasu

… *Applicant*

And

AK Equine Pte Ltd

… *Respondent*

JUDGMENT

[Companies — Striking off defunct companies — Restoration of struck off company]
[Limitation of Actions — Limitation direction — Section 344G(3) Companies Act 1967]

TABLE OF CONTENTS

Vikramathithan a/l Rasu
v
AK Equine Pte Ltd

[2025] SGHC 65

General Division of the High Court — Originating Application No 1147 of 2024
Mohamed Faizal JC
16 January, 14 February 2025

11 April 2025 Judgment reserved.

Mohamed Faizal JC:

1 This is an application by Mr Vikramathithan a/l Rasu (the "Applicant") to restore a company that had been struck off on 5 February 2024, AK Equine Pte Ltd (the "Respondent").[1] The Applicant seeks to do so in order to pursue a common law claim for damages against the Respondent arising from a workplace accident that had allegedly taken place on 8 November 2021.

2 This case poses an interesting question about whether, and how, the court should exercise its discretion under s 344G(3) of the Companies Act 1967 (2020 Rev Ed) (the "Companies Act 1967"), and in particular, if and how it should do so in the context of making a limitation direction. A limitation direction is a direction from the court to exclude a certain duration of time when

[1] Applicant's Written Submissions dated 9 January 2025 ("AWS"), at [6].

calculating how much time has elapsed since the cause of action first arose as part of its determination as to whether a cause of action is time-barred. For instance, a limitation direction could exclude all or part of the period during which a company was struck off the Register of Companies (the "Register"), so that such specific period would not be counted towards the usual time limit within which a claim must be had. A limitation direction would thus allow an ostensible claimant to overcome a limitation period which, on its face, has run its course during the time a company was struck off, such that the ostensible claimant would now have an opportunity to pursue its claim regardless.

3 For the reasons set out in this judgment, on these present facts, I take the view that such a limitation direction ought to be granted so as to allow the Applicant to pursue the necessary claim against the Respondent. As this appears to be the first time that the matter of limitation directions has been considered (and consequently, the first time such a direction is given) in the domestic context, I have, in the interest of transparency, set out the full reasoning underlying my decision to grant such an order.

Facts

4 For context, the Respondent's principal activities were the training of horses for horse racing, and the trading of horses.[2] It is not in dispute that the Applicant was employed by the Respondent as a livestock and dairy farm worker during the time of the alleged workplace accidents.[3]

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2 Reply Affidavit of the Respondent's director, Kuah Cheng Tee, dated 27 November 2024 ("Respondent's Affidavit"), at [6].

3 Respondent's Affidavit, at [10], [14].

5 In gist, the matter before me has its genesis from a claim by the Applicant that he had been involved in a workplace accident at the Singapore Turf Club on 8 November 2021.[4] The Applicant alleges that on the material day, at or about 7.00am, he was tasked to bring a horse for a trotting exercise approximately a kilometre away from the stables where the horse was being housed.[5] After the exercise in question, as the Applicant was riding the horse back to the stable, a bird suddenly flew in front of the horse, apparently startling it. The horse then reacted by prancing on its hind legs, forcefully flinging the Applicant off the horse onto the road in the process. The Applicant claims to have sustained serious injuries from this incident,[6] though the specifics of such injuries are not germane to this application. He reported the matter to his supervisor and was subsequently sent to Khoo Teck Puat Hospital.[7]

6 On 11 November 2021, three days after the alleged incident, the Respondent filed an incident report with the Ministry of Manpower (the "WICA 2019 claim") under the Work Injury Compensation Act 2019 (2020 Rev Ed) (the "WICA").[8] For context, the work injury compensation framework is a no-fault compensation regime designed to streamline the process for workers to obtain compensation without the need for lengthy legal proceedings, thereby providing a more accessible, efficient, and certain alternative to civil litigation that requires recourse to the common law. Key to the WICA regime is the fact that compensation is capped based on a pre-existing formula, though there is no

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4 Affidavit of the Applicant's solicitor, Muhamad Ashraf s/o Syed Ansarai, dated 4 November 2024 ("Applicant's Affidavit"), at [4].

5 Applicant's Affidavit, at [5].

6 Applicant's Affidavit, at [6].

7 Respondent's Affidavit, at [19]–[20].

8 Applicant's Affidavit, at [8].

legal requirement to prove any negligence or liability on the part of the employer or the third party. A *sine qua non* for a party who accepts compensation under the WICA framework is disqualification from advancing a claim for compensation under common law premised on the same facts.

7 On 10 October 2023, a notice of computation was issued under the WICA regime, granting the Applicant compensation in the sum of $11,207.98 (the "awarded sum").[9] As the Applicant felt that the awarded sum was too low and afforded insufficient compensation, he withdrew his WICA 2019 claim on 31 October 2023 and instead elected to proceed by way of a claim against the Respondent for civil damages arising from the alleged industrial accident (the "common law claim").[10] It is not in dispute that for about nine months after withdrawing the WICA 2019 claim, little was done to pursue the common law claim until the Applicant's present solicitors were appointed on 18 July 2024.[11] For context, the Applicant contends that such a delay had been the result of two successive set of lawyers (prior to the appointment of his present solicitors) not acting with sufficient haste in the matter.[12]

8 After being appointed, the Applicant's solicitors undertook a due diligence check with the Accounting and Corporate Regulatory Authority and discovered that the Respondent had been struck off with effect from 5 February 2024.[13] I pause here to note that the fact that the Respondent had been wound up is unsurprising as it is common knowledge that in June 2023, the

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9 Applicant's Affidavit, at [9], p 9 (Notice of computation under the WICA issued by Tokio Marine Insurance Singapore Ltd dated 10 October 2023).

10 Applicant's Affidavit, at [9]–[10].

11 Applicant's Affidavit, at [11].

12 Applicant's Affidavit, at [11].

13 Applicant's Affidavit, at [12].

Government announced that the Singapore Turf Club had to cease operations, with its final race being held in October 2024, and with the land eventually being returned to the State in 2027 to facilitate the use of the land for housing and other social and community projects (see Singapore Parl Debates; Vol 95, Sitting No 105; Col 28; [3 July 2023] (Indranee Rajah, Second Minister for Finance and National Development)). With the closure of the Singapore Turf Club, it understandably did not make sense for the Respondent to maintain long-term operations in light of its *raison d'être* (see [4] above).

9 At the time of the purported workplace accident, the Respondent was insured under a valid insurance policy issued by Tokio Marine Insurance Singapore Ltd ("Tokio Marine").[14] On 1 October 2024, the Applicant proceeded to send a letter of demand to Tokio Marine.[15]

10 Subsequently, on 4 November 2024, the Applicant commenced these proceedings against the Respondent seeking leave to be granted to restore its name in the Register.[16] It was noted by the Applicant that restoration would be necessary for him to commence proceedings against the Respondent, though the Applicant accepts that, as a matter of practical reality, "the damages would more likely be paid by the insurer".[17]

16 January 2025 hearing

11 At the hearing before me on 16 January 2025, the parties focused their arguments largely on the application of the test that the courts apply in

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14 Applicant's Affidavit, at [17].

15 Applicant's Affidavit, at [11(iii)], [13].

16 Originating Application filed 4 November 2024.

17 Applicant's Affidavit, at [18]–[19].

considering whether to restore a company. In particular, both parties made reference to *Lye Yew Cheong v Accounting and Corporate Regulatory Authority (Xie Zhiyang Keith, non-party)* [2024] SGHC 270 ("*Lye Yew Cheong*"), in which this court observed that three conjunctive requirements must be met for a company's name to be restored to the Register. The three requirements are as follows (*Lye Yew Cheong*, at [16], citing *Fu Zhihui Alvin and another v Accounting and Corporate Regulatory Authority* [2023] SGHC 177 ("*Alvin Fu*"), at [15]):

(a) the applicant must be an "aggrieved person";

(b) the application must be made within six years after the defunct company was struck off; and

(c) the court must be satisfied that:

(i) the company was carrying on business or in operation at the time of striking off; or

(ii) it is just that the name of the company be restored to the Register.

12 In dealing with the application of the test in *Lye Yew Cheong*, the hearing focused on the question of whether the Applicant's common law claim was time-barred. This is unsurprising given that, on a superficial level, the answer to that question ostensibly underpins many of the legal issues that are engaged. By way of an illustrative example, if the claim were time-barred, then it would, almost by definition, follow that the Applicant would not be an "aggrieved person" since the striking off of the Respondent would not have varied the Applicant's (non-existent) legal rights in any event, in that no proprietary or pecuniary interest arises from the matter of the company being registered or

otherwise (see *Alvin Fu*, at [24]). In such an event, it would also not be just to restore the Respondent to the Register in so far as there would be no practicable benefit that arises from restoration, since restoration would not do anything to resolve the independent matter of a time bar being in operation (see *Re Asia Petan Organisation Pte Ltd* [2018] 3 SLR 435 ("*Re Asia Petan*"), at [31]).

13 In light of those realities, I will first address the issue of the time bar, before determining whether to restore the Respondent to the Register.

Time bar

14 To my mind, the issues to be determined regarding the time bar are as follows:

(a) Whether the time bar has *prima facie* set in;

(b) If the time bar has set in, whether the court has discretion to grant a limitation direction, which would allow the Applicant to overcome such time bar; and

(c) If (a) and (b) are answered in the affirmative, whether the court should exercise such discretion to extend the time bar.

Issue 1: The time bar has* prima facie *set in

15 Initially, both parties took divergent views on the question of whether the time bar has set in. I pause here to note that neither party proffered any precedents to support their entirely diametrically opposed contentions, instead confining the scope of their arguments solely to points of principle.

(a) In his written submissions, the Applicant initially contended that he was not time-barred as the issue was out of his hands in so far as he

"issued the letter of demand well within the limitation period but could not take any further steps when he realised that the Respondent had been struck off from the register".[18] However, in his further written submissions after I gave certain directions (see [21] below), the Applicant eventually conceded that "it [was] indisputable that the limitation period would necessarily bar relief after 8 November 2024".[19]

(b) The Respondent on the other hand claimed that the intended cause of action was time-barred as, pursuant to s 24A(2) of the Limitation Act 1959 (2020 Rev Ed) (the "Limitation Act"), the suit had to be filed by 8 November 2024 but no originating claim had been filed by then.[20]

16 As I intimated to the parties at the hearing (and as I will explain in due course), it was obvious to me that, in the absence of any direction from the court, the statutory time limit for filing the claim would clearly have lapsed.[21] It is incontrovertible that the cause of action in this case arose on 8 November 2021. This was, at its core, a claim in negligence for which the applicable limitation period is prescribed by s 24A(2)(*a*) of the Limitation Act, which requires that any "action" to claim for "damages … in respect of personal injuries" be brought *within three years* from the date on which the cause of action accrued. The time bar would therefore have set in by 8 November 2024. I am unable to accept the Applicant's point that the cause of action was not time-barred as he had "issued the letter of demand well within the limitation period" – a letter of

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18 AWS, at [12(c)].

19 Applicant's Further Written Submissions dated 14 February 2025 ("AFWS"), at [8].

20 Respondent's Written Submissions dated 9 January 2025 ("RWS"), at [42]–[44].

21 16 January 2025 Minute Sheet, at p 2.

demand is not an "action", as is defined under the said Act in s 2(1) as "including a suit or any other proceedings in a court". Given that no suit or any other court proceeding seeking damages for negligence was filed against the Respondent by 8 November 2024, the time bar would have set in by the time I first heard the matter on 16 January 2025. In my mind, that itself is dispositive of the matter of the prescribed timeframe for the claim having passed.

17 In this connection, the claim that the Applicant's two previous sets of lawyers had been less than industrious in making sure the matter proceeds apace is, in my view, neither here nor there. Limitation periods in general operate independent of motive or reasons, and, consequently, the three year limitation period cannot be extended merely because a putative claimant is able to externalise blame for its apparent non-action to third parties. In any event, as a matter of logic, it would be perverse in principle for the court to extend the applicable limitation period just because the Applicant's lawyers had not acted with the necessary haste. Why should the Respondent – the least blameworthy party for such delays – be made to pay for this? To the extent there is negligence on the part of the lawyers in question, that is properly a question and matter between the lawyers and the Applicant, and not a matter for the Respondent to answer to.

18 It therefore follows that *prima facie*, the limitation period applies such that the underlying cause of action cannot, at least as things stand, be pursued.

Issue 2: The court has discretion to overcome the time bar by granting a limitation direction

19 Nonetheless, as I explained to the parties at the hearing, the preceding discussion is not conclusive of the matter of whether the Respondent should be

restored.[22] Instead, the key issues that lie at the heart of the discussion are whether the court possesses an overriding discretion under s 344G(3) of the Companies Act 1967 ("s 344G(3)"), and whether, given the circumstances, the court should exercise such discretion to make the necessary directions to place the Applicant in the same position as if the Respondent had not been struck off. For ease of reference, s 344G(3) reads as follows:

> On the application by any person, the Court may give such directions and make such orders, as it seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or its name had not been struck off the register.

20 As this court had observed in *Bijynath s/o Ram Nawal v Innovationz Pte Ltd (Accounting and Corporate Regulatory Authority, intervener)* [2020] 4 SLR 534 ("*Bijynath s/o Ram Nawal*") (at [44], [48]), s 344G(3) of the Companies Act 1967 confers a "very broad discretion" for the court to place an applicant in the same position as if the respondent company had not been struck off the Register. In *Bijynath s/o Ram Nawal* (at [73]), this court issued a direction under s 344G(3) to put the plaintiff in the position as a director of a company as if the company had never been struck off the Register. By virtue of the reinstatement, the plaintiff in that case was also placed in the position he was in prior to the company being struck off as he was no longer listed as the director of three companies that had been struck off the Register, and was thus no longer disqualified from acting as a director pursuant to s 155A of the Companies Act (Cap 50, 2006 Rev Ed) (at [74], [76]).

21 With those considerations in mind, at the hearing, I queried the parties as to whether the court has the discretion to grant a limitation direction under

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[22] 16 January 2025 Minute Sheet, at pp 3, 6.

s 344G(3),[23] as the English courts have done on occasion in appropriate cases, the practical effect of which in essence would be to extend the limitation period. As neither party appeared to be sufficiently apprised of the niceties of such a mechanism to meaningfully submit on that point at the hearing (although I would highlight that this is through no fault of either party as neither appeared alive to the existence of this mechanism), I directed the parties to file further submissions specifically addressing the viability of such a limitation direction being made, and whether it should be made on these facts.[24]

22 In their further submissions, both parties were *ad idem* that the court does indeed have the power to issue a limitation direction under s 344G(3).[25] In my mind, this must be correct – as the court in *Bijynath s/o Ram Nawal* noted, the powers conferred to the court under s 344G(3) are very wide. Indeed, as I will explain below, the English courts have utilised analogous powers under the English equivalent of Singapore's s 344G(3) of the Companies Act 1967 to issue such directions. There would therefore be no basis in principle for our courts to take an unduly restrictive view of its powers under s 344G(3). Of course, the question of whether such powers ought to be exercised in any given case is necessarily fact-specific (see *Bijynath s/o Ram Nawal*, at [60]), and it is to that we next turn.

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23 16 January 2025 Minute Sheet, at pp 3, 6.

24 16 January 2025 Minute Sheet, at pp 3, 6; Correspondence from the court dated 17 January 2025.

25 AFWS, at [9]–[10]; Respondent's Further Written Submissions dated 14 February 2025 ("RFWS"), at [16]–[22].

Issue 3: The court should exercise such discretion to extend the time bar

23 Before going into the parties' arguments, given that this is a judicial mechanism that does not appear to have been considered hitherto in the domestic context, I briefly deal with the matter of what considerations have largely concerned the English courts when issuing limitation directions. Limitation directions have been granted under s 1032(3) of the UK Companies Act 2006 (c 46) (which is the UK analogue to s 344G(3) of the Companies Act 1967) accompanying applications to restore the company. In deciding whether to grant such a limitation direction, the English courts have generally considered two points (*Housemaker Services Ltd v Cole and another* [2017] All ER (D) 51 (Apr) ("*Housemaker*"), at [38])):

> (a) whether there is a causative link between the dissolution of the respondent company and the failure to commence the proceedings in question (*Davy v Pickering and others* [2017] All ER (D) 104 (Jan) ("*Davy*"), at [51]). To put it another way, the query is whether a putative claimant would have commenced the relevant proceedings within time had the respondent company not been dissolved (*Hawkes v County Leasing Asset Management Ltd and others* [2015] All ER (D) 73 ("*Hawkes*"), at [30]) (the "causative requirement"); and
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> (b) whether it would be just for the court to provide the applicant an opportunity to bring the claim by a limitation direction (*Hawkes*, at [31]) (the "just requirement").

24 The two parties have, in their further submissions, taken diametrically opposed views on whether I should exercise my discretion under s 344G(3) to issue such a direction. I summarise the essence of the positions taken by each party:

(a) The Applicant contends that the causative requirement would be satisfied in so far as the cause for the Applicant's inability to pursue what he contends to be a *bona fide* claim was the Respondent being struck off the Register.[26] In particular, the Applicant observes that he had actively taken steps to pursue the matter before the limitation period set in, and indeed, the fact that this application was itself filed (on 4 November 2024) before the cause of action was time-barred was evidence of this.[27] The Applicant alleges that his delay in pursuing the action was caused by inaction by his previous solicitors,[28] the long waiting period for a notice of computation to be issued under the WICA regime and for the necessary medical reports to be prepared.[29] As for the just requirement, the Applicant asserts that it would be just for the court to make a limitation direction as this would ensure that the Applicant would not be irreparably prejudiced by the Respondent's action of winding itself up.[30] In a related vein, the Applicant also notes that the Respondent would not be unfairly prejudiced in so far as such a limitation direction would merely put the Respondent in the exact same position it would have been as if it had not been struck off the Register.[31]

(b) The Respondent, on the other hand, contends that both the causative and just requirements lean in favour of not granting a limitation direction. In particular, the Respondent contends that the

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26 AFWS, at [13]–[15].

27 AFWS, at [13(f)].

28 AFWS, at [13(c)].

29 AFWS, at [13(b)], [13(e)].

30 AFWS, at [17(b)].

31 AFWS, at [10(c)(iii)].

Applicant has engaged in dilatory conduct and has been slow to act, "raising doubts about whether the Applicant genuinely intend[ed] to pursue this claim".[32] It was suggested that the Applicant's failure to take active steps for a long period of time before then leaving only a brief window of opportunity (of a few weeks) to file its claim suggests that it was his own actions that were causative of his inability to bring the common law claim in time, rather than the Respondent's dissolution.[33] In that connection, allowing proceedings to commence by way of the granting of a limitation direction would be unjust as it would allegedly leave the Applicant in a more favourable position than if the Respondent had not been dissolved.[34] The Respondent further highlights how it would be prejudiced despite having conducted itself in accordance with the proper steps "without exhibiting any impropriety" throughout the winding-up process.[35] Additionally, relying on *Hawkes* (at [38]), the Respondent suggests that the merits of the underlying claim should feature in the court's analysis of whether to exercise its discretion. The fact that the Applicant's underlying claim is, in the Respondent's view, "clearly unmeritorious and insufficient to establish a *prima facie* case" supports how the court ought not to exercise its discretion to give a limitation direction.[36]

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32 RFWS, at [34].

33 RFWS, at [31]–[37].

34 RFWS, at [36].

35 RFWS, at [41]–[45].

36 RFWS, at [47]–[48].

25 In my view, the facts of this case lean towards the granting of a limitation direction, as both the causative and just requirements as set out in *Housemaker* are satisfied.

The causative requirement is satisfied

26 Starting first with the causative requirement, the fact that this application was commenced just before the limitation period ended, while one possible indicator, is ultimately not dispositive. This is because the English jurisprudence suggests that the focus lies on the commencement of the *underlying* proceedings (*ie*, the Applicant's claim for damages in respect of personal injuries), and not the proceedings seeking restoration of the company's name to the register. In *Housemaker*, despite the claimant having filed an application to restore the company's name before the limitation period had ended, the English High Court dismissed the claimant's application seeking a limitation direction. The court in *Housemaker* held that even if the claimant had made an application seeking to restore the company's name within a week or two of learning that the company had been dissolved, this would not have been "sufficient, let alone exceptional, so as to justify the giving of a limitation direction in favour of the claimant company" (at [52]).

27 The claimant had needed, but failed, to demonstrate "on the balance of probabilities that, if the company had not been dissolved, it would have issued proceedings for the [underlying proceedings] before the expiry of the limitation period" (*Housemaker*, at [47]). This is, by definition, a fact-specific question. In engaging in this key inquiry, while the court necessarily has to make some hypothetical assumptions, it should do so while focusing the enquiry on "probabilities, not possibilities" (see *Hawkes*, at [44]). I pause here to note that, on my end, I would hesitate to characterise what is required to be proven as a

demonstration of "exceptional circumstances", as the English cases have sometimes characterised the requirement (see *Hawkes*, at [25]). In my view, the use of such language may tend to obfuscate rather than illuminate in so far as it distracts from the need for the court to focus on a principled enquiry on probabilities (see *Hawkes*, at [27]).

28 To explore how the court would be satisfied of this inquiry on a balance of probabilities, I turn to the English High Court's analysis in *Housemaker*. The court in *Housemaker* remarked that the fact that a particulars of claim had been drafted by the claimant's counsel ten days before the end of the limitation period only established a "window of opportunity" and was insufficient (*Housemaker*, at [44]–[45]). The court then suggested that a causative link may have been found if instead there had been a draft claim form, if the claimant had instructed his solicitors to issue the substantive proceedings straightaway, or if the claimant had issued a claim even if it was *prima facie* statute-barred (*Housemaker*, at [45]–[46]).

29 On the present facts, I am inclined to take the view that, on a balance of probabilities, the Respondent would have commenced proceedings before the time bar kicked in, if it felt it were able to do so as a matter of law. In the present case, the Applicant had taken steps to commence proceedings by sending a letter of demand in relation to the claim on 1 October 2024, before he became time-barred on 8 November 2024. I address why I have rejected each of the Respondent's contentions in turn:

(a) Similar to the logic in *Housemaker* (see [28] above), the Respondent contends that a letter of demand would not suffice to establish a causative link as the Applicant had failed to seize his window

of opportunity to commence proceedings in actuality.[37] Although the Respondent largely mistakenly points to the Applicant's lack of urgency in pursuing the *restoration* proceedings, in essence, the Respondent appears to suggest that the Applicant ought to have had more urgency in pursuing the *underlying* proceedings, for instance, by filing an originating claim despite the fact that the Respondent's name was not on the Register then.[38] With respect, I am unable to accept such arguments. In my view, the inquiry is not wholly formalistic and does not turn on whether an originating claim or statement of claim had been drafted, filed and/or served. Indeed, it is not even apparent to me that anyone would assume the ability to file proceedings against a struck-off company, without even applying first to restore such company to the Register. On the present facts, and looking at the circumstances in the round, it is clear to me that by the time the letter of demand was sent, the Applicant was already very much gearing up towards the filing of an originating claim. The Applicant's wariness towards the issue of the time bar is evident from his Originating Application (Amendment No. 1) filed on 5 November 2024 (*ie*, a day after the filing of his initial originating application) for the present proceedings, in which the Applicant expressly prayed in prayer 2(2) that his "claim against the Respondent be preserved from being time-barred in light of the application to restore the struck off company to the register". In those circumstances, it is clear to me (at least on a balance of probabilities), that if not for the need to first apply for restoration, the Applicant would

37 RFWS, at [35].

38 RFWS, at [14], [35].

have issued proceedings for the claim before the expiry of the limitation period.

(b) The Respondent contends that regardless of whether the company had been struck off, the Applicant would have failed to commence the underlying proceedings in time as a result of his dilatory conduct.[39] In this regard, while there was admittedly some factual delay on the part of the Applicant which he readily accepts (see [24(a)] above), it is not clear to me why the court ought to place significant weight on such delay. In principle, as a matter of law, the pace at which a party moves at any point of time before a limitation period expires is generally immaterial, as long as the action is commenced within the prescribed timeframe. The law is ultimately concerned with whether a claim was filed on time, not with the urgency – or lack thereof – leading up to that moment. While admittedly, prudence would point towards early action, any delay within lawful bounds is legally inconsequential and ought to generally be treated as such. A claim brought on the very last permissible day, in theory at least, is on the exact same footing as one that had been filed immediately upon the cause of action arising; the only threshold of salience being whether the suit was filed, or court proceedings were commenced, before time had run out. Accordingly, in considering limitation periods and whether a limitation direction should be granted, an applicant's inaction within the limitation period should not be, in most cases at least, an unduly weighty consideration. Instead, as alluded to at [29(a)] above, the key consideration is whether the court is convinced, on a balance of probabilities, that steps were taken by an applicant within the limitation period which reflected that the applicant

[39] RFWS, at [31]–[34].

would have commenced legal proceedings against the company, if not for the fact that the company had to be restored to the Register first.

(c) In coming to this conclusion, I reject the Respondent's contention that the Scottish decision of *Whitbread (Hotels) Ltd, Petitioners* [2002] SLT 178 ("*Whitbread*") supports its view that a limitation direction ought not to be given on the present facts.[40] In my mind, the converse is true in that *Whitbread* supports why a limitation direction ought to be given on the present facts. In *Whitbread*, two petitioners successfully restored a company to bring actions against it for the negligent provision of construction services for hotels in Swansea and Slough respectively. The petitioners also sought a limitation direction for the period between the date that the company was struck off and the date it was restored. As elucidated by the Respondent in its further written submissions,[41] the Scottish court's decision turned on whether "the petitioners made any attempt to sue [the company] during that period" as there was "no particular reason why the petitioners should have the consequences of their inactivity … [result in] any benefit conferred upon them" (*Whitbread*, at [17]). No limitation direction was made for the second petitioner in respect of the Slough hotel as no attempt was made at all to institute proceedings (*Whitbread*, at [6], [17]). However, for the Swansea hotel, a limitation direction was made for the period between the date that the first petitioner commenced proceedings (albeit unsuccessfully since the company had been struck off) and the date the company was restored (*Whitbread*, at [4], [17]). In my judgment, the Applicant's issuance of a letter of demand lands him

40 RFWS, at [27]–[37].

41 RFWS, at [27]–[30].

> in a position analogous to that of the first petitioner (as opposed to the second petitioner) in *Whitbread* since, to the Applicant, this would have represented his best attempt at instituting proceedings against the Respondent which was struck off. For that reason, a limitation direction should similarly be made for the period between the date that the letter of demand was issued and the date that the name of the Respondent is restored.

30 I should parenthetically add that, in future, it would be prudent for the parties seeking a limitation direction to consider adopting some of the steps outlined in *Housemaker* to demonstrate an unambiguous intention to commence proceedings, even as they apply to place the company back on the Register (see [28] above). This would avoid such unnecessary debates in which the court is forced to engage in an exercise in clairvoyance and to make assumptions of whether a suit would have been filed before the limitation period expired. While I do not think that the parties will need to go as far as to initiate proceedings against a company that, strictly speaking, does not even legally exist (as such a claim, even if successfully filed, may be liable to being struck off since it would have been filed against a company that, as a matter of law, was not in existence at the time), they should nonetheless provide unequivocal and unambiguous evidence of their readiness to have filed a statement of claim within the limitation period had the proposed defendant not been struck off.

The just requirement is satisfied

31 I next turn to the just requirement. I find that it would be just to place the Applicant, who would have otherwise commenced proceedings, in the same position as if the Respondent had not been struck off. The fact that the Respondent had conducted the winding-up process in accordance with proper

procedure does not detract from how the Applicant ought to be able to have recourse through the underlying claim, which he would otherwise have been entitled to. Granting a limitation direction would allow the Applicant an opportunity to be heard, rather than depriving him of the time during which he could have sued the Respondent (see *Davy*, at [75]; *Whitbread*, at [15]). Since the limitation direction would be in favour of a third-party creditor (and not the Respondent itself), I also placed more weight on considerations of essential fairness (see *Regent Leisuretime Ltd v NatWest Finance (Formerly County NatWest Ltd)* [2003] All ER (D) 385 (Mar) ("*Regent Leisuretime*"), at [90]).

32 Additionally, due to the absence of a statutory regime for applicants facing similar conundrums in Singapore, I am generally more inclined to find that the just requirement is satisfied. I explain. In the UK, the English courts have dismissed applications for limitation directions on the basis that it would only be fair for the applicants to seek recourse to the exceptions under the Limitation Act 1980 (c 58) (UK) (the "UK Limitation Act") where the running of time may be postponed, rather than attempting to circumvent the statutory regime through a limitation direction (*Bilta (UK) Ltd and others v Tradition Financial Services Ltd* [2023] Ch 343, at [147]; *Regent Leisuretime*, at [90]). One such exception under the UK Limitation Act is s 33, which provides for discretionary exclusion of the time limit for actions in respect of personal injuries or death. This discretion extends the primary limitation period on grounds of equity. However, in the absence of an equivalent provision in Singapore (Law Reform Committee, Singapore Academy of Law, *Report of the Law Reform Committee on the Review of the Limitation Act (Cap 163)* (February 2007) at p 45), the court's refusal to grant a limitation direction would effectively leave such applicants without remedy.

33 To be clear, nothing that I have stated above should be taken to suggest that the just requirement is a *pro forma* requirement that would be invariably satisfied. To state a simple example, the just requirement would likely not be satisfied if there is clear evidence that a putative claimant was informed about a respondent company commencing the winding-up process very early on but does nothing to commence proceedings until just before the limitation period has expired, long after the respondent had been wound up. Ultimately, the answer to the just requirement must be informed by the equities of the case, and what is just in the circumstances.

34 In this connection, I agree with the Respondent that in considering whether a limitation direction ought to be granted, the court should, broadly speaking, consider the merits of the underlying claim in that an "obviously unmeritorious" case should not be the predicate basis upon which to order the restoration of the name of a company to the Register (see *Hawkes*, at [38]; *Housemaker*, at [54]–[56]).[42] This is in line with the longstanding position that in deciding whether a company ought to be restored to the Register in order for a third party to pursue a claim against the company, the court "has to be satisfied that there is a *prima facie* case for the claim that would purportedly be commenced after … restoration, and that the claim is not spurious" (*Re Asia Petan*, at [33]). This also aligns broadly to the English position on how the matter of merits should feature in assessing whether to grant a limitation direction (see *Housemaker*, at [54]–[56]). I should stress that this is not intended to be a probing examination of the merits of the case to consider its prospects of success – instead, unless the claim is plainly shadowy, or otherwise bound to fail, the fact that the case may not necessarily be iron-clad or especially

42 RFWS, at [47]–[48].

meritorious should not impact the question of whether the application for restoration should succeed.

35 Having considered the totality of the evidence adduced by the Applicant, I am of the view that the Applicant's case in the present instance is not obviously unsustainable or bound to fail, even if there may ultimately prove to be a good defence against it. In the circumstances, the merits of the claim (or any alleged lack of merit, as it were) were not, in my view, such that it ought to serve as a bar to restoration. In particular, I highlight the following in response to the Respondent's various contentions for why it takes the view that the Applicant's claim is "doomed to fail":[43]

(a) I am unable to accept the Respondent's contention that the Applicant's case is "doomed to fail" merely because he has not adduced any contemporaneous evidence, or called on any eyewitnesses, to substantiate the alleged incident.[44] The law is replete with instances where one person's word suffices to make out a claim. Indeed, one person's word can, in certain circumstances, even prove allegations beyond a reasonable doubt, let alone on a balance of probabilities. For rather self-evident reasons, there may be good reasons why no one saw the incident, and indeed, the fact that he apparently reported it on the same day is a possible data point that suggests that the incident did in fact take place, though I caution that only a full trial can determine this.

(b) The Respondent contends that there is a lack of a nexus between the alleged incident and the Respondent as the incident purportedly took

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43 RWS, at [46].

44 RWS, at [46(a)]–[46(b)].

place outside the Respondent's premises and control.[45] In my view, this adds very little to the discussion. If the incident did take place, it cannot be seriously disputed that it happened in the course of the Applicant's work for the Respondent. It may be that, on the facts, an argument (perhaps even a forceful one) can be made that liability should not follow, but any such conclusion can again only be meaningfully made after a full-blown hearing dealing with the merits.

(c) The questions of whether the Applicant's injuries were reasonably foreseeable, whether the Singapore Turf Club's rules to manage the premises suffice such that the Respondent could not have been expected to take any further steps to mitigate risk, and whether the unique nature of the circumstances were such that such the alleged incident was unforeseeable and/or out of the Respondent's control are all clearly matters that ought to be reserved for trial.[46] Questions of reasonableness, foreseeability and the adequacy of safeguards in any given setting are by their nature fact-sensitive, and therefore, hardly ever amenable to summary determination in the manner suggested by the Respondent. On the present facts, I see no basis for me to come to conclusions on any of these questions summarily in favour of the Respondent.

36 In any event, as the Applicant points out, on its face, there appear to be some plausible arguments for contending that non-delegable duties were imposed on the Respondent, including duties to implement the necessary measures to minimise the risks that the Applicant would have been exposed to

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45 RWS, at [46(c)].

46 RWS, at [46(d)]–[46(f)].

(*Miah Rasel v 5 Ways Engineering Services Pte Ltd* [2018] 3 SLR 480, at [39]).[47] I stress that this is not to suggest the argument being advanced is necessarily a forceful one, or to suggest its prospects for success at trial, but merely to highlight that a reasonable counter-argument to the Respondent's arguments exists and, in that sense, the case being advanced by the Applicant is not entirely hollow or lacking any prospect of success. Consequently, I am of the view that the Applicant's underlying claim is not "obviously unmeritorious".

37 For the above reasons, I find that both the causative and the just requirements are satisfied. Accordingly, I make a limitation direction to exclude the period between 1 October 2024 (*ie*, the date on which the letter of demand was issued by the Applicant) and the date that the name of the Respondent is restored to the Register.

Restoration of the name of the Respondent to the Register

38 Having found that the Applicant's underlying claim will not be time-barred due to the limitation direction that I have made, I now turn back to the three requirements in *Lye Yew Cheong*.

Issue 1: The Applicant is an "aggrieved person"

39 I find that the Applicant is an "aggrieved person" who is unable to act on his legal rights to pursue his claim for damages in respect of personal injuries against the Respondent. As alluded to earlier (at [12] above), my findings for the time bar issue explain why I cannot accept the Respondent's contentions that the Applicant is not an "aggrieved person" merely on grounds that the

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47 AWS, at [11]; 16 January 2025 Minute Sheet, at p 2.

underlying claim is time-barred,[48] or on grounds that the Applicant has not made out a *prima facie* underlying claim.[49]

40 For completeness, I also do not agree with the Respondent's contention that it is objectionable for the Applicant to proceed with a claim in common law as an attempt to "try his luck" for a greater quantum of damages than that proposed under the WICA regime.[50] The Applicant possesses a legal right to pursue all his available remedies, and anyone in the shoes of the Applicant would understandably pursue the claim that they assess to be the most financially sensible for their purposes. There is nothing inherently objectionable in doing so; indeed, this is by design in that the WICA framework was specifically structured in a way to allow aggrieved individuals who have suffered workplace injuries to elect to traverse the common law route when they feel that the compensation offered to them by way of the statutory remedy (under WICA) does not align to their views of what would be fair (Singapore Parl Debates; Vol 94, Sitting No 110; [3 September 2019] (Zaqy Mohamad, Minister of State for Manpower)). In fact, the reality that the Applicant rejected the compensation offered to him under the WICA regime in favour of pursuing the common law claim ought to, in theory, work in his favour. This is because where a party has actively rejected a statutory claim within the limitation period, this is a deliberate and reasoned choice reflecting a clear contemplation of the pursuit of alternative legal avenues. In essence, by declining the statutory remedies that are available to him, the Applicant has demonstrated an explicit sign of his desire to pursue common law remedies. Rather than evidence of

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48 RWS, at [42]–[45].

49 RWS, at [46]–[47].

50 RWS, at [48]–[49].

delay or neglect,[51] this decision suggests that the prospect of litigation is one that was being seriously considered by the Applicant from the outset.

Issue 2: This application is made within six years after the Respondent was struck off

41 It is not in dispute that the second requirement is satisfied as the Respondent was struck off on 5 February 2024, and this originating application was filed on 4 November 2024, which is clearly within six years of the Respondent being struck off.[52]

Issue 3: The court is satisfied that it is just that the name of the Respondent be restored to the Register

42 I find that this requirement is satisfied as it would allow the Applicant an opportunity at litigating his underlying claim against the Respondent. I address why I do not accept the Respondent's contentions in turn:

(a) Given my findings at [29(b)] above, I do not accept the Respondent's contention that "the prejudice suffered would be more than the usual prejudice occasioned by the restoration of a company to the Register" due to delays by the Applicant.[53] It is difficult to see what additional prejudice would be suffered when the Applicant's failure to commence proceedings against the Respondent for the underlying claim within the limitation period was precisely due to the dissolution of the Respondent, and not as a result of any delays caused by the Applicant.

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51 RFWS, at [33].

52 AWS, at [6].

53 RWS, at [58]–[62].

(b) I am unable to accept the Respondent's contention that there is no practical benefit to allowing this restoration application. Having found that there is a *prima facie* case for the Applicant's underlying claim (at [35]–[36] above), in accordance with the Respondent's own logic, it must follow that there is purpose and practical benefit to restoring the company in that it enables the Applicant to pursue his claim against the Respondent (see *Ganesh Paulraj v Avantgarde Shipping Pte Ltd* [2019] 4 SLR 617, at [24]–[25]).[54]

43 As a quick aside, the Respondent's contention that it was "dormant" at the time of striking off is not relevant for the purposes of the present discussion.[55] The Applicant has confirmed in the hearing before me that he is not seeking to restore the Respondent on the premise of it not being dormant or being otherwise in operation.[56] There is therefore no question (at least none being specifically posed by the Applicant in these proceedings) of the Respondent being wrongly struck off as it was carrying on business or otherwise in operation at the time of striking off, such that the Register should be revised on that basis. I therefore need not, and have not, assessed whether, on the facts, the Respondent can be said to have been in operation at the time of the striking off, in the manner explained in *Lye Yew Cheong*.

Conclusion

44 For the reasons above, I grant the application for leave to restore the Respondent to the Register for the purposes of the Applicant pursuing a claim for the alleged incident on 8 November 2021. I also hereby make a limitation

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54 RWS, at [63]–[64].

55 RWS, at [52]–[55].

56 16 January 2025 Minute Sheet, at p 5.

order that any calculation of the limitation period for such proceedings should exclude the period after the Applicant had issued the letter of demand (*ie*, 1 October 2024, which in essence was when such action would have been brought), until the date that the name of the Respondent is formally restored to the Register. The upshot of this is that it would leave the Applicant with a relatively short duration of time (*ie*, about four to five weeks) to file its statement of claim after the Respondent's restoration to the Register before it does become time-barred, but this would broadly cohere with the actual state of affairs that the Applicant would have found himself in at the time it decided to file suit if the Respondent had not been removed from the Register.

45 On costs, I will deal with it separately but it would seem to me to be sensible that any question of costs ought to be reserved to the conclusion of the matter of the underlying claim. However, if the parties disagree and costs are not otherwise agreed, the parties are to file submissions on costs, limited to no more than five pages each, within two weeks of the issuance of this judgment.

Mohamed Faizal
Judicial Commissioner

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