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

[2025] SGHC 87

Admiralty in Personam No 50 of 2022 (Summonses Nos 2712, 2914 and 3059 of 2024)

Between

COSCO Shipping Specialized Carriers Co, Ltd

… *Claimant*

And

(1) PT OKI Pulp & Paper Mills

(2) COSCO Shipping Specialized Carriers (Europe) B. V.

(3) All other persons claiming or entitled to claim damage, loss, expense, indemnity arising out of contact between "LE LI" (IMO No. 9192674) and jetty/structure at Tanjung Tapa Pier on or about 31.05.22

… *Defendants*

JUDGMENT

[Civil Procedure — Injunctions — Discharge]
[Civil Procedure — Injunctions — Variation]
[Civil Procedure — Judgments and orders]

TABLE OF CONTENTS

COSCO Shipping Specialized Carriers Co, Ltd
v
PT OKI Pulp & Paper Mills and others

[2025] SGHC 87

General Division of the High Court — Admiralty in Personam No 50 of 2022
(Summonses Nos 2712, 2914 and 3059 of 2024)
S Mohan J
11–12 February 2025

9 May 2025 Judgment reserved.

S Mohan J:

1 This is my fourth judgment stemming from the ongoing dispute between the claimant COSCO Shipping Specialized Carrier Co, Ltd ("COSCO") and the first defendant PT OKI Pulp & Paper Mills ("OKI"). The dispute arises out of an allision between the vessel "LE LI" (the "Vessel") and a trestle bridge/jetty on 31 May 2022 at Tanjung Tapa Pier in Palembang, Indonesia (the "Incident"). The Vessel is owned by COSCO and the trestle bridge/jetty is owned/operated by OKI. The second defendant, COSCO Shipping Specialized Carriers (Europe) B.V., is a related entity of COSCO, but plays no relevant part in the applications before me.

2 This judgment deals with two applications brought by OKI. They raise interesting issues as to the requirements of service under the Rules of

Court 2021 ("ROC 2021") and in particular, the meaning of an "interest in the appeal" as it is used in the ROC 2021. From my own research and the authorities cited by the parties, it would appear that these issues have not arisen or been discussed either in the case law or academic commentary on the ROC 2021.

3 The first application is HC/SUM 3059/2024 ("SUM 3059"), which is an application to discharge, revoke or set aside, or (in the alternative) to vary CA/ORC 34/2024 (the "ASI"), which was an anti-suit injunction issued by the Court of Appeal on 5 September 2024. The relevant part of the ASI is worded as follows:

> The 1st Defendant [*ie,* OKI] and its respective officers, servants and agents be restrained forthwith from commencing and/or maintaining and/or continuing the prosecution of the proceedings before the Kayuagung District Court, Indonesia in Case No. 46/Pdt.G/2022/PN Kag and/or any consequential proceedings resulting therefrom (including any appeals) (the "**Indonesian Proceedings**").
>
> [emphasis in original]

I will similarly adopt the abbreviation of the "Indonesian Proceedings" as defined in the ASI.

4 The second application is HC/SUM 2712/2024 ("SUM 2712"), which is OKI's application to stay the ASI pending my determination of SUM 3059.[1]

5 For completeness, in HC/SUM 2914/2024 ("SUM 2914"), COSCO has brought a without notice application pursuant to O 23 r 3 ROC 2021 for leave to apply for an order of committal against OKI and its directors and/or officers

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[1] OKI's Skeletal Submissions for SUM 3059 and SUM 2712 dated 31 January 2025 ("OSS") at para 1(b).

for alleged breaches of the ASI. SUM 2914 was also fixed before me to be heard together with SUM 2712 and SUM 3059. At the hearing, I indicated to the parties that I would adjourn SUM 2914 until after I had delivered my decisions in SUM 2712 and SUM 3059.[2]

Procedural history

6 A more comprehensive narration of the background facts may be found in my earlier decision in *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills and others* [2024] SGHC 92 ("*COSCO (ASI)*") at [4]–[25]. For present purposes, I set out the relevant procedural history:[3]

Date	Event
31 May 2022	The Incident occurred in Palembang, Indonesia.
4 August 2022	COSCO commenced HC/ADM 50/2022 ("ADM 50"), a limitation action brought under Part 8 of the Merchant Shipping Act 1995 (2020 Rev Ed).
25 August 2022	COSCO applied in HC/SUM 3219/2022 for, *inter alia*, a decree to limit its liability.
11 October 2022	OKI filed a Notice of Intention to Contest ("NITC") in ADM 50.
26 October 2022	On or around this date, OKI commenced the Indonesian Proceedings in the Kayuagung District Court.[4]

2 Notes of Arguments ("NOA") dated 12 February 2025 at p 12, lines 9–10.

3 Appendix to Respondent's Written Submissions filed 31 January 2025.

4 8th Affidavit of Li Jianzhong filed 8 October 2024 at para 11.

24 November 2022	OKI filed HC/SUM 4238/2022 ("SUM 4238") in ADM 50 which sought to, amongst others, challenge the jurisdiction of the Singapore courts to hear ADM 50. On 17 April 2023, SUM 4238 was heard. On 22 May 2023, SUM 4238 was dismissed – see *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills and others* [2024] 3 SLR 807.
28 July 2023	OKI filed HC/SUM 2302/2023 ("SUM 2302") seeking permission to withdraw its NITC.
25 August 2023	COSCO applied for an anti-suit injunction in HC/SUM 2676/2023 ("SUM 2676") to restrain OKI from, *inter alia*, continuing the Indonesian Proceedings.
7 September 2023	At a Registrar's Case Conference for SUM 2676, OKI was given directions to file and serve affidavits, written submissions, and bundles.
15 September 2023	The Assistant Registrar ("AR") granted OKI's application in SUM 2302 to withdraw its NITC. OKI filed its Notice of Withdrawal on 16 September 2023. COSCO filed an appeal in HC/RA 197/2023 ("RA 197") against the AR's decision in SUM 2302 on 18 September 2023.
19 September 2023	COSCO filed a Notice of Arbitration against OKI at the Singapore International Arbitration Centre ("SIAC"), commencing arbitral proceedings against OKI in ARB 476-484/23/SXG (the "SIAC Arbitration").
21 September 2023	OKI filed written submissions opposing SUM 2676.
25 September 2023	RA 197 was dismissed.
27 September 2023	SUM 2676 was heard. On 27 December 2023, SUM 2676 was dismissed.

7 February 2024	Pursuant to a request by COSCO, further arguments were heard on SUM 2676. On 28 March 2024, the court's decision to dismiss SUM 2676 was affirmed - see *COSCO (ASI)*.
11 April 2024	COSCO filed CA/OA 7/2024 ("OA 7"), seeking permission to appeal against the decision in *COSCO (ASI)*. OA 7 was allowed on 30 April 2024.
2 May 2024	The Kayuagung District Court decided that it lacked jurisdiction to adjudicate OKI's claims.[5] On 15 May 2024, OKI filed an appeal to the Palembang High Court against the Kayuagung District Court's decision.[6]
14 May 2024	COSCO filed CA/CA 29/2024, *ie*, its appeal against my decision in SUM 2676 as set out in *COSCO (ASI)*. COSCO did not serve the papers relating to OA 7 and CA 29 (collectively, the "Appeal Papers") on OKI.[7]
24 May 2024	COSCO sent an email to the SIAC (copying OKI) in which it informed the SIAC of the ongoing appeal in CA 29 (the "24 May Email").[8]
29 May 2024	OKI, with its insurer ("BRINS"), commenced another set of proceedings before the Indonesian courts against COSCO (the "BRINS Proceedings").[9]

5 8th Affidavit of Li Jianzhong filed 8 October 2024 at para 11.

6 8th Affidavit of Li Jianzhong filed 8 October 2024 at para 12.

7 7th Affidavit of Li Jianzhong filed 7 October 2024 at paras 28 and 39.

8 7th Affidavit of Li Jianzhong filed 7 October 2024 at p 179.

9 OSS at para 34.

27 June 2024	The Palembang High Court allowed OKI's appeal against the Kayuagung District Court's decision on lack of jurisdiction. The Palembang High Court ordered the Kayuagung District Court to examine the subject matter of the case and send the results to the Palembang High Court.[10]
5 September 2024	CA 29 was heard and allowed by the Court of Appeal, who accordingly granted the ASI against OKI – *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills and others and another matter* [2024] 2 SLR 516 ("*COSCO (CA)*").
10 to 12 September 2024	COSCO made several attempts, in Singapore and Indonesia, to serve and/or notify OKI of the ASI.[11] In particular, COSCO sent an email on 11 September 2024 at 1.56pm to OKI and the SIAC, informing them of the ASI.
20 September 2024	OKI filed a Notice of Appointment of Solicitors in ADM 50 and CA 29, and also filed SUM 2712, its application to stay the ASI.
7 October 2024	The Palembang High Court in Indonesia issued its decision on the merits, partially granting OKI's claims (the "Indonesian Decision"). The decision was formally notified to the parties on 8 October 2024.[12]

10 OSS at para 36; 5th Affidavit of Surya Kurniawan Susanto filed 10 October 2024 at para 9.11.

11 8th Affidavit of Li Jianzhong filed 8 October 2024 at paras 20–25.

12 6th Affidavit of Surya Kurniawan Susanto filed 4 November 2024 at para 37.

17 October 2024	SUM 2712 was heard and an interim stay of the ASI was granted subject to certain conditions. In particular, OKI was required to provide a written undertaking to the court "not to take any further steps in any of the Indonesian proceedings whether by way of further appeal or otherwise pending the final determination of prayer 1 of SUM 2712 and the Setting Aside application [*ie,* SUM 3059]";[13] BRINS was also required to provide an undertaking in similar terms in respect of the BRINS Proceedings (see also *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills and others* [2024] SGHC 273 ("*COSCO (Interim Stay)*").[14]
21 October 2024	OKI filed SUM 3059.

7 I pause to note that the intensity with which the parties are litigating – evidenced by the multitude of applications taken out by either side, is perhaps best contextualised by reference to the sums at stake. Following the Incident, OKI asserted losses totalling some US$592,787,794, comprising more than US$440 million of consequential losses allegedly arising from lost production capabilities.[15] This was subsequently revised downwards to US$269,307,341.[16] Abroad, OKI's claims have been partially granted in the Indonesian Decision – it was awarded a sum of US$147,470,227 in damages.[17] By contrast, COSCO estimates that based on the Vessel's gross tonnage, the limitation fund under

13 NOA for SUM 2712 dated 17 October 2024 at p 11, lines 25–31.

14 NOA for SUM 2712 dated 17 October 2024 at p 12, lines 6–11.

15 1st Affidavit of Li Jianzhong filed 25 August 2022 at para 10.

16 5th Affidavit of Li Jianzhong filed 25 August 2023 at 3.04pm at para 41.

17 6th Affidavit of Surya Kurniawan Susanto filed 4 November 2024 at p 584.

Singapore law is approximately US$16.5 million, a value roughly 16 times smaller than what OKI has claimed.[18]

The parties' cases

8 I summarise the parties' respective positions here. Where necessary, I will address their substantive arguments as part of my analysis below.

OKI's case

Discharge, revocation, or setting aside of the ASI

9 OKI seeks, as part of its primary case, to discharge, revoke, or set aside the ASI. It submits that COSCO should have, but failed, to serve the Appeal Papers on OKI. The applicable provisions OKI relies upon are O 18 rr 27(1) and 29(1) of ROC 2021 ("O 18 rr 27 and 29"), which apply to CA 29 and OA 7 respectively. The material portions of these rules are identical – they require an appellant (or putative appellant as the case may be) to serve the relevant documents (*ie*, the Appeal Papers) on "*all parties who have an interest in the appeal*" [emphasis added]. OKI contends that because COSCO failed to serve the Appeal Papers on OKI, the ASI suffers from a "fundamental procedural defect that warrants its discharge".[19]

10 Alternatively, OKI submits that *because* it was not served with the Appeal Papers, OA 7 and CA 29 became *ex parte* in nature.[20] There are certain

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18 1st Affidavit of Li Jianzhong filed 25 August 2022 at para 19; 5th Affidavit of Li Jianzhong filed 25 August 2023 at 3.04pm at para 42.

19 OSS at para 90.

20 NOA dated 11 February 2025 at p 3, lines 13–20.

implications which arise from the *ex parte* nature of a hearing, on which OKI now relies to submit that the ASI should be set aside:

(a) The court may decide to discharge the ASI upon hearing full arguments from both sides at the subsequent *inter partes* hearing.[21]

(b) As the sole party to an *ex parte* hearing, COSCO would have been under an obligation to provide full and frank disclosure of all material facts, an obligation which OKI says that COSCO has breached.[22] OKI submits that COSCO's breach of its duty of full and frank disclosure warrants discharging the ASI.[23]

11 OKI also argues that it would be prejudiced if the ASI is not discharged because the release of the Indonesian Decision renders continued compliance with the ASI impossible.[24] On the contrary, OKI contends that COSCO would not be prejudiced as OKI is willing to provide certain undertakings which it says would ameliorate any prejudice which COSCO would otherwise suffer from the discharge of the ASI (see below at [13]).[25]

12 I note that OKI has, in its written submissions, also submitted that the ASI should be discharged because COSCO's failure to notify them of the *ex parte* hearing was an abuse of process.[26] However, at the hearing before me,

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21 OSS at para 95.

22 OSS at paras 117, 119 and 124.

23 OSS at para 118.

24 OSS at para 98.

25 OSS at para 102.

26 OSS at para 113.

OKI's counsel Mr Abraham Vergis SC confirmed that OKI was no longer pursuing the point on lack of notice.[27]

Variation of the ASI

13 If the court is not prepared to discharge, revoke, or set aside the ASI, OKI prays in the alternative for the ASI to be varied on the basis of a material change in circumstances:

(a) First, the release of the Indonesian Decision renders continued compliance with the ASI Order "impossible".

(b) Second, OKI's willingness "to provide an undertaking that it would not enforce or rely upon the [Indonesian Decision] pending the full and final determination of the issue of the [arbitral] Tribunal's jurisdiction [in the SIAC Arbitration]".[28]

14 On the latter point, OKI has already previously undertaken to this court not to take any further steps in the Indonesian Proceedings pursuant to the conditions I had imposed at the hearing on 17 October 2024.[29] OKI has also previously already undertaken not to "rely on or enforce" any judgment arising from the Indonesian Proceedings pending the full and final determination of SUM 2712.[30]

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27 NOA dated 11 February 2025 at p 5, lines 12–13.

28 OSS at para 130.

29 OKI's Letter of Undertaking to the Registrar dated 21 October 2024.

30 Clasis LLC's letter to court dated 8 October 2024 at para 6.2.

15 Importantly, should the ASI be varied, OKI seeks that the varied order be conditional on COSCO waiving "any time-bar defences / objections in the [SIAC] Arbitration".[31] At the hearing, OKI clarified that it was chiefly concerned with COSCO raising the two-year time bar under *Indonesian law* in respect of OKI's tortious claims as the owner of the trestle bridge/jetty (the "Time Bar Condition").[32]

Stay application

16 In relation to SUM 2712, OKI contends that since I had previously granted an interim stay of the ASI on 17 October 2024 (*ie,* Prayer 2 of SUM 2712), Prayer 1 of SUM 2712 "should be allowed to maintain the status quo".[33]

17 OKI further submits that COSCO will not be prejudiced by the grant of a stay because both OKI and BRINS have already undertaken not to take any further steps in the BRINS Proceedings, and OKI has also undertaken not to enforce and/or rely on the Indonesian Decision.[34] By contrast, OKI says that it *will* be prejudiced without a stay as it can no longer comply with the ASI, and so will be at risk of contempt proceedings.[35]

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31 OSS at para 132.

32 NOA dated 12 February 2025 at p 4, lines 27–30.

33 OSS at paras 135 and 137.

34 OSS at para 142.

35 OSS at paras 145–148.

COSCO's case

Discharge, revocation, or setting aside of the ASI

18 Mr Toh Kian Sing SC, counsel for COSCO, argues that, on OKI's case, if SUM 2676 were indeed *ex parte* in nature, then COSCO did not need to serve the Appeal Papers on OKI. This is because OA 7 and CA 29 would "retain the same [*ex parte*] character", and there is "no need to serve the notice of appeal" in *ex parte* appeals.[36] For present purposes however, Mr Vergis clarified at the hearing before me that OKI's position is that SUM 2676 did proceed as an *inter partes* matter,[37] but for OA 7 and CA 29, they were *ex parte* in nature *because* OKI was not served with the Appeal Papers (see [10] above). Thus, the point raised by Mr Toh falls away, but it remains to be determined whether the Appeal Papers ought to have been served on OKI.

19 Mr Toh's next argument was that even if OA 7 and CA 29 were *inter partes* hearings, COSCO did not need to serve the Appeal Papers on OKI. OKI's withdrawal of its NITC on 16 September 2023 demonstrated that it was "not interested in the outcome of [SUM 2676] and by extension, CA 29".[38] This was reinforced by OKI's conduct after it had been notified of the existence of CA 29 by way of the 24 May Email – in particular, OKI's refusal to "find out more about CA 29" indicated its purported "lack of interest".[39] COSCO thus submits

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36 COSCO's Written Submissions for SUM 2712 and SUM 3059 filed 31 January 2025 ("CSS") at paras 41–42.

37 NOA dated 11 February 2025 at p 2, lines 12–22.

38 CSS at para 48.

39 CSS at para 49.

that OKI "cannot be properly regarded as an 'interested' party in OA 7 and CA 29".[40]

20 If the court nevertheless finds that COSCO should have served the Appeal Papers on OKI, COSCO submits it is a procedural irregularity and that any such irregularity should be cured by the court's exercise of its powers under O 3 r (2) ROC 2021.[41]

21 COSCO further submits that it was (a) not required to provide OKI with notice of the hearings as the hearings were *inter partes* in nature;[42] (b) the matters that OKI alleged should have been disclosed by COSCO were irrelevant to CA 29 and had in any event been addressed;[43] (c) even if COSCO was under a duty to make full and frank disclosure, it had not breached its duty, and (d) in any event, any breach of that duty was innocent and would not warrant discharging the ASI.[44] In respect of (a), this is no longer a live issue since OKI is no longer pursuing this point (at [12] above).

22 COSCO also raises the following issues which it says warrants the ASI *not* being set aside:

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40 CSS at para 50.

41 CSS at para 52.

42 CSS at para 64.

43 CSS at para 69.

44 CSS at paras 74 and 79.

(a) OKI had filed SUM 3059 out of time – it was filed more than 14 days after it "knew or should have known of the alleged grounds for setting aside" the ASI.[45]

(b) OKI's conduct is an abuse of process.[46]

Variation of the ASI

23 In the further alternative, if the court is minded to vary the ASI, COSCO submits that there is no reason why the ASI should be subject to the Time Bar Condition.[47] In particular, it argues that (a) "the accrual of a time bar in a non-contractual forum (i.e., Indonesia) [is not] relevant to the grant of the ASI"; and (b) in any event, "no time bar has accrued".[48]

24 COSCO also made various submissions on the proposed wording of the variation at the hearing, which I will address later in this judgment.

Stay Application

25 As for SUM 2712, COSCO argues that the stay of the ASI should be denied. OKI's present difficulties with complying with the ASI are a result of its own alleged failure to comply with the ASI and a further stay in these circumstances would "amount to an endorsement of OKI's reprehensible conduct".[49]

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45 CSS at para 111.

46 CSS at para 121.

47 CSS at para 131.

48 CSS at para 131.

49 CSS at para 142.

Issues

26 From the foregoing summary of the procedural history and the parties' contentions, I have identified the following key issues for my determination:

(a) Whether the ASI should be revoked/set aside/discharged. In this regard, a number of subsidiary issues also fall to be decided:

(i) whether COSCO was required to serve the Appeal Papers on OKI;

(ii) if COSCO was required to serve the Appeal Papers, whether the failure to do so could and/or should be cured; and

(iii) whether the ASI should be discharged for any of the other reasons raised by OKI (at [10] and [11] above).

(b) If the ASI is not discharged, whether it should be varied, and if so, whether the Time Bar Condition should be imposed.

(c) Finally, whether the stay application in SUM 2712 should be granted.

27 I now turn to my analysis of these issues.

Whether a stay should be granted

28 I deal with the last issue first as it is the easiest to dispose of. Prayer 1 of SUM 2712 seeks the following order:

> That CA/ORC 34/2024 ("ORC 34") be stayed pending the determination of the 1st Defendant's application to discharge /

> revoke / set aside / vary ORC 34 (and any appeal arising thereon);

29 In my view, it is appropriate to order the stay of the ASI to continue pending the final determination of SUM 3059 (and by "final" I mean including any appeals against my decision herein) – a continuation of the stay would retain the status quo and would not prejudice either party. At the close of the hearing on 12 February 2025, I ordered that the interim stay which took effect on 17 October 2024 was to be extended, with the same conditions continuing to apply, pending my decisions in SUM 2712 and SUM 3059.[50] This had the same practical effect as allowing Prayer 1 of SUM 2712 at least until SUM 3059 had been determined by me. In this judgment, I have decided SUM 3059 by refusing to discharge/revoke/set aside the ASI but instead, granting a variation of it on terms largely similar to those sought by OKI (see [94] and [123] below).

30 In my judgment, COSCO would not suffer any prejudice by my allowing the stay to effectively continue. Mr Vergis has acknowledged that the subsequent discharge or setting aside of a court order would not excuse a party's prior breaches while it was still in effect: *Madison Pacific Trust Ltd and others v PT Dewata Wibawa and others* [2024] SGHC 184 at [28] citing *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR(R) 60 at [29]; *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 at [82] citing Mark S W Hoyle, *Freezing and Search Orders* (Informa, 4th Ed, 2006) at para 9.17.[51] *A fortiori*, a stay of the ASI cannot excuse prior breaches while it was still in effect. This puts paid to COSCO's assertion that granting a stay would "have

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50 NOA dated 12 February 2025 at p 12, lines 1–7.

51 NOA dated 12 February 2025 at p 4, lines 2–5.

the effect of rendering [COSCO's] application for permission to commence contempt proceedings nugatory".[52]

31 Further, in view of the undertakings given by OKI and BRINS and the variation of the ASI that I have ordered in this judgment (at [123] below), there is also, in my view, no prejudice to COSCO if the stay is maintained until the final determination of any appeals that may be mounted by either party against this judgment. On the other hand, if there is no appeal or permission to appeal filed by either party and the deadline for doing so expires, then the stay (and the undertakings) will no longer operate - *instead*, the ASI as varied will no longer be suspended and will kick in to take effect. Thus, in effect, the brakes would have been put on the Indonesian Proceedings either way. In my judgment, that is a sensible way to maintain the status quo pending the final determination of SUM 3059.

Preliminary issues in respect of SUM 3059

Jurisdiction

32 COSCO suggests that the variation application should have been made to the Court of Appeal –[53] I disagree. Notwithstanding that the ASI was issued by the Court of Appeal, the High Court does have the jurisdiction to hear a subsequent application to set aside or vary the ASI. In *COSCO (Interim Stay)*, I had observed that "when the Court of Appeal makes an order for an anti-suit injunction in allowing an appeal from a decision of the court below … it does so by exercising the General Division's powers pursuant to s 49(2) of the

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52 CSS at para 142.

53 NOA dated 12 February 2025 at p 9, lines 23–27.

[Supreme Court of Judicature Act 1969]" (at [30]). The General Division of the High Court thus possesses jurisdiction to hear and grant orders which affect previous orders made by the Court of Appeal, so long as this does not amount to a contravention of the *res judicata* rule (*COSCO (Interim Stay)* at [30]–[31]). My observations in *COSCO (Interim Stay)* remain equally relevant here and in my view, the variation application was appropriately made to the General Division of the High Court.

Whether SUM 3059 is out of time or is an abuse of process

33 I first address COSCO's objections as outlined above at [22]. As these were in the nature of preliminary objections, I consider them first.[54]

34 COSCO's first argument is that SUM 3059 was filed out of time. COSCO contends that setting aside applications are made pursuant to the court's powers under O 3 r 2(8) ROC 2021. Order 3 r 2(8) is however subject to O 3 r 2(10), which states that an application under O 3 r 2(8) "must be taken out within 14 days after the date the applicant knows or should have known that any of the grounds in that paragraph exists". COSCO submits that OKI filed SUM 3059 "more than a month after being notified of the ASI".[55] In this regard, I note that OKI filed its Notice of Appointment of Solicitors and SUM 2712 (*ie*, its stay application) on 20 September 2024, a month before it filed SUM 3059.

35 At the hearing, OKI took the position that I had effectively granted an extension of time for OKI to file SUM 3059 because I had granted the interim stay prayed for in SUM 2712 subject to various conditions including one that

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54 CSS at paras 111–115.

55 CSS at para 111.

OKI was to file SUM 3059 by 21 October 2024.[56] I disagree with this argument – OKI had not sought any extension of time from me at the 17 October 2024 hearing and accordingly, that issue was not before me then.

36 OKI also contended that the time for them to file SUM 3059 should begin running from the time it was "aware of the full grounds for making the application".[57] OKI argues that even after it had access to the documents in OA 7 and CA 27, the Court of Appeal's minute sheet did not make clear the grounds on which the appeal had been allowed.[58] The implication appears to be that OKI did not know the grounds to support its setting aside application until the full decision in *COSCO (CA)* was published.

37 I agree with COSCO that in so far as the application prayed for the ASI to be discharged, revoked, or set aside, SUM 3059 was filed out of time. As an aside, for present purposes, I am willing to treat the application to "discharge" the ASI as also falling within the scope of O 3 r 2(8) even though the rule only refers to applications to "revoke" or "set aside" orders – plainly, a setting aside or revocation of the ASI would mean that the underlying injunction would be discharged.

38 It is clear from OKI's submissions that the *lack of service* of the Appeal Papers is the primary ground which it relies on in SUM 3059. As soon as it was notified of the ASI, OKI would have been aware of the fact that an ASI had been obtained against it in Singapore (in ADM 50) in circumstances where it

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56 NOA dated 11 February 2025 at p 5, lines 16–19; NOA for SUM 2712 dated 17 October 2024 at p 11, lines 20–23.

57 NOA dated 11 February 2025 at p 5, lines 26–27.

58 NOA dated 11 February 2025 at p 6, lines 7–16.

had not been served. While it is not clear on the evidence exactly when OKI says it became aware of the ASI, it is clear that OKI would have been aware of this at the latest by *20 September 2024* when it filed SUM 2712 and applied to stay the ASI (as I observed above at [34]). Thus, when OKI filed SUM 3059 on 21 October 2024, this was one month after the *latest* date on which it could have become aware of the ASI and the grounds supporting SUM 3059. For these reasons, I find that OKI did file SUM 3059 out of time.

39 However, I am also of the view that this procedural irregularity should be cured pursuant to O 3 r 2(4) ROC 2021, for three reasons. First, the delay by OKI was approximately two weeks long. This was not a lengthy delay. I am also not able to identify (nor has COSCO pointed to) any prejudice which arises from OKI's delay in filing SUM 3059. When OKI filed SUM 2712 on 20 September 2024, this would also have been a clear indication to COSCO that OKI was likely to challenge the ASI. I observe that OKI had actually informed COSCO of its intention to file an application to "set aside / vary [the ASI]" by way of an email from its solicitors to COSCO's solicitors dated 19 September 2024;[59] OKI also said as much in its affidavit supporting SUM 2712.[60] Second, I do not think that OKI has acted improperly or in bad faith. I am willing to accept OKI's submission that immediately following the grant of the ASI, the "need of the hour given the threat of contempt proceedings" meant that it was more concerned with staying the ASI.[61] I am of the view that the delay in these circumstances is forgivable. Third, OKI's application combined reliefs seeking

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59 5th Affidavit of Surya Kurniawan Susanto filed 10 October 2024 at p 261, para 3.

60 5th Affidavit of Surya Kurniawan Susanto filed 10 October 2024 at para 13.4 (originally filed under cover of the 4th Affidavit of Dawn Tan Si Jie, which was filed 20 September 2024).

61 NOA dated 11 February 2025 at p 6, line 24.

a discharge/revocation/setting aside of the ASI and a variation in the alternative. The application to vary the ASI would *not* have fallen within O 3 r 2(8) which only applies to applications to revoke or set aside orders. By the time I heard SUM 3059, the parties had had the opportunity to, and did, file all the affidavits they wished to and presented their written and oral arguments in full. Viewed in the round, it would be an unfair and disproportionate result for me to dismiss SUM 3059 out of hand in its entirety on the basis that part of the application seeking a discharge/revocation/setting aside of the ASI had been filed out of time. In my judgment, the fair and sensible approach is to cure the irregularity and hear and determine the entirety of the application on its merits. Accordingly, I cure the irregularity and grant OKI an extension of time until 21 October 2024 to apply to discharge/revoke/set aside the ASI, this being the date on which SUM 3059 was in fact filed. To be clear, as OKI's application to *vary* the ASI (also made in SUM 3059) was not filed out of time, there was no issue of the court having to cure any irregularity in respect of that part of the application.

40 I also did not consider OKI's conduct to be an abuse of process. As I observe below at [106], I did not think that OKI had acted improperly in the proceedings leading up to the present application. For this reason, the abuse of process ground also fails.

41 With those preliminary points out of the way, I turn now to address the more substantive questions before me.

Whether the ASI should be revoked/set aside/discharged

Whether OKI needed to be served with the Appeal Papers

42 For convenience, I reproduce the relevant provisions of O 18 rr 27(1) and 29(1) ROC 2021:

> **Bringing of appeal (O. 18, r. 27)**
>
> **27**.—(1) A party who intends to appeal to the appellate Court against the decision of the lower Court hearing any application or any appeal must file and serve on all *parties who have an interest in the appeal* a notice of appeal in Form 35 —
>
> …
>
> **Permission to appeal (O. 18, r. 29)**
>
> **29**.—(1) Where permission to appeal against a decision is required, subject to paragraphs (2), (3) and (4) and any written law, a party must apply for such permission from the appellate Court and file and serve the application and the documents mentioned in paragraph (7) on all *parties who have an interest in the appeal* within 14 days after the date of the lower Court's decision.
>
> [emphasis added]

43 The question is an easy one to frame but not such an easy one to answer: who is considered a "party", and which parties "have an interest in the appeal"?

44 OKI submits that the court should take guidance from O 57 r 3 of the Rules of Court 2014 ("O 57 r 3 ROC 2014" or "O 57 r 3"), which it says is the predecessor provision to O 18 rr 27 and 29. In particular, O 57 r 3(6) states:

> (6) The notice of appeal must be served on all *parties to the proceedings in the Court below who are directly affected by the appeal* or their solicitors respectively at the time of filing the

> notice of appeal; and, subject to Rule 10, it shall not be necessary to serve the notice on parties not so affected.
>
> [emphasis added]

45 The comparable phrase (in italics) is "parties to the proceedings in the Court below who are directly affected by the appeal". In support of its case, OKI cited *Golden Hill Capital Pte Ltd and others v Yihua Lifestyle Technology Co, Ltd and another* [2021] 2 SLR 1113 ("*Golden Hill*"),[62] a decision of the Court of Appeal which discusses the interpretation of O 57 r 3. The court in *Golden Hill* observed that O 57 r 3 ROC 2014 comprises two conjunctive requirements (at [38]). First, the person must be a party to the proceedings in the lower court. This refers to the named parties, "regardless of whether they were permitted to *participate* in [the lower court] proceedings" [emphasis in original]: *Golden Hill* at [40]. Second, the party must have been "directly affected by the appeal", which "entails some kind of impact on the *status and legal rights* of the party in question … by the substantive decision in the appeal, without the intervention of any intermediate agency" [emphasis in original]: *Golden Hill* at [46].

46 Drawing an analogy to the present case, OKI submits that it similarly satisfies the two prongs in O 18 rr 27 and 29. First, OKI is a "party" because it is named as such in ADM 50 and "in SUM 2676, OA 7, and CA 29".[63] Second, OKI has an "interest in the appeal" because the ASI substantively affects its "status and legal rights".[64] As outlined above (at [19]), COSCO's main argument is that OKI's withdrawal of its NITC affected either its status as a "party" or its "interest in the appeal", such that it did not need to be served.

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62 OSS at para 72.

63 OSS at para 75.

64 OSS at paras 76–77.

COSCO also points to the fact that OKI had, after being notified of CA 29, continued to display a lack of interest (see [19] above).[65]

47 In response, OKI argues that the withdrawal of its NITC is a "red herring".[66] It contends that its withdrawal of its NITC merely indicated that it was no longer *subjectively* interested in participating in ADM 50, but the requirements of service under ROC 2021 do not (and should not) take into account a party's subjective intentions.[67] Instead, on the authority of *Golden Hill* (at [40] and [42]), OKI's *legal status* as a party could not be affected by its decision to (not) participate, nor could its non-participation change the fact that it stood to be objectively affected by the appeal (*ie*, its "interest in the appeal" remained).[68]

Whether OKI was a "party"

48 In my view, OKI was a "party" within the meaning of O 18 rr 27 and 29. I agree with OKI's submissions and the observations in *Golden Hill* that the word "party" ordinarily refers to the *named* parties. This is supported by the following observation made by Coomaraswamy J in *Oro Negro Drilling Pte Ltd and others v Integradora de Servicios Petroleros Oro Negro SAPI de CV and others* [2023] SGHC 297 at [142]:

> … The parties to the proceedings are simply the two or more legal persons between whom the claimant asserts the *lis* to exist. It is therefore the claimant who defines the parties by choosing to name some but not other legal persons as either a claimant or a defendant upon commencement. The parties are

65 CSS at para 49.

66 OSS at para 79.

67 OSS at para 81(d).

68 OSS at para 81(a) and 81(b).

> not defined by some legal or factual relationship to the claimant or to the *lis. That is why the parties to civil proceedings can be identified simply by looking at the title to the proceedings.*
>
> [emphasis added]

49 Additionally, O 1 r 3 ROC 2021 defines a "non-party" as:

> … *any person who is not a party* ***in the action*** and includes a person who participates in the action because of a statutory duty or because he or she may be affected by the Court's decision in the action;
>
> [emphasis added in italics and bold italics]

50 In turn, an "action" refers to "proceedings commenced by an originating claim or an originating application" (see O 1 r 3 ROC 2021). On this definition, the "action" in this case would be ADM 50, and a "non-party" would be any person who was not party to ADM 50. The logical corollary of this is that a "party" would then be any person who *is* party to ADM 50.

51 I pause to observe that a named "party" in the current context likely contemplates a named party who *has been duly served* with the originating process. I hold this view for three reasons. First, this interpretation provides consistency with *ex parte* applications. Typically, *ex parte* applications still name a "respondent" on the cause papers, but do not need to be served because there is no actual "respondent": *Au Wai Pang v Attorney-General* [2014] 3 SLR 357 at [66].[69] Second, it accords with the general understanding of service as a primary means by which the court establishes jurisdiction over a matter: *COSCO (ASI)* at [25]. It only makes sense to speak of a "party" to an action if they are under or subject to the court's jurisdiction. Third, my views on this

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69 CSS at para 42.

point find support in *Gillooly v Gillooly* [1950] 2 All ER 1118 (*"Gillooly"*), a case which concerned the interpretation of O 58 r 2 of the English Rules of the Supreme Court, which is *in pari materia* with O 57 r 3(6) ROC 2014. The court in *Gillooly* held that a party who had been served with the proceedings below but did not enter an appearance is still a "party" who must be served with the notice of appeal (at 1119A; see also *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 57/3/13).

52 Applying these principles, as OKI was deemed served with the originating claim (see *COSCO (ASI)* at [143(b)]) and remains listed as the first defendant in ADM 50, it was a "party" under O 18 rr 27 and 29, and it would remain so unless and until it was removed pursuant to O 9 r 10 ROC 2021. On the authority of *Gillooly*, the subsequent withdrawal by OKI of its NITC could not affect its status as "party" to the proceedings. Lastly, I also address the Court of Appeal's statement (which COSCO relied on) that OKI, by reason of its withdrawal, "was no longer a party to the proceedings" by the time SUM 2676 was heard on 27 September 2023: *COSCO (CA)* at [31].[70] I do not think that the Court of Appeal was making any finding that OKI was not a "party" within the meaning of O 18 rr 27 and 29. Reading the relevant paragraph as a whole and in context makes it clear that the Court of Appeal was, in summarising the procedural history of the matter, merely noting OKI's *practical* involvement in SUM 2676, rather than its *legal* status in CA 29 as such. This can be inferred from the Court of Appeal's observation that SUM 2676 proceeded "as though it were an *ex parte* application": *COSCO (CA)* at [31]. The words "as though" suggest that the Court of Appeal was cognisant of the fact that SUM 2676 was

[70] CSS at para 43.

technically still *inter partes* in nature – *ie,* OKI was still legally a "party" to those proceedings at the time.

53 For the foregoing reasons, I find that OKI was a "party" within the meaning of O 18 rr 27 and 29.

Whether OKI had an "interest in the appeal"

54 Having found that OKI was a "party", the next issue is whether it also had an "interest in the appeal" such that it needed to be served the Appeal Papers.

55 As I mentioned above at [2], the definition of an "interest in the appeal" does not appear to have been directly considered by a court before. I therefore turn to consider the academic commentaries.

56 The commentaries are consistent in observing that an "interest in the appeal" is "broader language" than that previously used in ROC 2014 (*ie,* "directly affected by the appeal"): *Singapore Rules of Court: A Practice Guide* (Chua Lee Ming editor-in-chief; Paul Quan gen ed) (Academy Publishing, 2023) at para 18.084; see also *Singapore Civil Procedure 2025* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2025) ("*Singapore Civil Procedure 2025*") at para 19/14/5 (in the context of O 19 r 14 ROC 2021). Thus, the authors of *Singapore Civil Procedure 2025* observe that this "broadened definition suggests that so long as there is reason to believe that a party has a stake or may be affected by the outcome of the appeal, even third parties should be served with a notice of appeal for good order" (at para 19/14/5). In *Singapore Court Practice 2025* (Jeffrey Pinsler gen ed) (LexisNexis Singapore, 2025) ("*Singapore Court Practice 2025*"), the authors observe at para [18.5.2] that the

"term 'interest' is not defined so as not to fetter the court's discretion" (in the context of O 18 r 5 ROC 2021, which concerns obtaining permission to intervene in an appeal).

57 Returning to the present case, OKI certainly stood to be "directly affected" by the appeal per O 57 r 3 of the ROC 2014. It was the subject of the ASI sought and eventually obtained by COSCO. I agree with the general observation made in the commentaries above (at [56]) that an "interest in the appeal" appears to be broader than the previous wording. Accordingly, a party who is "directly affected by the appeal" would *generally* also be a party with an "interest in the appeal". The previous test of whether a party possesses a "legally significant interest" provides a useful starting point (see *Singapore Court Practice 2025* at para [18.5.2]. However, the question remains whether the meaning of "interest" admits of a consideration of factors *apart from* those relating to the effect of the outcome of an appeal on a party's legal interests. Here, COSCO has pointed to OKI's conduct as evidencing a lack of an "interest" in the appeal (see above at [19]).

58 This particular factual scenario does not seem to have been previously dealt with by the authorities. There is limited (indeed, no) guidance as to the outer limits of what constitutes an "interest in the appeal", and I am not certain that the present formulation necessarily encompasses *all* such instances where a party is, technically, "directly affected by the appeal". In other words, I am not confident that one can definitively say that the present wording of "interest in the appeal" fully subsumes the previous wording of "directly affected by the appeal", especially in the absence of any direct authority on the matter.

59 Accordingly, I turn to consider the present case as a matter of principle. I hasten to add that my findings on this issue are tailored to the unique factual situation before me, and should not be construed as giving parties *carte blanche* to skirt the requirements of service. The precedential value of my analysis in this case should thus be used with caution, pending a more authoritative exposition.

60 I first address COSCO's argument that OKI did not need to be served because it *displayed* a "lack of interest", as evidenced by its refusal to find out more about CA 29 (see [19] above). On this aspect of COSCO's case, whether a party needed to be served would depend on whether that party's *conduct* sufficiently evidenced its interest in the matter. In my opinion, this is not a relevant consideration. I agree with Mr Vergis' argument that this submission by COSCO, if correct, would introduce an undue amount of subjectivity and uncertainty into the requirements of service.[71] Accepting this interpretation would, in my view, open the door to abuse. Opportunistic parties may attempt to get around service requirements by simply asserting that the counterparty is "uninterested". Further, it would be immensely difficult, if not impossible, for courts to assess when exactly a party's inaction gives rise to the conclusion that they are sufficiently "uninterested" in the appeal and hence need not be served.

61 However, I agree with COSCO's other submission that OKI's withdrawal of its NITC affected its "interest in the appeal" (see [46] above). In my judgment, a party loses their "interest in the appeal" if they withdraw their notice of intention to contest prior to the appeal being brought. There are three reasons why I find that O 18 rr 27 and 29 should be interpreted in this manner.

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71 NOA dated 12 February 2025 at p 8, lines 13–17.

62 First, the concerns I have just raised at [60] do not apply to this situation because whether or not a notice of intention to contest has been filed (or withdrawn) is a clear and *objective* act which leaves no room for uncertainty. It would be a straightforward exercise for parties (and by extension, the court) to determine whether the other party has an active appearance in the proceedings or not.

63 Second, this construction accords with the purpose and rationale of the notice of intention to contest or not contest. The notice of intention to contest (or not contest) replaces the process of entering an appearance under the ROC 2014: *Singapore Court Practice 2025* at para [6.6.2]. A defendant enters an appearance to "officially communicate his intention to defend or challenge the action": *CNX v CNY* [2022] 5 SLR 368 at [29], citing *Singapore Court Practice* (Jeffrey Pinsler gen ed) (LexisNexis Singapore, 2021) at para 12/1/1. By extension, when a party *withdraws* their notice of intention to contest, they officially communicate their intention to cease participating in the action altogether – in my view, this would include any further proceedings thereunder.

64 Third, this interpretation neatly accords with one of the fundamental purposes of service, which is to give "notice of the document or a process (such as an application) so that the party served may address the matter, respond and state his position (if he wishes to do so)": *Singapore Court Practice 2025* at para [7.1.3]. Ordinarily, a "defendant is not entitled to take any steps in the proceedings until he has entered an appearance": *Singapore Court Practice 2025* at para 12/1/1. Extrapolating from this, there should be no need to serve documents pertaining to an appeal (or putative appeal) for the purpose of enabling the other party to respond if that party no longer has any right of audience in the first place, as a consequence of filing a notice of intention to

contest the proceedings and then subsequently withdrawing it prior to any appeal process being commenced by the other party. Whether a party has filed a notice of intention to contest (or having so filed one has subsequently withdrawn it) *at the point* when the application for permission to appeal or the appeal proper is brought is, in my view, an important (indeed, critical) consideration on (i) whether that party has an "interest in the appeal" and (ii) consequently, whether that party ought to be served or not.

65 For these reasons, I find that, by withdrawing its NITC, OKI did not, from that point onwards, have any "interest in the appeal" within the meaning of O 18 rr 27 and 29 as far as OA 7 or CA 29 were concerned. As I indicated above at [43] and [46], in order to succeed on this point, OKI needed to demonstrate that it met the conjunctive requirements of being a "party" with "an interest in the appeal". OKI only persuaded me on the former but not the latter requirement. Accordingly, in my judgment, COSCO was *not* required to serve the Appeal Papers on OKI.

Whether any defect of service of the Appeal Papers could and/or should be cured

66 In any case, even if I am wrong in my analysis above and OKI should have been served, I find that the failure to serve the Appeal Papers is an irregularity that may and, in the circumstances of this case, ought to be cured.

67 OKI submits that a failure to serve a notice of appeal is a "fundamental procedural defect that warrants" discharging the ASI.[72] OKI brought my attention to cases such as *AD v AE* [2004] 2 SLR(R) 505 and *Anwar Siraj and*

[72] OSS at para 90.

another v Ting Kang Chung John [2010] 1 SLR 1026 ("*John Ting*") for the proposition that a notice of appeal is essential for an appeal to exist.[73] However, at the hearing, Mr Vergis clarified that OKI was not taking the position that the defect *could not* be cured or that the court had no power to cure it, but rather that it *should not* be cured.[74] This was a sensible concession to make – it is clear that the court has broad powers under ROC 2021 to cure procedural irregularities. O 3 r 2(4)(*a*) ROC 2021 states:

> (4) Where there is non-compliance with these Rules, any other written law, the Court's orders or directions or any practice directions, the Court may exercise all or any of the following powers:
>
> > (*a*) subject to paragraph (5), waive the non-compliance of the Rule, written law, the Court's order or direction or practice direction;
> >
> > …

68 In deciding whether to exercise its discretion to cure a procedural irregularity, it has been suggested that the court should have regard to a two step approach which considers first, whether the breach "constitutes a material breach of the Ideals", and second, if the breach is "materially inconsistent with one or more of the Ideals", whether the court should exercise its discretion to "dismiss, stay or set aside" the proceedings having regard to the relevant considerations: Jeffrey Pinsler, *Singapore Civil Practice* (LexisNexis, 2022) at paras [4-46]–[4-47].[75]

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73 OSS at para 91.

74 NOA dated 11 February 2025 at p 5, lines 1–2.

75 CSS at para 53.

69 In the instant case, the key question in my view is whether COSCO's failure to serve the Appeal Papers has deprived OKI of "fair access to justice" (see O 3 r 1(2)(*a*) ROC 2021), that being the Ideal that is most likely to be impinged. Indeed, it was OKI's contention that it had been deprived of the right to be heard and fair access to justice by reason of COSCO's failure to serve the Appeal Papers.[76] OKI further contended that, by reason thereof, the hearing of CA 29 (and the ASI granted) was tainted by a serious and fundamental procedural defect and consequently the ASI granted was a nullity and should be revoked.[77]

70 In assessing whether a breach is "material" and whether I should exercise my discretion to cure it, I take guidance from two cases which discuss the types of factors which may be relevant. In *Anwar Siraj and another v Teo Hee Lai Building Construction Pte Ltd* [2014] 1 SLR 52 ("*Teo Hee Lai*"), it was observed (in the context of a previous version of the Rules of Court) that the court would refuse to cure a failure to comply with the Rules of Court if (at [48]):

> (a) the curative approach would result in prejudice; (b) where the nature of the error is so serious or fundamental that it cannot, in principle, be validated; (c) where the mandatory nature of the rule breached may be construed as excluding cure; (d) where the rule is sufficiently comprehensive to govern non-compliance; and (e) where the substantive application, if made, would have failed: see Jeffery Pinsler, *Principles of Civil Procedure* (Academy Publishing, 2013) at para 01.040.

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76 6th Affidavit of Surya Kurniawan Susanto filed 4 November 2024 at para 18; NOA dated 11 February 2025 at p 4, lines 21–23.

77 OSS at paras 90 and 92.

71 *John Ting* concerned a request for the court to grant an extension of time to file a notice of appeal. The court observed that the applicable principles are (at [29]):

> (a) the length of the delay; (b) the reasons for the delay; (c) the chances of the appeal succeeding if time for appealing is extended; and (d) the degree of prejudice to the would-be respondent if the application is granted.

72 I begin with the factors identified in *Teo Hee Lai*. Factors (b), (c), and (d) are not relevant – OKI accepts that the defect *can* be cured (see above at [67]), and O 18 rr 27 and 29 do not themselves identify the consequence of a failure to serve. Factor (e) operates in COSCO's favour – it ultimately succeeded on appeal. Turning to *John Ting*, factor (a) is not relevant as service was never effected. In my view, factor (b) operates in COSCO's favour – in light of my conclusion above that OKI did not need to be served, I consider that it was legally reasonable for COSCO to take the position that OKI did not need to be served. Factor (c) is similar to factor (e) in *Teo Hee Lai* and operates in COSCO's favour. However, I would be cautious about placing too much weight on this factor with the benefit of hindsight as to how the appeal eventually panned out. Further, it is precisely OKI's case that the appeal may have concluded differently if it had the chance to present its case – it would be circular to reason that an irregularity should be cured on the basis of a successful appeal when it is that very irregularity that has (allegedly) materially contributed to the appeal's success. Taking a holistic view, these factors (either singly or collectively) do not point strongly in either direction.

73 In my view, the determinative factor in this case is whether OKI suffered any prejudice arising from COSCO's failure to serve the Appeal Papers. In *Lim Julian Frederick Yu v Lim Peng On (as executor and trustee of the estate of Lim*

Koon Yew (alias Lim Kuen Yew), deceased) and another [2024] SGHC 53 at [107], the court held that in determining whether to waive non-compliance of a procedural requirement, the guiding consideration is the extent to which the non-compliance caused prejudice to the opposing party. Prejudice is a factor common to both *Teo Hee Lai* (factor (a)) and *John Ting* (factor (d)), and also aligns closely with the central consideration of whether OKI has been deprived of its right to be heard *ie*, whether the failure to serve OKI was materially inconsistent with the Ideal of "fair access to justice" (see above at [69]). But this, in my judgment, is also where OKI's objection falls. OKI has not been able to identify *any* prejudice which it suffered as a result of COSCO's failure to serve the Appeal Papers. There is nothing in the affidavit evidence which shows what OKI would have done had the Appeal Papers been served on them. After I dismissed SUM 4238, OKI withdrew its NITC to avoid being held to have submitted to the jurisdiction of the Singapore court, following the guidance given in *The "Jarguh Sawit"* [1997] 3 SLR(R) 829 at [34]–[36].[78] Having taken that position, it was clear to me that OKI no longer wished to participate in ADM 50, and by extension, in any proceedings within ADM 50, such as SUM 2676 *or* any appeals therefrom (see above at [63]). Indeed, when I asked Mr Vergis pointedly what OKI would have done had it been served with the Appeal Papers, he candidly responded that OKI's position was that the defect was so serious that it should not be cured and that is where OKI rested its case.[79] Mr Vergis' inability to elaborate on what, if any, course of action OKI could or would have taken had it been served was telling - in my view, it further evidenced OKI's inability to demonstrate any prejudice.

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78 NOA dated 15 September 2023 at the hearing of SUM 2302 at p 2, lines 18–26.

79 NOA dated 11 February 2025 at p 3, lines 7–11.

74 OKI argues that curing a defect of failing to serve the notice of appeal would "defeat the entire purpose of service", and cites *Lai Swee Lin Linda v Attorney-General* [2006] 2 SLR(R) 565 ("*Linda Lai*") (at [45]) for the proposition that "if no appeal is filed and served within the prescribed period …, the successful party is justly entitled to assume that the judgment concerned is final".[80] I do not think that passage addresses the fundamental issue in OKI's case – the lack of any identifiable prejudice. *Linda Lai* concerned an application to extend the time for filing the notice of appeal. The court was concerned that the successful party would not have the certainty of being able to rely on the judgment in its favour if it remained susceptible to appeal long after the prescribed period of appeal had lapsed (*Linda Lai* at [45]). That scenario is slightly different from the present case. Unlike *Linda Lai*, there is no indication that OKI wished to participate in or rely on any of the proceedings in SUM 2676, OA 7, and CA 29. Instead, all indications suggest quite strongly that OKI would *not* have participated in the appeal.

75 This conclusion is further buttressed by the fact that OKI was in all likelihood *aware* of the appeal (but yet chose not to participate). In particular, COSCO had sent the 24 May Email to the SIAC (copying OKI) whereby it informed the SIAC of CA 29 (see above at [6] and [19]).[81] The 24 May Email was relatively detailed. It stated, *inter alia*, that there was an ongoing appeal against SUM 2676, and that one of the issues in SUM 2676 was whether "[OKI's] claim in the Indonesian Proceedings falls within the scope of the arbitration agreement under Bill of Lading Nos. …".[82] OKI does not take the

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80 OSS at para 93.

81 Respondent's Core Bundle dated 31 January 2025, Tab 31.

82 Respondent's Core Bundle dated 31 January 2025, Tab 31, at para 3(b).

position that it did not receive the email or was otherwise not notified of CA 29. Instead, OKI contends that the 24 May Email (a) did "not constitute proper service", (b) contained "minimal information and documents", and (c) that it had no obligation "to find out more about CA 29 on its own accord".[83]

76 While I agree with OKI that its subjective awareness of the appeal could not possibly affect its entitlement (if any) to be served (see [60] above), OKI's knowledge can be taken into account for the purpose of deciding whether it has suffered any prejudice by not being formally or properly served. That knowledge is relevant to the question of whether the failure to be served should be cured.

77 In this regard, I find the following observations in *Family Food Court (a firm) v Seah Boon Lock and another (trading as Boon Lock Duck and Noodle House)* [2008] 4 SLR(R) 272 (at [65]) to be apposite (in the context of a party seeking to intervene):

> It should also be noted that if a person who has an interest in the proceedings decides not to be a party, he is bound by the court's decision in those proceedings and cannot seek to re-open the case. As Lord Penzance observed in the English High Court decision of *Wytcherley v Andrews* (1871) LR 2 P & D 327 at 328–329:
>
> > [T]here is a practice in this court, by which any person having an interest may make himself a party to the suit by intervening; and it was because of the existence of that practice that the [courts] ... held, that if a person, knowing what was passing, was content to stand by and see his battle fought by somebody else in the same interest, he should be bound by the result, and not be allowed to re-open the case.
> >
> > …

[83] 7th Affidavit of Surya Kurniawan filed 4 December 2024 at para 26.6.

78 Similarly, the Court of Appeal in *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 observed that:

> 101 … the due administration of justice also requires that objections to an irregular step be made without undue delay. A party who is aware of an irregularity should not sit by and do nothing before raising an objection late in the day.
>
> …
>
> 113 Conversely, *we must not be taken as saying that a party's failure to raise timely objections is never relevant to the exercise of the court's discretion under O 2 r 1. Rather, it always is.* Such a failure may indicate the lack of *bona fides* in an objection. ***Alternatively, an absence of prejudice may be inferred from one party's failure to object in a timely way.*** Put simply, *the court's discretion under O 2 r 1 should be exercised in light of all the circumstances of the case. These would include, the prejudice suffered by the party not in default*, any delay by the party making an objection and the reasons for that delay.
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> [emphasis added in italics and bold italics]

79 On the evidence, OKI was aware of the appeal in CA 29 while it was ongoing. The 24 May Email was sufficient to fix it with notice that CA 29 was pending. OKI's decision to remain silent until after the appeal had been decided against it was, in my view, strongly indicative of the fact that it did not suffer any prejudice as a result of COSCO's failure to serve the Appeal Papers.

80 For this reason, I am of the view that even if it is the case that COSCO was required to serve the Appeal Papers on OKI, the failure to do so was, on the facts of this case, an irregularity that was not materially inconsistent with the relevant Ideal of fair access to justice. The irregularity should be cured in the circumstances of this case and thus, if necessary, I do so cure it under O 3 r 2(4)(*a*) ROC 2021 by waiving the non-compliance.

Whether the ASI should be discharged for other reasons

81 There was some dispute between the parties over whether SUM 2676, OA 7, and CA 29 were *inter partes* or *ex parte* in nature (see [18] above). The relevance being that a party appearing at an *ex parte* hearing would be under an obligation to make full and frank disclosure of all material facts: *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 ("*The Vasiliy Golovnin*") at [83]. It was common ground that SUM 2676 eventually proceeded as an *inter partes* hearing, even after OKI withdrew its NITC.[84] Accordingly, there is no question of any obligation arising at the hearing of SUM 2676 for COSCO to make full and frank disclosure. As for OA 7 and CA 29, for present purposes, I am prepared to assume (*without* deciding) that OA 7 and CA 29 were *ex parte* in nature. This is because even if OA 7 and CA 29 were assumed to be *ex parte* hearings (because OKI was not served with the Appeal Papers), I find that COSCO had not breached its duty of full and frank disclosure and that there are otherwise no other circumstances warranting the ASI to be discharged.

Whether there was a breach of full and frank disclosure

82 OKI submits that COSCO breached its duty of full and frank disclosure in two respects:

(a) COSCO failed to inform the Court of Appeal that the Indonesian Proceedings had already concluded and the parties were merely waiting for the final judgment on the merits.[85]

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84 NOA dated 11 February 2025 at p 2, lines 12–16 (OKI), and p 15, lines 13–15 (COSCO).

85 OSS at para 119.

(b) COSCO failed to inform the Court of Appeal of the principle of English law that only charterparty provisions which are "'germane' to the shipment, carriage and delivery of the goods, or the payment of freight", will be incorporated into a bill of lading by general words of incorporation: *Herculito Maritime Ltd and others v Gunvor International BV and others; The MV Polar* [2024] 2 All ER 263 at [82], [77] and [84].[86] For convenience, I will refer to this as the Incorporation Principle.

83 In respect of the first alleged breach, I do not think that COSCO had breached its duty of full and frank disclosure, and even if it did, I am of the view that it would not have materially affected the decision to grant the ASI. OKI submits that the fact that the Indonesian Proceedings were already at an advanced stage (*ie*, awaiting judgment) should have been disclosed because the Court of Appeal would have then taken into consideration issues of comity which may arise owing to the advanced stage of the Indonesian Proceedings.[87] OKI cites *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 ("*Sun Travels*") and *Beckkett Pte Ltd v Deutsche Bank AG* [2011] 2 SLR 96 ("*Beckkett*") for the proposition that considerations of comity become more relevant when the foreign proceedings are at an advanced stage.[88]

84 These cases do not greatly assist OKI. It is now clear that under Singapore law, the breach of an arbitration agreement is a separate ground that

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86 OSS at para 124.

87 OSS at para 120.

88 OSS at para 121.

on its own ordinarily justifies the grant of an anti-suit injunction (what has been termed, a "contractual ASI"): *Sun Travels* at [68]; *COSCO (ASI)* at [30]. As pointed out by Mr Toh at the hearing, *Beckkett* did not involve a contractual ASI and so the case is not as relevant.[89]

85 *Sun Travels* is thus the main authority for consideration. A careful perusal of the case shows that the court only considers comity when foreign proceedings are allowed to advance *due to the very fault of the ASI applicant*.[90] In *Sun Travels*, the court had observed that considerations of comity were relevant "*when there is delay in bringing an application for anti-suit relief*" [emphasis added] (at [81]), and "what is of greater importance is the extent to which the delay has allowed foreign proceedings to have progressed" (at [83]). This understanding of comity is consistent with the equitable nature of anti-suit injunctions (*Sun Travels* at [108]). Thus, comity would not prevent the award of an anti-*enforcement* injunction "where the applicant had no means of knowing that the judgment was being sought until it was delivered … [because] [w]ithout knowledge, there can be no dilatoriness that would make the applicant's conduct inequitable or unconscionable" (*Sun Travels* at [110]). In the present case, COSCO was (according to OKI) served with the Indonesian Proceedings on or about 7 August 2023.[91] In less than three weeks, SUM 2676 was filed on 25 August 2023. I do not think that there is any question of COSCO having been dilatory in pursuing the ASI, such that the comity considerations as identified in *Sun Travels* could apply.

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89 NOA dated 11 February 2025 at p 15, lines 27–29.

90 CSS at para 71.

91 5th Affidavit of Surya Kurniawan Susanto filed 10 October 2024 at para 9.1.

86 Accordingly, I am of the view that the fact that the Indonesian Proceedings were at an advanced stage was not a material fact that had to be disclosed, nor was it a fact that would have affected the Court of Appeal's decision.

87 In respect of the second alleged breach, OKI alleges that COSCO had failed to inform the Court of Appeal in CA 29 of the Incorporation Principle (see [82(b)] above). For context, the contractual relationship between COSCO and OKI arises from contracts of carriage as evidenced by nine bills of lading (the "BLs") issued by COSCO (as carrier) to OKI (as shipper): *COSCO (CA)* at [14]. The BLs contained clauses which incorporated the contract of affreightment between COSCO and COSCO (Europe) (the "Head COA"): *COSCO (CA)* at [13] and [14]. In particular, Box 6 of the Head COA provided that the loading port was to be "Oki Sea Port, Palembang, Indonesia 1SP 1SB [*ie,* one safe port, one safe berth] charterers' option to load at Sungai Pakning anchorage for handy size or smaller vessel" (the "Safe Port Warranty"): *COSCO (CA)* at [33(a)]. COSCO had taken the position in CA 29 that this Safe Port Warranty was one of the Head COA clauses which had been duly incorporated into the BLs.[92] Relying in part on the finding that the Safe Port Warranty had been incorporated in the BLs, the Court of Appeal in *COSCO (CA)* observed at [102] that:

> … the parties must have similarly contemplated that a pure tort claim for damage to the Trestle Bridge, caused during the performance of the contracts of carriage between the parties and where the foreseeable lines of defence included recourse to the provisions of those contracts, should be subject to the Arbitration Agreement. … loading at the Jetty with the Trestle

92 OSS at para 125, citing COSCO's Written Submissions in CA 29 dated 7 June 2024, at para 50(d).

> Bridge was not just contemplated, it was contractually provided for. …

88 OKI submits that COSCO's failure to inform the Court of Appeal of the Incorporation Principle led the Court of Appeal into error because they "did not consider whether the *specific* terms of the Head COA relating to the safe port warranty were incorporated in the BLs".[93] On OKI's case, the Safe Port Warranty was *not* such a germane term relating to shipment, carriage, delivery or payment of freight that it would have been incorporated into the BLs,[94] and presumably the Court of Appeal might have agreed had they been aware of the Incorporation Principle.

89 In my view, this was not something which necessarily fell within the scope of COSCO's disclosure obligations. The obligation of an *ex parte* applicant is to disclose all material *facts* (see [81] above). Strictly speaking, the Incorporation Principle was a point of *law*. While I am in no way saying that parties are allowed to misrepresent the law to any court, I am cognisant that legal arguments which go towards the merits of the dispute are not the primary focus of the disclosure obligations. Contrast may be made to English law, which appears to take a slightly broader approach. The applicant (or more accurately, the applicant's counsel(s)) in a without notice application is under a duty to make "fair presentation", and this extends to drawing the court's attention to the applicable law: *Memory Corporation plc and another v Sidhu and another* [2000] 1 WLR 1443 at 1454H and 1460A; Steven Gee, *Commercial Injunctions* (Sweet & Maxwell, 6th Ed, 2016) ("Gee, *Commercial Injunctions*") at para 8-014. That said, English law also recognises that "erroneous legal submissions

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93 OSS at para 126(b).

94 OSS at para 126(c).

will not amount to non-disclosure or misrepresentation provided that such errors do not deprive the court of knowledge of any material circumstance": Gee, *Commercial Injunctions* at para 9-001.

90 Under Singapore law, only "defences which are of such weight as to deliver … a 'knock out blow'" need to be disclosed: *The "Xin Chang Shu"* [2016] 1 SLR 1096 at [48]. On its face, I do not think that the point raised by OKI was such a "knock out blow" as to require disclosure by COSCO. There would conceivably be some room for disagreement about whether the Safe Port Warranty was "germane" enough to be incorporated. In any event, even if there was non-disclosure, I do not think that it was so egregious as to warrant setting aside the ASI. The court will "often apply the principle of proportionality in assessing the sin of omission against the impact of such default" (*The Vasiliy Golovnin* at [84]). I do not think that COSCO's failure to raise the Incorporation Principle is so grave as to warrant setting aside the ASI.

Whether the ASI should be discharged upon hearing fuller arguments and/or a change of circumstances

91 OKI submitted that the ASI should be discharged for two main reasons:

(a) First, it is no longer possible for OKI to comply with the ASI because the Indonesian Proceedings have concluded.[95]

(b) Second, OKI is prepared to give an undertaking not to enforce or rely on the Indonesian Decision "pending the final determination on the

[95] OSS at para 96(a).

issue of the Tribunal's jurisdiction".[96] OKI submits that its undertaking would give COSCO what it had originally sought to achieve *via* the ASI.

92 COSCO also accepts that as things currently stand, the Indonesian Proceedings have concluded – by this I mean the Palembang High Court has rendered the Indonesian Decision on 7 October 2024, deciding in OKI's favour and granting it judgment for its claim albeit in an amount less than what OKI had originally claimed.[97] The only set of proceedings currently afoot in Indonesia is COSCO's cassation appeal to the Supreme Court of Indonesia against the Indonesian Decision[98] – apart from COSCO filing its appeal papers and OKI being permitted by me to file its response, OKI has held all further fire pending the determination of SUM 3059.[99]

93 Given the parties' common position as to the status of the Indonesian Proceedings, I accept that it is no longer possible to comply with the ASI fully as it is currently formulated – for example, it is no longer possible for OKI to not "commence" the Indonesian Proceedings, which is one of the acts enjoined by the ASI. In light of this, I am satisfied that the ASI as it is presently formulated would cause difficulties – the court cannot compel the impossible. That said, I am of the view that the ASI should be *varied*, but not discharged altogether. This is because, as OKI's proposed undertaking also implicitly acknowledges, while the Indonesian Proceedings have concluded, they have given rise to the Indonesian Decision, which is still "live" and may be used in a

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96 OSS at para 96(b).

97 6th Affidavit of Surya Kurniawan Susanto at paras 37–38.

98 NOA dated 11 February 2025 at p 8, lines 7–11.

99 NOA dated 17 October 2024 at p 13, lines 4–11.

manner prejudicial to COSCO. While I note that OKI has offered to undertake not to enforce and/or rely on the Indonesian Decision for the time being, at least while SUM 3059 is determined and/or its jurisdiction challenge before the SIAC is heard and determined, given that OKI is now before the court in ADM 50, a varied ASI would still have utility to ensure compliance. Further, OKI's undertaking also suggests that there is no material prejudice in allowing the ASI to remain but on varied terms.

94 For all the foregoing reasons, I am of the view that there is no justification for the ASI to be revoked, discharged or set aside and I decline to do so. Accordingly, that part of SUM 3059 is dismissed. I turn then to OKI's alternative case on varying the ASI.

Whether the ASI should be varied

95 For convenience, I reproduce again the material portion of the ASI:[100]

> The 1st Defendant and its respective officers, servants and agents be restrained forthwith from commencing and/or maintaining and/or continuing the prosecution of the proceedings before the Kayuagung District Court, Indonesia in Case No. 46/Pdt.G/2022/PN Kag and/or any consequential proceedings resulting therefrom (including any appeals) (the "**Indonesian Proceedings**").
>
> [emphasis in original]

96 As I mentioned above at [93], full compliance with the ASI became impossible from 7 October 2024, the date of the Indonesian Decision. It is well established that an injunction may be varied to take cognisance of a "material change of circumstances since the injunction was first granted": *AAR and*

[100] Respondent's Core Bundle dated 31 January 2025, Tab 21, at p 194.

another v AAS (liquidator and trustee of B and others) and others [2009] 4 SLR(R) 33 at [16].[101] In my view, impossibility of performance (whether in whole or in part) is a paradigmatic case of changed circumstances requiring a variation of the ASI.

97 I pause to emphasise that any variation of the ASI would not prejudice COSCO's application in SUM 2914 for leave to apply for committal proceedings against OKI in respect of alleged prior breaches of the ASI (see [30] above).

98 As I noted above at [26(b)], on the question of varying the ASI, the key point of contention between the parties was whether the Time Bar Condition should be imposed.

99 I begin by noting that the court is empowered to impose such a condition and neither party contended otherwise. Section 4(10) of the Civil Law Act 1909 (2020 Rev Ed) ("CLA") gives the court broad powers to order injunctions, "either unconditionally or *upon such terms and conditions as the court thinks just*" [emphasis added].

100 The parties cited various authorities dealing with the issue of when a court should (or should not) impose conditions on a stay of proceedings in favour of arbitration, in the context of s 6(1) of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA"). Under s 6(2) IAA, the court may grant a stay of proceedings "upon such terms or conditions as the court thinks fit". Considering that the court's discretion under s 6(2) IAA and s 4(10) CLA is equally broad, I am of the view that the authorities dealing with the imposition of conditions

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101 OSS at para 128.

when ordering a stay of proceedings in favour of arbitration are equally apposite to the present case involving an ASI.

101 The leading case on the imposition of conditions is the Court of Appeal's decision in *The "Navios Koyo"* [2022] 1 SLR 413 ("*The Navios Koyo*"), from which the following principles may be distilled:

> (a) There exists a broad range of conditions which a court may impose. Whether the court's discretion to impose a condition ought to be exercised "depends on the true nature of the condition(s) sought, in the context of the relevant circumstances" (at [26]). Ultimately, the court's discretion to impose conditions is "informed by the justice of the case" and when there is "proper justification" put forward by the party seeking the imposition of the condition [emphasis in original removed] (at [30]).
>
> (b) In deciding whether to impose conditions, the court must consider all the surrounding facts and circumstances of the case and in particular, the following three factors (at [30]):
>
> > (i) "the *reasons* for the conditions being sought, and whether those reasons could have been obviated by the applicant's own conduct";
> >
> > (ii) "whether the need for any of the conditions was contributed to or caused by the conduct of the respondent"; and
> >
> > (iii) "the *substantive effect* on the parties of any condition that the court may impose".
> >
> > [emphasis in original]

(c) In relation to the first two factors which are to be assessed "as a matter of sound commercial practice", the court observed that a party is "entitled and expected to look after its own commercial interests" (at [31]). Thus, a party is not likely to obtain a condition "if the reasons for the condition being sought arise entirely from its own conduct" (at [31]). By contrast, conditions may be imposed if the respondent contributed to the need for a stay through "some unconscionable or improper conduct … such as: (a) misrepresentation; (b) wilful non-disclosure; and/or (c) deliberate design in waiting for a time-bar defence to set in prior to applying for the stay" (at [31]).

(d) In relation to the third factor, the court observed that administrative conditions which are merely facilitative of the arbitration agreement, such as "imposing a timeline to commence arbitration, requiring a party to appoint a solicitor to accept service, or ordering parties not to frustrate the appointment of the tribunal" tend to be less objectionable (at [27] and [29]). However, where the court is "being asked to deprive a party of a substantive and accrued defence which ought properly to be determined at the arbitration [this] is a very strong factor *against* the imposition of the condition" [emphasis in original] (at [32]). Such conditions, which include the waiver of time bar defences, will be "subject to a heightened level of scrutiny" (at [28]–[29]).

(e) Lastly, the court also clarified that the size of the claim is *not* a relevant consideration in deciding whether to impose a condition (at [42]).

102 I turn now to consider the authorities. In *The Navios Koyo*, the appellant commenced claims against the respondent under various bills of lading. The

face of the bills of lading contained an incorporation clause which purported to incorporate the relevant charterparty as well as the arbitration clause (at [2]). The appellant however, failed to inquire as to the relevant terms of the charterparty and/or arbitration clause, and only obtained a copy of the charterparty the night before the time bar accrued (at [2]). An unconditional stay in favour of arbitration was successfully obtained by the respondent (at [3]). The appellant sought the imposition of a condition that the stay should be made conditional on the respondent's waiver of the time bar defence (at [3]). The Court of Appeal declined to impose any conditions on the grant of the stay. The court found that the appellant "simply did not *bother* to ask the respondent for a copy of the charterparty … until the very last minute" [emphasis in original] (at [38]). It was thus not appropriate to impose a condition which would deprive the respondent of an "*accrued* and *substantive* defence" [emphasis in original] when the "the reasons underpinning the appellant's seeking of the condition lay entirely upon the appellant's own dilatory conduct", and there was otherwise no suggestion that the respondent had acted improperly (at [43]).

103 The next two authorities predate *The Navios Koyo* but their facts are still useful in demonstrating how the principles enunciated at [101] above can be applied. In *The "Duden"* [2008] 4 SLR(R) 984 ("*The Duden*"), the court upheld the decision of the assistant registrar requiring the appellant to waive its defence of time bar as a condition for staying proceedings. The court observed that "the respondents in the present case could not be faulted for failing to institute arbitration proceedings" (at [18]). In particular, the court observed that the respondents "were only informed of the identity of the relevant charterparty after the expiry of time for instituting proceedings" (at [18]), and the charterparty's incorporation was described as "confused and indirect" (at [21]). In light of the "uncertainty and confusion surrounding the identity of the

charterparty referred to in the Bill of Lading", it was not reasonable to require the respondents to comply with the arbitration agreement (at [22]). I note that the court was less than pleased with the appellant's conduct, noting that they appeared "all too clearly to be trying all ways and means to avoid an adjudication of the matter" (at [24]).

104 The last case is *The "Xanadu"* [1997] 3 SLR(R) 360 ("*The Xanadu*") (cited in *The Duden* at [16]–[17]). The court there was inclined to require the waiver of a time bar because there was "sufficient ambiguity which was reasonably entertained by the plaintiffs on the question whether the relevant bill of lading had identified the arbitration clause which was invoked"; furthermore, the defendants had waited till *after* the time bar expired to file their stay application (at [6]). While the court had also cited the potential "undue and disproportionate hardship" (at [6]) which the plaintiffs might suffer due to the size of their claim, this is no longer a relevant consideration (*The Navios Koyo* at [42]).

105 Returning to the instant case, I am cognisant that the Time Bar Condition is a substantive one which requires greater scrutiny. Nonetheless, I am satisfied that in the somewhat unusual circumstances of this case, the condition should be imposed. I elaborate below.

106 I am of the view that OKI's conduct leading up to the present circumstances could not be said to be dilatory or blameworthy. Nor could OKI, in the light of how the proceedings here and in Indonesia evolved, be faulted for not having instituted arbitration proceedings in Singapore earlier. Like the respondent in *The Duden*, I believe that OKI held legitimate doubts as to whether its tortious claim was captured by the arbitration agreement

incorporated into the BLs. The reasonableness of OKI's position is demonstrated by two facts – first, on 27 December 2023 and then on 28 March 2024 after hearing further arguments, I decided in OKI's favour at first instance in SUM 2676 – *ie*, COSCO's application for an ASI against OKI was dismissed on all the grounds that were advanced (see *COSCO (ASI)* at [188]). Second, on 27 June 2024 (by which time the two-year time bar under Indonesian law had expired), the Palembang High Court allowed OKI's appeal and dismissed COSCO's jurisdictional challenge which was initially allowed by the Kayuagung District Court. Thus, during that time, there was no ASI in place and OKI had two decisions in its favour that, in effect, indicated to OKI that it was *not* required to commence arbitration proceedings against COSCO in Singapore for its tortious claim as a result of the Incident. To be clear, the focus of my analysis here is not whether the ASI should have been granted – the Court of Appeal has already decided that issue in *COSCO (CA)*. My focus is on OKI's conduct in the intervening period and whether it was dilatory or blameworthy in failing to commence arbitration proceedings in Singapore before any Indonesian law time bar had or might have set in. In my view, any "delay" between the commencement of the Indonesian Proceedings and the situation OKI presently finds itself in following the grant of the ASI cannot be said to be due to its fault. OKI's conduct was unlike the appellant in *The Navios Koyo* who sat on its hands while allowing the time bar to run out. In contrast, in the case before me, due to how the proceedings in Singapore and Indonesia unfolded, there was a substantial period of time before the expiry of the Indonesian law time bar where OKI's position had, objectively, been justified – or at the very least, it could be said that the position was unclear and had not been authoritatively settled.[102] Of course, that state of affairs materially altered when

[102] NOA dated 12 February 2025 at p 5, lines 7–13.

the ASI was granted on 5 September 2024 but by that time, the time bar under Indonesian law had potentially already set in (at least in so far as any potential arbitration proceedings to be commenced by OKI in Singapore were concerned).

107 In my judgment, it would, in the unusual circumstances detailed above, be unjust to lay at OKI's door, the consequences (if any) of the time-bar under Indonesian law applying to a tortious claim that may be brought by OKI in arbitration proceedings in Singapore, or for OKI's claim to be subject to such a time bar defence.

108 COSCO argues that to preserve its claim against the time bar, OKI could and should have lodged a claim or counterclaim in the SIAC Arbitration while reserving its jurisdictional challenge.[103] OKI submits that this was not a tenable position to take. It cited the case of *Beltran, Julian Moreno and another v Terraform Labs Pte Ltd and others* [2024] 4 SLR 674 ("*Terraform*") for the proposition that filing a counterclaim would be inconsistent with a jurisdictional challenge (at [75]).[104] COSCO's counsel, Mr Toh, sought to distinguish *Terraform* on two fronts. First, he argued that *Terraform* concerned court and not arbitration proceedings; in arbitration, a concurrent jurisdictional challenge and counterclaim would be permitted by Rules 28.3 and 28.4 of the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016) (the "2016 SIAC Rules").[105] Rules 28.3 and 28.4 of the 2016 SIAC Rules state:

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103 NOA dated 11 February 2025 at p 18, lines 24–31.

104 NOA dated 12 February 2025 at p 6, lines 27–30.

105 NOA dated 12 February 2025 at p 10, lines 17–20.

> 28.3 Any objection that the Tribunal:
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> > a. does not have jurisdiction shall be raised no later than in a Statement of Defence or in a Statement of Defence to a Counterclaim; or
> >
> > b. is exceeding the scope of its jurisdiction shall be raised within 14 days after the matter alleged to be beyond the scope of the Tribunal's jurisdiction arises during the arbitral proceedings.
>
> The Tribunal may admit an objection raised by a party outside the time limits under this Rule 28.3 if it considers the delay justified. A party is not precluded from raising an objection under this Rule 28.3 by the fact that it has nominated, or participated in the nomination of, an arbitrator.
>
> 28.4 The Tribunal may rule on an objection referred to in Rule 28.3 either as a preliminary question or in an Award on the merits.

109 Second, Mr Toh pointed out that in *Terraform*, the defendant had filed its defence on the merits and its counterclaim on the basis of reservations, as opposed to a purely jurisdictional challenge (at [71]– [72]).[106]

110 In my view, *Terraform* is not exactly on point. I accept COSCO's argument that the counterclaim and defence in that case were inconsistent with the jurisdictional challenge because they were premised on "contradictory" (and thus ineffective) reservations (at [75]). Conceivably, it might have been open to OKI to file both a counterclaim and jurisdictional challenge if it had pleaded these grounds in the alternative (see *Terraform* at [72]). That said, I find that *Terraform* remains relevant in so far as it highlights the risks of filing pleadings on the merits together with jurisdictional objections (regardless of how they are structured) – indeed, the court in *Terraform* had observed that under ROC 2021, parties should file a jurisdictional objection "without more" (at [64]). I am of

[106] NOA dated 12 February 2025 at p 10, lines 17–25.

the view that OKI was entitled to consider this legal risk in deciding not to file a counterclaim in the SIAC Arbitration.

111 Further and in any event, COSCO's submission is not supported by a plain reading of Rules 28.3 and 28.4 of the 2016 SIAC Rules. Rule 28.3(a) only contemplates a jurisdictional challenge being made *via* either a defence or a defence to counterclaim. Considering how Rules 28.3 and 28.4 are framed, as well as my observations in the preceding paragraph in relation to *Terraform*, I agree with OKI that it was reasonable for OKI to take the position that it was not open to them to file a *counterclaim* in the SIAC Arbitration *while* reserving its jurisdictional challenge under Rule 28. Doing so would have put OKI at risk of taking a "contradictory" step that would have had the effect of submitting the counterclaim to arbitral proceedings and to the jurisdiction of the arbitral tribunal.

112 For completeness, I also do not think that *COSCO* has in any way acted improperly in this case. There was no suggestion that COSCO had engaged in dilatory tactics to cause the time bar to run out. While improper conduct was a basis in both *The Duden* and *The Xanadu* upon which the court imposed a condition requiring the shipowner to waive time bar, I do not read *The Navios Koyo* as *requiring*, in all cases, a finding of some impropriety on the part of the applicant (whether for a stay of proceedings or a contractual ASI) before such a condition would be imposed by the court (see *The Navios Koyo* at [31]). Ultimately, and as made clear in *The Navios Koyo*, the baseline is that the court is moved by the "justice of the case" (at [30]), and justice may, in an appropriate case, require a condition of a time bar waiver being imposed even in circumstances where *neither* party is blameworthy in any relevant sense.

113 Lastly, COSCO also argues that the Time Bar Condition is not necessary because it has either not yet accrued as a matter of Indonesian law (due to time being suspended) or has otherwise been effectively protected by OKI in Indonesia by way of the Indonesian Proceedings.[107] Initially, the parties crossed swords on what would happen if the arbitral tribunal in Singapore ruled that it had no jurisdiction to determine OKI's claim and that jurisdiction objection was subsequently upheld by the Singapore courts. OKI's argument was that in that scenario, if OKI was compelled (by reason of the ASI) to discontinue the Indonesian Proceedings but was subsequently successful in its arbitral jurisdictional challenge, it would not be able to commence fresh proceedings in Indonesia by reason of the time bar.[108] However, by the time the matter was argued before me, the question of whether the time bar under Indonesian law was relevant or applicable for the purposes of OKI commencing fresh proceedings *in Indonesia* was no longer the real bone of contention – this was because there was no longer any need to commence fresh proceedings in Indonesia given that the Indonesian Decision had been rendered. I thus do not find it necessary to decide that issue as it is no longer a concern on the facts before me.

114 The *real* issue before me is the prospect of COSCO raising the time bar under Indonesian law as a defence to any tortious claim (or counterclaim) that OKI may bring by way of *arbitration in Singapore*. At the hearing before me, Mr Toh was careful to state for the record that COSCO was only prepared to waive any time bar applicable under either Singapore law or English law but

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107 CSS at paras 91–94.

108 OSS at para 49.

without any reference to their respective rules of private international law[109] – parenthetically, Singapore law is the *lex arbitri* and English law is the governing law of the BLs. Mr Toh also made clear that COSCO's primary position was that I should not impose the Time Bar Condition as OKI had to live with the consequences of its litigation strategy, and that COSCO was not prepared to waive any Indonesian law time bar defence that might apply to OKI's tortious claim in Singapore.[110] I should add for context that there was no serious dispute that under Singapore conflicts of law principles, the proper law of OKI's claim in tort was Indonesian law on the basis that the Incident occurred there.

115 In response, Mr Vergis submitted that based on the carefully worded ambit of the time bar waiver COSCO was prepared to offer, it was clear that COSCO was in effect attempting to force OKI to shoehorn its claim as a contractual one under the BLs, and in turn be faced with COSCO raising contractual defences to the claim.[111] On the other hand, if OKI were to advance its claim as a tortious claim, it faced the prospect of COSCO contending that the claim was time-barred under Indonesian law, being the proper law of the tort.[112] In my view, even without delving into the merits, that is a reasonable interpretation of how matters are likely to unfold. I am thus satisfied that there is a more than reasonable prospect that in the event OKI seeks to advance its claim in arbitration as a tortious claim, COSCO is likely to raise a defence of time bar under Indonesian law.

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109 NOA dated 11 February 2025 at p 19, lines 6–11.

110 NOA dated 12 February 2025 at p 10, lines 1–15.

111 NOA dated 12 February 2025 at p 7, line 8 – 10.

112 NOA dated 12 February 2025 at p 5, line 30 to p 6, line 3.

116 In my judgment and for the foregoing reasons, having taken particular account of the circumstances of this case and how matters have panned out in Indonesia and Singapore, it would be unjust for the Time Bar Condition not to be imposed and for OKI's tortious claim (if advanced in arbitration) to have to contend with a defence of time bar under Indonesian law being raised by COSCO. Accordingly, and in the somewhat unusual circumstances of this case, I accept that there is proper justification for the imposition of the Time Bar Condition, and I am therefore prepared to order that the ASI be varied with the Time Bar Condition imposed. I turn now to consider the precise wording of the ASI and how it should read as varied.

Variation of the ASI

117 At the hearing, OKI eventually proposed that the ASI be amended to read as follows:[113]

> The 1st Defendant and its respective officers, servants and agents be restrained forthwith from enforcing, relying upon or taking any steps to enforce any judgment or orders issued in the Indonesian Proceedings, provided that the Claimant waives any time-bar objections or defences in SIAC arbitration no. ARB 476-484/23/SXG.

118 On the other hand, COSCO proposed adding the following language (emphasised in bold) to the ASI as currently formulated:[114]

> "The 1st Defendant and its respective officers, servants and agents be restrained be [*sic*] forthwith**, up to 7 October 2024,** from commencing and/or maintaining and/or continuing the prosecution of the proceedings before the Kayuagung District Court, Indonesia in Case No. 46/Pdt.G/2022/PN Kag and/or

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113 NOA dated 11 February 2025 at p 10, lines 7–22.

114 Loose sheet containing proposed variations tendered by COSCO at the hearing; NOA dated 11 February 2025 at p 18, lines 10–14.

> any consequential proceedings resulting therefrom (including any appeals) (the "Indonesian Proceedings") **and be further restrained from enforcing and/or taking any steps in reliance on any judgment arising from the Indonesian [P]roceedings until a further order of the Court**."

119 Leaving aside the issue of the Time Bar Condition (which I have decided in OKI's favour), I am of the view that OKI's proposed variation is more straightforward. COSCO had proposed retaining the first part of the ASI which restrained OKI from "commencing and/or maintaining and/or continuing the prosecution" of the Indonesian Proceedings, up to 7 October 2024 (*ie*, the date from which compliance with the ASI became impossible – see [96] above). It proposed this formulation because it was primarily concerned with ensuring that OKI's variation did not have the unintended effect of curing its past (alleged) breaches of the ASI.[115]

120 In my view, COSCO's proposed wording is unwieldy in so far as the ASI (as varied) is meant to take effect prospectively from the date of this judgment, but still references past acts (up to 7 October 2024). I have thus decided to adopt OKI's proposed wording (with some further amendments of my own). For the avoidance of any doubt, I have also reiterated below (at [124]) that the ASI as varied only operates prospectively – this would adequately address COSCO's concerns in relation to any potential curing of OKI's alleged prior breaches.

Conclusion

121 For the reasons set out above, I allow Prayer 1 of SUM 2712 in the following amended terms:

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115 NOA dated 12 February 2025 at p 2, lines 26–28.

> That CA/ORC 34/2024 ("ORC 34"), as varied *vide* the order made in HC/SUM 3059/2024 ("SUM 3059"), be stayed pending the final determination of the 1st Defendant's application in SUM 3059 to discharge/revoke/set aside/vary ORC 34.

122 The phrase "final determination" is meant to cater to any appeals that may be brought against this judgment. As I stated above at [31], if the deadline for appealing (or seeking permission to appeal, if necessary) expires and no appeal or application for permission to appeal is filed, the stay I have ordered (and the undertaking given by OKI) will cease to operate and at the same time, the ASI as varied will then kick in.

123 As for SUM 3059, I dismiss the application in so far as it prays for the ASI to be "discharged, revoked, or set aside". I allow SUM 3059 to the extent that it seeks a variation of the ASI. The ASI as varied is to read as follows:

> The 1st Defendant and its respective officers, servants and agents be restrained forthwith from taking any steps in further continuation of the proceedings before the Kayuagung District Court, Indonesia in Case No. 46/Pdt.G/2022/PN Kag and/or any consequential proceedings resulting therefrom (including any appeals) (the "Indonesian Proceedings") and/or from enforcing, relying upon or taking any steps to enforce any judgment or orders issued in the Indonesian Proceedings, on the condition that the Claimant waives any time-bar objections or defences in SIAC arbitration no. ARB 476-484/23/SXG or any other arbitration proceedings commenced in Singapore by the 1st Defendant against the Claimant in respect of the 1st Defendant's claim against the Claimant arising out of the contact between the vessel "LE LI" (IMO No. 9192674) and the jetty/structure at Tanjung Tapa Pier, Palembang, Indonesia, on or about 31 May 2022.

124 For the avoidance of any doubt, I reiterate that the variation I have ordered above only takes prospective effect from the date of this judgment, subject of course to the terms of the stay order I have made in SUM 2712 at [121] above. The variation of the ASI does not, and is not intended in any way

to (i) affect the ambit of or any breaches said to arise from non-compliance with the ASI in its original form from the time it was granted on 5 September 2024 until its variation today (see above at [30]) or (ii) the merits of SUM 2914 which has not yet been heard by me.

125 I will hear the parties separately on costs.

S Mohan
Judge of the High Court

Toh Kian Sing SC, Dedi Affandi bin Ahmad, Hazel Cheah Kam Ying, Wu Muyu and Mohammad Salihin Bin Mohd Zahrin (Rajah & Tann Singapore LLP) for the claimant;
Abraham S Vergis SC and Axl Rizqy (Providence Law Asia LLC) (instructed), Leong Lu Yuan and Dawn Tan Si Jie (Clasis LLC) for the first defendant.