IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 7

Court of Appeal / Civil Appeal No 26 of 2025 (Summons No 32 of 2025)

Between

Owner of the vessel(s)
"CHLOE V"

… *Appellant*

And

UBS AG

… *Respondent*

JUDGMENT

[Civil Procedure — Stay of proceedings — Appeal]
[Civil Procedure — Costs — Security]

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Owner of the vessel(s) "CHLOE V"
v
UBS AG

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Court of Appeal — Civil Appeal No 26 of 2025 (Summons No 32 of 2025)
Steven Chong JCA, Ang Cheng Hock JCA and Hri Kumar Nair JCA
26 January 2026

3 March 2026

Steven Chong JCA (delivering the judgment of the court):

Introduction

1 It has been said that costs rules and orders have a profound impact on the final outcome of the legal proceedings; a litigant's vindication on the merits may prove to be hollow if the fruits of success are soured by uncompensated costs (*Ng Eng Ghee v Mamata Kapildev Dave* [2009] 4 SLR(R) 155 at [1]). In an appeal where the costs of the proceeding below remains outstanding, the respondent is precisely one who has secured a victory that may be in name only as it remains out of pocket in legal fees. That being the case, it has every right to seek payment of the outstanding costs before being required to incur further costs in the appeal. When an appellate court is asked to stay the appeal on account of the outstanding costs order, the fundamental consideration would be to balance the right of the respondent to be paid the outstanding costs and the right of the appellant (whose case has been found to be without merit by the

lower court) to pursue its appeal notwithstanding its failure or omission to pay the outstanding costs.

2 The present application, in which the respondent seeks a stay or dismissal of the appeal, CA/CA 26/2025 ("CA 26"), pending the payment of the outstanding costs ordered below and further security of costs for the appeal, presents an opportunity for this court to consider the applicable principles that would assist future courts in approaching this balancing exercise in the context of the Rules of Court 2021 (the "ROC 2021"). In developing the framework to deal with such applications, we have considered various arguments raised by litigants in previous cases, in addition to those raised in the present appeal.

Procedural history

3 The procedural history of the appeal informs that the respondent's attempts at recovering costs from the appellant have at every turn been fraught with unnecessary difficulties. For context, the appellant is a special purpose vehicle incorporated in the British Virgin Islands and was at all material times the registered owner of the vessel, "Chloe V" (the "Vessel"). The respondent is a leading international financial bank. It was previously known as Credit Suisse AG, until it was absorbed into UBS AG by way of a statutory merger on 31 May 2024. It is not disputed that the surviving entity, UBS AG, has automatically succeeded to all the assets, rights and obligations of Credit Suisse AG. For convenience, we will simply refer to the surviving entity as the "respondent".

4 On 18 September 2021, the respondent commenced HC/ADM 102/2021 ("ADM 102") against the Vessel. The respondent's claim was for outstanding sums due under a Facilities Agreement dated 26 June 2019 (the "Facilities Agreement") entered between the parties, which was secured by a mortgage on

the Vessel. On 15 October 2021, the respondent proceeded to enforce its mortgage by arresting the Vessel.

5 On 29 September 2021, the appellant entered an appearance in ADM 102 and filed a counterclaim, in which it alleged that the respondent had breached an implied term and/or duty to not prevent the appellant from performing its obligation, to act rationally in exercising its discretion, and/or to not unreasonably withhold any approval which it may give under the Facilities Agreement. In particular, the appellant relied on the respondent's refusal to grant the appellant's request for a Letter of Quiet Enjoyment, which allegedly scuppered the appellant's negotiations for a new charterparty with Koch Supply and Trading Pte Ltd.

6 On 18 November 2021, Justice S Mohan (the "Judge") ordered that the Vessel be appraised and sold *pendente lite* by the court. The Vessel was subsequently sold for US$42,100,000 and the sum of US$42,933,184.45 (the proceeds from the sale of the Vessel and the bunkers onboard) was paid into court on 26 January 2022 (the "Sale Proceeds").

7 The respondent then applied for summary judgment against the appellant *viz* HC/SUM 5945/2021 ("SUM 5945"). On 21 March 2022, Assistant Registrar Paul Tan ("AR Tan") granted judgment in favour of the respondent for the sum of US$43,586,317.36, along with interest. Notably, the Sale Proceeds were insufficient to satisfy the respondent's judgment debt.

8 The costs of SUM 5945 were fixed at S$80,000 on an indemnity basis, with disbursements to be agreed or fixed by the court. On 5 April 2022, the respondent's solicitors sent a demand for the appellant to pay the costs ordered. The appellant did not respond.

9 The appellant appealed against AR Tan's decision *viz* HC/RA 82/2022 ("RA 82"). On 18 May 2022, the Judge heard and dismissed the appeal with costs fixed at S$30,000 on an indemnity basis and disbursements. On the same day, the respondent's solicitors sent another demand for the appellant to pay the outstanding costs, this time including the costs of RA 82. Again, the appellant did not respond.

The appellant's delay in furnishing security for costs for its counterclaim

10 Notwithstanding that it owed costs to the respondent, the appellant proceeded with its counterclaim. In the circumstances, the respondent applied for security for the costs of defending the counterclaim *viz* HC/SUM 2171/2022 ("SUM 2171"). On 14 September 2022, Assistant Registrar Colin Seow ("AR Seow") ordered the appellant to furnish security in the sum of S$265,000 by way of payment into court or a first-class banker's guarantee within 14 days, *ie*, by 28 September 2022, failing which the counterclaim would be automatically stayed.

11 Instead of furnishing the security as ordered, the appellant appealed against AR Seow's decision *viz* HC/RA 304/2022 ("RA 304") which was heard and dismissed by the Judge on 14 November 2022. The appellant was granted a time extension to furnish the security within 14 days, *ie*, by 28 November 2022.

12 Even then, the appellant failed to meet the extended deadline. On 28 November 2022, the appellant filed HC/SUM 4267/2022 ("SUM 4267"), which was an application for a variation of the order to furnish security to include the option of providing a solicitor's undertaking, as well as *another* time extension of three weeks (until 19 December 2022). The application was heard

by Assistant Registrar Vikram Raja Rajaram on 21 December 2022, and he granted only the time extension. He also made the following observations:

> 10. In my view, an extension of time should be granted. Essentially, the [appellant] states that it required time to fund the security through a loan from a third party controlled by the shareholders of the [appellant]. The [appellant's] solicitors have also confirmed that they have since received the relevant amount to provide security. In these circumstances, I think it is appropriate for an extension of time to be granted.
>
> 11. *I accept though that the reasons provided are not entirely satisfactory. Steps ought to have been taken after [AR Seow's] Order was made to arrange for provision of security and if the intention was not to comply with the AR's Order pending appeal, a stay of the AR's Order should have been sought. Further, additional time should have been sought from the Judge.* However, in my view, these unsatisfactory aspects of the reasons provided can be addressed through an appropriate order as to costs. I will be hearing the parties later on the cost orders that I should be making on both applications.
>
> [emphasis added]

13 It was on 29 December 2022 – *more than three months* after AR Seow's decision – that the appellant finally paid the sum of S$265,000 into court.

The appellant's refusal to comply with various costs orders

14 The appellant's refusal to make payment was not confined to the above costs orders. The following sums, which arose from various other applications in ADM 102, remained due and payable from the appellant to the respondent:

(a) S$7,000 and S$3,133.85, being the costs of and disbursements for SUM 2171.

(b) S$8,000 and S$819.68, being the costs of and disbursements for RA 304.

(c) S$5,500, being the net costs of SUM 4267 and HC/SUM 4110/2022 ("SUM 4110").

(d) S$2,200, being the net costs of HC/SUM 1530/2023 and HC/SUM 1543/2023.

15 On 21 December 2022, the respondent's solicitors sent a demand for the payment of S$5,500 (in relation to (c) above). The appellant again did not respond. A further demand was sent on 13 June 2023 for the payment of S$24,453.53, which constituted the outstanding costs incurred in relation to the respondent's counterclaim (SUM 2171, RA 304, SUM 4267 and SUM 4110). The appellant was requested to make payment by 20 June 2023. Again (and unsurprisingly by this point), the appellant did not respond.

16 On 6 July 2023, the respondent's solicitors sent a final demand for the payment of the outstanding costs. This time, the respondent asked the appellant whether it was prepared to consent to the respondent's application for payment of outstanding costs from the security of S$265,000 previously paid into court on 29 December 2022.

17 The appellant's solicitors replied on 12 July 2023, stating that the outstanding costs had already been paid out of the Sale Proceeds pursuant to Clause 34.5 of the Facilities Agreement. We reproduce the relevant portions of Clause 34.5 for convenience:

> **34.5 Partial payments**
>
> 34.5.1 If the Agent receives a payment for application against *amounts due under the Finance Documents* that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order …
>
> [emphasis added in italics]

However, the respondent pointed out that Clause 34.5 applied to any payments received against amounts due under the Finance Documents (as defined in the Facilities Agreement), and not to the payment of outstanding costs incurred by a borrower in the course of defending and/or prosecuting an action.

18 In the circumstances, the respondent applied for payment out of the security held in court *viz* HC/SUM 2422/2023. On 30 August 2023, the Judge, who heard the application, ordered S$21,953.53 to be paid out to the respondent. As of 20 November 2025, S$243,046.67 represents the balance sum from the S$265,000 paid into court.

Further security for costs for the appellant's counterclaim

19 Leading up to the trial of the appellant's counterclaim, the respondent filed an application for further security for costs *viz* HC/SUM 2973/2024. On 30 October 2024, the Judge heard the application and agreed that it was reasonable to order further security for costs, in view of the increase in the number of trial days from six to eleven days and an increase in the number of expert witnesses on the appellant's part. The Judge ordered the appellant to provide further security of S$60,000 within 14 days of 30 October 2024, *ie*, by 13 November 2024.

20 On 13 November 2024, the appellant provided the security in the form of a solicitor's letter of undertaking. As such, the respondent had security for costs in the total of S$303,046.47 (excluding any accrued interest) prior to the commencement of the trial of the counterclaim.

The appellant's refusal to pay costs for its counterclaim

21 The trial of the counterclaim was heard from 1 November to 13 November 2024. On 28 July 2025, the Judge dismissed the counterclaim in its entirety (the grounds of his decision can be found in *The "CHLOE V"* [2025] SGHC 142 ("*The "CHLOE V"*") and invited submissions on costs. On 11 November 2025, the Judge issued his decision on costs:

> 1. Costs of the [c]ounterclaim are fixed at SGD 650,000 to be paid by the [appellant] to the [respondent].
>
> 2. Disbursements of the [c]ounterclaim are fixed at the aggregate of SGD 39,985.53, GBP 85,900.00, USD 83,626.76 and CHF 93,875.12 to be paid by the [appellant] to the [respondent].
>
> 3. Interest on the amounts stated at paragraphs 1 and 2 of this Judgment are to accrue at a rate of 5.33% per annum commencing from 11 November 2025 until the date when full payment is received.

22 Thereafter, the respondent's solicitors sent a demand for payment of the sums owing pursuant to the costs order on 12 November 2025. The appellant did not respond. On 18 November 2025, the respondent's solicitors sent a further demand for the appellant to make payment by 25 November 2025. The appellant did not respond.

23 On 28 November 2025, the respondent's solicitors wrote to the appellant's solicitors demanding payment of S$60,000 held as security pursuant to the solicitor's letter of undertaking. On the same day, the respondent filed HC/SUM 3504/2025 ("SUM 3504"), seeking payment of the remaining sums held in court as security for the costs of defending the appellant's counterclaim. The appellant's solicitors finally responded on 3 December 2025 that they had arranged for the payment of S$60,000 and that they would not be objecting to SUM 3504. However, they maintained that the costs of and incidental to SUM 3504 ought not to be borne by the appellant as it was "not contested".

24 On 9 December 2025, the respondent's solicitors replied that the costs of and incidental to SUM 3504 ought to be borne by the appellant as it was necessitated by the appellant's refusal to pay the outstanding costs, despite the respondent's demands on 12 and 18 November 2025. The appellant did not respond.

25 On 11 December 2025, the respondent's solicitors wrote to the appellant's solicitors, stating that:

(a) S$60,000 had been applied towards the accrued interest and part-payment of the outstanding costs.

(b) Even after the respondent receives the amount of security for costs held in court (S$243,046.67), this would not be sufficient to satisfy the outstanding costs order.

(c) The respondent demands for "immediate and full payment of all sums owing under [the outstanding costs order]". This was calculated to be S$633,510.24, £85,900, US$83,626.76 and CHF 93,875.12.

Again, the appellant did not respond.

26 The events described at [21]–[25] above took place after the appellant had filed CA 26 on 23 September 2025 against the decision in *The "CHLOE V"*. On 26 December 2025, the respondent filed the present application.

Application for stay or dismissal pending payment of outstanding costs

Applicable law

27 Prior to the introduction of ROC 2021, the courts appeared to favour a more restrained approach towards staying or dismissing appeals pending

payment of the outstanding costs by an appellant. While the court had inherent power (pursuant to O 92 r 4 of the Rules of Court 2014 (the "ROC 2014")) to require an appellant to pay the outstanding costs on penalty of the appeal being stayed or dismissed, this court observed in *Roberto Building Material Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2003] 2 SLR(R) 353 at [17], "[t]his inherent [power] should only be invoked in exceptional circumstances where there is a clear need for it and the justice of the case so demands. The circumstances must be special." The mere fact that an appellant was able to but did not pay costs is insufficient to meet this threshold (*Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd* [2020] 1 SLR 97 at [37]).

28 The substance of O 92 r 4 of the ROC 2014 can now be found in O 3 r 2(2) of the ROC 2021, which states:

> **General powers of Court (O. 3, r. 2)**
>
> … (2) Where there is no express provision in these Rules or any other written law on any matter, the Court may do whatever the Court considers necessary on the facts of the case before it to ensure that justice is done or to prevent an abuse of the process of the Court, as long as it is not prohibited by law and is consistent with the Ideals.

29 At the same time, O 21 r 2(6) of the ROC 2021 introduces a new and separate regime for staying or dismissing appeals pending payment of the outstanding costs by an appellant:

> **Powers of Court (O. 21, r. 2)**
>
> … (6) The Court may stay or dismiss any application, action or appeal or make any other order as the Court deems fit if a party refuses or neglects to pay any costs ordered within the specified time, whether the costs were ordered in the present proceedings or in some related proceedings

30 At the outset, we agree with the observations of the Appellate Division in *Huttons Asia Pte Ltd v Chen Qiming* [2024] 2 SLR 401 ("*Huttons*") at [28]–[29] that, given the express power contained in O 21 r 2(6), there is no longer any need to resort to the court's inherent powers, and that *a more robust approach should prevail* in response to an appellant's failure or omission to pay the outstanding costs. However, that is not to say that the court's inherent powers to stay appeals on account of outstanding costs orders can never be invoked again if O 21 r 2(6) for whatever reason does not apply. The decision in *Huttons* is in line with the approach taken by this court in two prior unreported decisions, CA/SUM 12/2023 and CA/SUM 20/2024 (see the discussion in *Huttons* at [26]; and in respect of the former decision, *The Republic of India v Deutsche Telekom AG* [2024] 1 SLR 56 at [37]). The subsequent High Court decision of *Hahnemann Travel & Tours Pte Ltd v Hasnah bte Abdullah* [2025] SGHC 250 adopted a similar approach (at [38]). In these decisions, the respective appellants were ordered to make full payment of the outstanding costs before their appeals could be heard. This is also in line with the Ideals set out in O 3 r 1(2) of the ROC 2021, in particular, to achieve fair and practical results suited to the needs of the parties. Indeed, as observed in *Huttons* at [27], "an appellant's failure to pay the costs of proceedings at first instance, whilst continuing to pursue appellate proceedings, may be regarded as unfair to its counterparty, who is forced to be out of pocket in defending the appeal despite not having been paid costs for proceedings it was successful in". In this spirit, we turn to the principles which are applicable to the exercise of the court's power under O 21 r 2(6) of the ROC 2021.

31 As a starting point, given that the stay application is filed by the respondent, the respondent is required to show, on a *prima facie* basis, that the appellant has "refused or neglected" to pay the outstanding costs. The fact that

the appellant has failed or omitted to pay the outstanding costs should suffice to demonstrate such a *prima facie* case.

32 The burden then falls on the appellant to explain why the outstanding costs order has not been satisfied and to provide a good reason why a stay should not be granted on account of the outstanding costs order. In our view, placing such a burden on the appellant is fair and sensible as only the appellant would know the true state of its own financial position (see *Goldtrail Travel Ltd v Onur Air Tasimacilik AS* [2018] 1 All ER 721 at [15]). If the appellant is unable to provide a good reason for its failure or omission to pay, a stay should ordinarily be granted as such an appellant would be treated as having "refused or neglected" to pay the outstanding costs. Any stay order should be limited to an appropriate period of time; if the costs order remains outstanding beyond that period, the appeal would be deemed to have been struck out automatically. This is to ensure that the appeal does not remain pending indefinitely on account of the appellant's failure to pay the outstanding costs.

33 If the appellant claims that it lacks the financial resources to make payment in respect of the outstanding costs order, it is incumbent on such an appellant to explain its financial position, including the provenance of the funds for the litigation below and for the appeal. It is no answer to allege that the funding by a third party (such as controllers, shareholders, potential investors or related companies) was voluntary in nature and hence limited only to the costs for the pursuit of the claims. As the outstanding costs order, *ie*, the costs debt, arose as direct result of the funding provided by such third parties, there is no legitimate reason why such third parties should not be required to pay the outstanding costs if they wish to proceed with the appeal. We would add that, if third-party funders adopted such a position, that would be plainly self-serving,

and it is precisely the type of conduct which was cautioned against in *Frantonios Marine Services Pte Ltd v Kay Swee Tuan* [2008] 4 SLR(R) 224 at [53]:

> Where the condition in s 388 is satisfied (*ie*, that the impecunious plaintiff corporation is unable to pay the costs of the successful defendant), it normally follows that the corporation's own costs of pursuing the claim must be financed by the directors, shareholders or other interested parties (collectively called "interested parties"). If these interested parties believe that the plaintiff corporation has a viable or meritorious cause of action and they wish to shoulder the risk of that litigation, then it is only fair that they should not only provide funds for the corporation's legal fees and associated expenses for the litigation, but they should also, if so ordered by the court, provide funds to enable the plaintiff corporation to provide security for costs of the defendant in the event the plaintiff corporation's action fails, since there is no real possibility that the plaintiff corporation itself will be able to satisfy the defendant's costs. *The interested parties' evaluation of risk should not be allowed to proceed on the basis that if the plaintiff corporation were to succeed, the interested parties stand to gain (albeit indirectly) but if the action is lost, the interested parties can simply walk away leaving the defendant saddled with unpaid costs that the plaintiff corporation will not be able to pay anyway.* These interested parties are essentially hiding behind the impecunious plaintiff corporation, only financing the plaintiff's side of the litigation costs but ignoring the plight of the defendant, who would not be able to reach the interested parties to satisfy its unpaid legal costs. …
>
> [emphasis added]

34 Likewise, it does not lie in the mouth of the appellant to claim that the respondent should take steps to enforce the outstanding costs order incurred as a direct result of the unsuccessful claim or defence below. The respondent should not have to incur additional costs and expenses to recover the outstanding costs. In this regard, we observe that such an invitation would typically be made when enforcement is not free of difficulty or inconvenience, including situations where the appellant is resident outside Singapore.

35 If the court is satisfied that the appellant does not have the financial resources to pay the outstanding costs (which would typically be the case if the

appellant is a litigant-in-person), then the failure or omission to pay the outstanding costs might not properly be regarded as refusal or neglect to pay. In this regard, we found the observation of Chao Hick Tin JC (as he then was) in *Ng Tai Tuan v Chng Gim Huat Pte Ltd* [1990] 2 SLR(R) 231 to be very instructive as to what the word "neglect" entails, albeit in the context of s 254(2)(*e*) of the Companies Act (Cap 50, 2006 Rev Ed). Chao JC observed at [14] that "[m]ere omission to pay a debt on demand does not of itself constitute neglect to do so within the meaning of that provision". He held that "neglect" in the context required an omission to pay *without reasonable excuse*. In such circumstances, O 21 r 2(6) of the ROC 2021 – which applies to situations where "a party refuses or neglects to pay any costs ordered" – is not engaged. The court should ordinarily allow the appeal to proceed so as to ensure that the appellant's right to pursue a legitimate appeal is not stifled subject to the court's inherent power to stay or dismiss the appeal where it is evident that the appeal is plainly hopeless. To show that the appeal is not hopeless, the appellant merely has to show that it has a good arguable case on appeal, *ie*, one that is more than barely capable of serious argument, but not necessarily one which a judge considers would have a more than even chance of success. Where the appeal turns on questions of fact which the trial judge has resolved against the claimant, it must be shown that there is a good arguable case that the trial judge's assessment was "plainly wrong or against the weight of the evidence" (see *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2020] 2 SLR 490 at [34]). It bears reiterating that the court should not be required to engage in a detailed examination of the merits of the appeal at this juncture, *ie*, any contention about the merits of the appeal should be one that is readily apparent. In circumstances where the appellant is not even able to cross this threshold, the balance of justice tilts in favour of the respondent, who bears all the financial risks of an appeal that is hopeless with little prospect of recovering its costs. In our view, the

combination of an impecunious appellant *and* a hopeless appeal qualifies as a special or exceptional circumstance in which the court should invoke its inherent power to stay or even dismiss the appeal.

36 On the other hand, even if the court is satisfied that the appellant has refused or neglected to pay the outstanding costs, it retains a discretion to refuse to stay or dismiss the appeal, pursuant to O 21 r 2(6) of the ROC 2021. The situations in which the court would exercise its discretion to allow the appeal to proceed should be extremely limited, given that an appellant should not ordinarily be allowed to ignore costs orders with impunity. The justice of the case must strongly demand that the appeal be heard. The facts of *Third Eye Capital Corp v Pretty View Shipping SA* [2025] SGHCR 16 ("*Third Eye*") are illustrative of one such situation. That case involved an application by the defendants to set aside the service of an order for examination of judgment debtor and the order itself. The examinee was a director of the defendants. It was submitted by the plaintiff that the court should stay or dismiss the application, on account of the fact that previous costs orders made against the defendants had not been satisfied. Given that the defendants could afford the costs of counsel, it appeared that the defendants had the requisite means but were deliberately refusing to pay the outstanding costs. The court refused to stay the application, considering it significant that the application was brought "as a *response*" [emphasis in original] to the examination proceedings brought by the claimants. Accordingly, the balance of interests "weighed in favour of the defendants' right to be heard regarding their objections about the [service of the examination order and the order itself]" (*Third Eye* at [21]). The issues raised went towards the court's jurisdiction – it appears to us that these were important matters that the court would have had to satisfy itself of in any event.

The appeal should be stayed pending the appellant's payment of the outstanding costs

37 It is uncontroversial that the appellant has failed or omitted to pay the outstanding costs in respect of its unsuccessful counterclaim. In the circumstances, the inquiry revolves around its reasons for its failure or omission to pay.

38 It is significant that, although the appellant does not appear to have any substantial assets in Singapore or elsewhere in the world, this has to date not impeded its ability to engage in costly legal proceedings. Similar observations were made by AR Seow at [40], [42] and [43] of his decision in SUM 2171 (published as *Credit Suisse AG v Owner of the Vessel "CHLOE V"* [2022] SGHCR 9 ("*Credit Suisse AG*")), which was the respondent's application for security for the costs of defending the appellant's counterclaim:

> 40 However, despite the [appellant's] apparent lack of funds and assets, the evidence before me reveal that the [appellant] has a demonstrated ability to muster substantial financial resources to fund its dispute resolution needs, if required. By [the appellant's in-house legal counsel's] own evidence adduced on behalf of the [appellant] in [HC/ADM 64/2021 ("ADM 64"), in which an earliest arrest was initiated by the vessel's previous charterer, Koch Shipping Pte Ltd ("Koch")] and referred to in the proceedings before me, it was disclosed that the [appellant] had remitted a sum of US$7,072,852.49 pursuant to a letter of undertaking on or around 17 September 2021 into a trust account of its foreign solicitors, in order to procure the release of an alleged associated vessel, the "ALPHA", which was at the time also arrested by Koch in South Africa. This happened while the vessel involved in the present proceedings (*ie*, the "CHLOE V") was still under Koch's arrest in Singapore in ADM 64. The [appellant] even relied on those circumstances resulting in the release of the "ALPHA" to mount formal legal challenges in ADM 64 to obtain an order for the immediate release of the "CHLOE V" around the same time. By these circumstances, the [appellant] appeared to be well capable of resourcing funds to finance its dispute resolution needs in at least two jurisdictions contemporaneously.

> …
>
> 42 That is not all. After the "CHLOE V" was released from ADM 64 and re-arrested in ADM 102, the [appellant] further appears to continue to be able to maintain its ability to muster the wherewithal to fund its litigation needs in Singapore, namely its defence against the summary judgment proceedings in ADM 102 and the prosecution of its own counterclaim in the same action. These steps in the litigation were taken by the [appellant] under full legal representation. Moreover, just as the [respondent] had engaged an experienced Queen's Counsel to give expert opinion in the summary judgment proceedings, so too did the [appellant]. This was to address English law which has been put into issue by the [appellant's] counterclaim alleging the claimant's breach of an implied obligation to act reasonably, rationally and in good faith when exercising its discretion whether to withhold any approval which it may give under the Facilities Agreement …
>
> 43 Putting all these factors together, the picture that emerges is one which is – much like in the case of *Frantonios Marine* – quite significantly at odds with the [appellant's] apparent lack of funds and assets. The factors demonstrate that the [appellant], with the help of its controller(s) and/or shareholder(s), is capable of marshalling the financial means, when desired, to pursue and/or safeguard its dispute resolution interests in connection with the vessel "CHLOE V". I do not say this lightly, as evidence has been drawn to my attention indicating that the [appellant] is in fact backed by controller(s) and/or shareholder(s) ready to inject substantial funds into the [appellant] so long as the [appellant] can be kept commercially viable. …

39 There appears to be no pretence that the appellant has been financially supported by its controllers all this while. Its position in SUM 2171 was that the appellant's controllers "did not offer the [appellant] financial support unconditionally" and that they "would have been prepared to invest additional funds in the [appellant] only if the [appellant] had entered into the New Koch Charterparty" (see *Credit Suisse AG* at [43]). In the present application, the appellant maintains that any financial support from its controllers remains "voluntary". In other words, the appellant's controllers are only prepared to provide financial support to the appellant *when doing so is in their own interests*; such financial support would *not* be forthcoming for the purposes of satisfying

costs orders made against the appellant. But, as explained above, this is a self-serving response which we cannot accept. It flows from this that the appellant cannot be said not to have *access* to the financial resources to pay the outstanding costs. It must be emphasised that it was the funding provided by the appellant's controllers to-date that has created the outstanding costs debt due to the respondent in the first place.

40 Indeed, not once has the appellant cited financial difficulty as a reason for its failure or omission to pay the outstanding costs. Instead, it takes issue with the respondent's figure of S$633,510.24 in its demands. It argues:

(a) First, the respondent has not provided any calculation to show how this figure is derived.

(b) Second, the respondent should have given credit for the security which the appellant has already provided (S$303,046.47, comprising the balance sum of S$243,046.67 held in court and S$60,000 in the form of a solicitor's letter of undertaking). Without taking interest into account, only S$386,939.06 remains outstanding from the appellant.

(c) Third, the respondent's calculation of S$633,510.24 is incorrect. According to the appellant:

> 29. Interest on the SGD 689,965.33 from 11 November 2025 to 3 December 2025 (22 days) at 5.33% per annum is:
>
> SGD 689,985.53 x 5.33% x (22/365) = SGD 2,229.62.
>
> 30. On that basis, the SGD amount as at 3 December 2025 would be:
>
> SGD 689,985.53 + SGD 2,229.62 = SGD 692,215.15.
>
> 31. After crediting the SGD 60,000.00 paid on 3 December 2025, the figure would be:
>
> SGD 692,215.15 – SGD 60,000 = SGD 632,215.15.

> 32. There is therefore a discrepancy between SGD 632,215.15 and the [r]espondent's asserted SGD 633,510.24.

41 The appellant submits that, in these circumstances, it was reasonable "to await proper quantification rather than make a payment on the basis of an inflated or uncertain figure to avoid overpayment/underpayment".

42 We find the appellant's explanation to be entirely contrived for the following reasons.

43 First, it cannot be said that the respondent did not provide any calculation to show how its figure was derived. On 11 December 2025, the respondent's solicitors provided the appellant with a breakdown of its start and end dates, the total number of days calculated, the interest rate applied, the interest accrued in the respective original currencies, the exchange rate for the foreign currencies and the interest accrued in the local currency. Given this information, which we think is sufficient, the appellant cannot claim that it was unable to understand how the respondent's figure was arrived at.

44 Second, the appellant's position – stated unequivocally in the affidavit of Mr Alexandros Lamprinakis, the appellant's in-house legal counsel – was that it only took issue with the respondent's calculation of the sum of S$633,510.24, and not the sums in foreign currencies. As such, there was no reason not to repay the amounts that were not disputed. We also add that: (a) the discrepancy between the parties' calculations was quite minor and did not offer any credible reason to withhold the payment *entirely*; and (b) it is in any event the appellant who has erred in its calculation: applying the appellant's own formula above (at [40(c)]), the figure it should have arrived at is S$2,216.65, not S$2,229.62.

45 We do, however, agree with the appellant that the respondent is not entitled to demand for the full sum outstanding without taking into account the security of S$303,046.47 which has already been provided by the appellant for the costs below. We note that the respondent has referred this court to the proposition that a creditor with several remedies at his disposal can choose which one to enforce, at what time, in which order, and in whatever way, subject only to the rule that he cannot recover more than is due to him. While that might be true, there is no good reason for the respondent not to take into account the balance security of S$243,046.67 held in court (the S$60,000 by way of solicitor's undertaking has since been utilised – see [25] above). That balance security should be deducted against the outstanding costs order and once that is done, there would be no justification for the appellant to withhold payment of the balance amount. In fact, on 21 January 2026, the respondent's solicitors sent a further demand for the appellant to pay the balance sum after taking into account the security sum provided by the appellant. But the appellant did not respond.

46 Third, even if the appellant disputes the respondent's calculations, it should have taken steps to seek clarifications from the respondent. That it completely failed to do so strongly suggests that this was a mere afterthought in order to delay the payment of the outstanding costs.

47 In sum, the appellant has failed to provide any credible reason for its failure or omission to pay the outstanding costs. In our judgment, this amounts to a refusal or neglect to pay the outstanding costs.

48 For completeness, we observe that the appellant's conduct in these proceedings would have in any event satisfied the higher threshold of special or exceptional circumstances which warrants the court's exercise of its inherent

power. At every opportunity, the appellant has refused or delayed or ignored the demands for the payment of costs ordered by the court, despite having sufficient access to financial resources. This was thoroughly abusive and cannot be countenanced.

49 We therefore order that the balance security of S$243,046.67 held in court shall be released to the respondents forthwith in partial satisfaction of the outstanding cost orders.

50 We also order a stay of CA 26 for four weeks from the date hereof pending payment of the balance outstanding costs in the sum of S$390,463.57. We arrived at this figure using the respondent's calculations, which took into account the accrued interest:

(a) First, we calculated the interest accrued from each component of the outstanding costs order for the 22-day period from 11 November to 3 December 2025:

> **1. Interest accrued on Costs**
>
> SGD 650,000 x judgment interest of 5.33% x 22 days / 365 days = SGD 2,088.19
>
> **2. Interest accrued on Disbursements**
>
> SGD 39,985.53 x judgment interest of 5.33% x 22 days / 365 days = SGD 128.46
>
> GBP 85,900 x judgment interest of 5.33% x 22 days / 365 days = GBP 275.96
>
> USD 83,626.76 x judgment interest of 5.33% x 22 days / 365 days = USD 268.66
>
> CHF 93,875.12 x judgment interest of 5.33% x 22 days / 365 days = CHF 301.58

(b) Next, we converted the accrued interest in foreign currency to Singapore dollars:

GBP 275.96 → applying prevailing exchange rate of SGD 1 = GBP 0.5836 → SGD 472.86

USD 268.66 → applying prevailing exchange rate of SGD 1 = USD 0.771 → SGD 348.46

CHF 301.58 → applying prevailing exchange rate of SGD 1 = CHF 0.6196 → SGD 486.74

Total interest (SGD) accrued on Disbursements = SGD 128.46 + SGD 472.86 + SGD 348.46 + SGD 486.74 **= SGD 1,436.52**

(c) We then applied the S$60,000 received from the appellant's solicitors to settle the accrued interest (amounting in total to S$3,524.71), resulting in a balance of S$56,475.29. This balance was then applied to partially satisfy the principal of the outstanding costs order, resulting in a balance of S$633,510.24, £85,900, US$83,626.76 and CHF 93,875.12 in outstanding costs.

(d) Finally, we applied the S$243,046.67 held in court to partially satisfy the principal of the outstanding costs order, resulting in a final balance of S$390,463.57, £85,900, US$83,626.76 and CHF 93,875.12 in outstanding costs.

51 If the appellant fails or omits to make payment of the sum of S$390,463.57, £85,900, US$83,626.76 and CHF 93,875.12 to the respondent within the four weeks period, CA 26 is deemed to be struck out automatically.

Application for further security

52 The purpose of providing security for costs, which was summarised by the High Court in *SW Trustees Pte Ltd v Teodros Ashenafi Tesemma* [2023] 5 SLR 1484 at [20]–[22], is three-fold: (a) to protect the defendant, who cannot avoid being sued, by enabling him to recover costs from the plaintiff out of a fund within the jurisdiction in the event that the claim against him by the

plaintiff proves to be unsuccessful; (b) to ensure, within the limits of protecting the defendant, that the plaintiff's ability to pursue his claim is not stifled; and (c) to maintain a sense of fair play between the parties even amidst the cut-and-thrust of litigation.

53 In *Yuanta Asset Management International Ltd v Telemedia Pacific Group Ltd* [2017] SGCA(I) 2, this court observed at [3]–[4] that further security may be provided whenever it is just to do so; the court may take into account any circumstances for the purpose of making this determination. This includes the financial means of the appellant, foreign residency, the merits of the appeal, the conduct of the appellant (for example, whether he has acted in a manner which shows a clear intention to avoid potential liability for costs), potential difficulties in enforcing a judgment for costs including delay and expense and whether the application for further security is made promptly.

54 In our judgment, the conduct of the appellant (which has been examined in some detail above) has amply demonstrated that the respondent is likely to face continued difficulties in recovering costs from the appellant (who *has* access to financial resources to pay), in the event that it prevails in the appeal. We therefore order the appellant to furnish additional security of S$100,000 for the appeal within four weeks from the date hereof, which would result in a total amount of S$120,000 as security for costs for the appeal.

Conclusion

55 In the result, we allow the present application without an oral hearing and make the following orders:

(a) The balance security of S$243,046.67 held in court shall be released to the respondents forthwith in partial satisfaction of the outstanding cost order.

(b) The appellant is ordered to provide additional security for the appeal in the sum of S$100,000 within four weeks from the date hereof.

(c) CA 26 is hereby stayed for four weeks from the date hereof pending payment of the balance outstanding costs in the sum of S$390,463.57, £85,900, US$83,626.76 and CHF 93,875.12 and the provision of the additional security of S$100,000. If the appellant fails or omits to make payment of the said sum to the respondent or provide the additional security within the four-week period, CA 26 is deemed to be struck out automatically.

(d) The appellant is ordered to pay the respondent the costs of this application fixed in the sum of S$31,052.70 (inclusive of disbursements) forthwith.

Steven Chong
Justice of the Court of Appeal

Ang Cheng Hock
Justice of the Court of Appeal

Hri Kumar Nair
Justice of the Court of Appeal

Tan Boon Yong Thomas and Lieu Kuok Poh (Haridass Ho & Partners) for the appellant;
Song Swee Lian Corina, Liang Junhong Daniel and Thomas Benjamin Lawrence (Allen & Gledhill LLP) for the respondent.