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

[2026] SGHC(A) 8

Appellate Division / Originating Application No 49 of 2025

Between

(1) Balbeer Singh Mangat
(2) Sirjit Gill

… *Applicants*

And

(1) Tembusu Growth Fund III Ltd
(2) ACE Spring Investments Limited
(3) Eric Alfred Schaer
(4) Nicolas Kim-Hoang Nguyen
(5) Qualgro Pte Ltd
(6) Jagdish Murli Chanrai

… *Respondents*

JUDGMENT

[Civil Procedure — Extension of time]

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Balbeer Singh Mangat and another
v
Tembusu Growth Fund III Ltd and others

[2026] SGHC(A) 8

Appellate Division of the High Court — Originating Application No 49 of 2025
Woo Bih Li JAD and See Kee Oon JAD
21 January 2026

18 March 2026 Judgment reserved.

See Kee Oon JAD (delivering the judgment of the court):

1 More than a year after their counterclaim was dismissed in HC/S 103/2017 ("S 103"), the applicants filed the present application (the "Application") seeking an extension of time of four weeks to file and serve a notice of appeal against that decision. They had previously taken out no less than three summonses before the General Division of the High Court (the "HC") to advance their cause – the first two of which succeeded and the last of which failed.

2 Having considered the parties' submissions, we are of the view that the Application should be dismissed for the reasons set out below.

Facts

3 The facts surrounding the underlying dispute in S 103 have been comprehensively set out in *ACE Spring Investments Ltd v Balbeer Singh Mangat* [2024] SGHC 277 (the "Judgment"). As such, we will only recount the salient points in brief.

Parties and background to the dispute

4 The applicants were the plaintiffs-in-counterclaim in S 103 while the respondents were the defendants-in-counterclaim in that suit.

5 The first applicant, Mr Balbeer Singh Mangat, is married to the second applicant, Ms Sirjit Gill. The applicants were unrepresented in S 103 and they remain unrepresented in the Application.

6 The applicants were former directors of FTMS Holdings (S) Pte Ltd ("FTMS"). In April 2017, the board of FTMS stripped the applicants of their powers as directors of FTMS and removed them from all management and operational positions in FTMS.

7 The first respondent, Tembusu Growth Fund III Ltd, and the fifth respondent, Qualgro Pte Ltd, were both fund managers of funds which invested in FTMS. The first respondent has since been voluntarily wound up by its members. The third respondent, Mr Eric Alfred Schaer, and the fourth respondent, Mr Nicolas Kim-Hoang Nguyen, were both appointed directors of FTMS in December 2016.

8 From September 2015, the first and fifth respondents had entered into various loan and redemption agreements with FTMS which imposed increasingly onerous terms on FTMS. The applicants were guarantors under

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these agreements. As FTMS continuously defaulted on its repayment obligations, the first and fifth respondents commenced separate enforcement actions by bringing S 103 and HC/S 104/2017 ("S 104") respectively against the applicants in February 2017.

9 The sixth respondent, Mr Jagdish Murli Chanrai, a shareholder and director of FTMS, had also personally guaranteed and/or provided security for FTMS' obligations under the various loan agreements which FTMS had entered into with the first and fifth respondents. As such, the first and fifth respondents had also either commenced or threatened to commence enforcement action separately against the sixth respondent initially. However, after S 103 and S 104 were commenced, the first and fifth respondents agreed to assign all their rights and interests arising from their agreements with FTMS to the second respondent, ACE Spring Investments Limited, in consideration for certain payments. This included the right to bring a claim against the applicants. The second respondent thus became the sole plaintiff in both actions on 11 May 2017.

10 Pursuant to the assignment agreement mentioned in the preceding paragraph, any enforcement action commenced against the sixth respondent was discontinued. Alongside this agreement, the sixth respondent also guaranteed the payments which the second respondent was to make to the first and fifth respondents under the agreement. Subsequently, in October 2018, the applicants were adjudged bankrupt after several creditors, including the second respondent, filed bankruptcy applications against them. The second respondent did not proceed with the claims in S 103 and S 104 thereafter, but the applicants obtained approval from the Official Assignee (the "OA") to pursue their counterclaims.

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11 On 27 October 2021, the court ordered that S 103 and S 104 were to proceed as one action, with S 103 being the leading action. Only the counterclaim proceeded to trial. In their counterclaim, the applicants alleged that there was an unlawful and/or lawful means conspiracy between two or more of the six respondents to, amongst other things, pressure and/or influence them to cause FTMS to enter into the various loan agreements and orchestrate a takeover of FTMS. They also alleged that the sixth respondent was liable to them for misrepresentation, and that they were bankrupted and had suffered other losses as a result of the alleged conspiracy and misrepresentations.

12 The applicants' counterclaim in S 103 was dismissed in its entirety by a Senior Judge sitting in the HC (the "Judge") on 28 October 2024.

13 The second, third and fourth respondents were absent and unrepresented in S 103, and remain absent and unrepresented in the Application. As such, we will refer only to the first, fifth and sixth respondents collectively as the "respondents" in the course of this judgment.

Procedural history after the Judgment was issued

14 On 15 November 2024, the Judge made various costs orders against the applicants in relation to S 103. Pursuant to O 19 r 25(1)(*a*) read with O 19 r 4(1) of the Rules of Court 2021 (the "ROC"), the deadline for filing a notice of appeal would therefore be 13 December 2024 (*ie*, 28 days after 15 November 2024).

HC/SUM 3448/2024

15 On 26 November 2024, the applicants filed HC/SUM 3448/2024 ("SUM 3448") for an extension of time to file and serve a notice of appeal against the whole of the Judgment. The first applicant initially explained that an

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extension of time was needed because, as bankrupts, the applicants needed to obtain the sanction of the OA to proceed with filing an appeal.

16 The OA, in turn, required the applicants to produce a legal opinion on the merits of the intended appeal by 19 November 2024 before deciding whether to allow them to proceed. As the applicants could not obtain a legal opinion before the OA's deadline, they sought an extension of time until 3 January 2025 to file and serve a notice of appeal so that the OA would have ample time to review the opinion. The applicants produced the legal opinion to the OA on 28 November 2024.

17 As it transpired, however, the production of the legal opinion was not the only obstacle standing in the applicants' path to obtaining the OA's sanction. In another affidavit for SUM 3448 filed on 12 December 2024, the first applicant sought an extension of time until 28 February 2025 instead because they had to "raise funds from [their] case support group for the security deposit and for the appeal". To obtain the OA's sanction, the applicants had to address two matters. First, as the security deposit which they previously placed with the OA was insufficient to cover the costs for S 103 which they had to pay, the applicants had to raise funds to cover this shortfall. Second, the applicants had to furnish a security deposit by a third party for any party-and-party costs that may be ordered against the OA or the bankruptcy estate in the intended appeal.

18 At the first hearing of SUM 3448 on 19 December 2024, the Judge adjourned the matter to the end of January 2025 so that the applicants would retain the flexibility to seek an extension of time at the next hearing if they encountered difficulties in raising the requisite funds. The first applicant assured the Judge that "[i]f there [was] a deficit, then [they] [would] request for maybe

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1 or 2 more weeks, but [they] [would] make sure everything is done, whatever date".

19 At the second hearing of SUM 3448 on 28 January 2025, the applicants indicated that they would be able to furnish the shortfall for the costs of S 103 by 24 February 2025. However, in relation to the security deposit for the appeal, they would need about four to five weeks, or even possibly up to six weeks, after the OA produces a letter showing its estimate of the amount required for the security deposit to "get the funds in" as they needed to show the OA's letter to their funders first. As such, the Judge granted the applicants leave to file a notice of appeal out of time subject to some conditions. For ease of reference, the relevant parts of the Judge's order in HC/ORC 931/2025 ("ORC 931") read as follows:

> 1. Leave to file Notice of Appeal out of time subject to the Plaintiffs in Counterclaim [*ie*, the applicants] paying up in full the outstanding amount of costs ordered to the Defendants in Counterclaim [*ie*, the first to sixth respondents] by 24 February 2025 (*no extension of this deadline will be given*). For avoidance of doubt, these outstanding costs are for the costs of the trial and do not include the costs ordered for this application.
>
> 2. To assist the Official Assignee ("OA"), all Defendants in Counterclaim are to give the best estimate of their costs of the appeal should the Defendants in Counterclaim succeed in the appeal by 7 February 2025 to the OA.
>
> 3. The OA is to write to the Plaintiffs in Counterclaim the amount of security required to be deposited with the OA for the purposes of granting of sanction by *21 February 2025*.
>
> 4. Upon the sanction of the OA being granted, the Plaintiffs in Counterclaim are to file the Notice of Appeal within one (1) week of the receipt of the sanction of the OA.
>
> 5. Whether the sanction of the OA will be granted will probably be known latest by *31 March 2025*.
>
> …
>
> [emphasis added]

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20 The Judge described the 31 March 2025 date in para 5 of the order as a "soft deadline" for the OA's grant of sanction. This was meant to accommodate the six-week period from the OA's letter indicating the estimate of the security deposit (which was estimated to be produced by 21 February 2025 as indicated in para 3 of the order) which the applicants said they needed to "get the funds in".

21 The applicants, however, continued to face difficulties raising the requisite funds. They failed to meet the 24 February 2025 deadline in para 1 of ORC 931. While the applicants transferred most of the requisite sums before the deadline, one of the sums was only transferred around seven hours after the deadline (*ie*, at 7.18am on 25 February 2025).

HC/SUM 667/2025

22 Although para 1 of ORC 931 stated that no extension of the 24 February 2025 deadline would be given, the applicants filed HC/SUM 667/2025 ("SUM 667") on 10 March 2025 to retrospectively vary that deadline or, alternatively, seek an extension of time to meet the deadline.

23 At the hearing of SUM 667 on 2 April 2025, it was revealed that the applicants had yet to furnish the OA with the security deposit for the appeal. They told the Judge that they needed another four to six weeks from the date of the hearing to raise the funds. According to the applicants, they were not able to raise the funds in time because their funders would only be willing to contribute funds once they were assured that the "technicality" (that is, the fact that their failure to meet the deadline in ORC 931 for paying the outstanding costs of S 103 would technically extinguish their entitlement to file an appeal out of time) was cleared. The first applicant represented that, if the "technicality" was no longer a problem after the hearing of SUM 667,

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"*the contribution will come within 4 to 6 weeks*" [emphasis added]. The applicants assured the court that they had already secured the agreement of all their funders to contribute the requisite funds. On this basis, the Judge granted the applicants' request to vary ORC 931 and made the following additional orders in HC/ORC 2799/2025 ("ORC 2799"):

> …
>
> 2. Only upon the Official Assignee ("OA") confirming before 22 May 2025 by way of letter to all parties (including the Court) that the sanction has been granted, then the Notice of Appeal is to be filed within 1 week from the date of the letter.
>
> 3. In the event that no sanction of the OA is granted as informed by letter from the OA to all parties including the Court before *22 May 2025*, then it follows that *no notice of appeal can be filed*. ***The matter will end there.***
>
> [emphasis in original omitted; emphasis added in bold and bold italics]

24 In essence, the Judge imposed a long stop date so that there would not be an indefinite extension of time. The 22 May 2025 date was meant to accommodate the six-week period within which the applicants assured the court they would be able to raise the requisite funds, as well as an additional week which the OA would need to grant the sanction. The Judge's order meant that, so long as the applicants received the OA's sanction by that date, they would have one week to file a notice of appeal.

HC/SUM 1441/2025

25 On 20 May 2025 (*ie*, two days before the long stop date in ORC 2799), the applicants filed yet another application in HC/SUM 1441/2025 ("SUM 1441"). This time, they sought an extension of up to 14 days from the date of the order sought to file an appeal.

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26 According to the sixth respondent, the following sequence of events followed the filing of SUM 1441:

(a) SUM 1441 was first fixed for hearing on 19 June 2025. By that date, the applicants had yet to furnish the requisite security deposit.

(b) At the 19 June hearing, the first applicant gave a personal undertaking to the court that the full security deposit would be furnished by 25 June 2025. On this basis, the Judge adjourned the hearing of SUM 1441 to 27 June 2025.

(c) However, as documented in a letter from the OA, over two-thirds of the security deposit remained unpaid as of 26 June 2025.

(d) At the hearing on 27 June, the applicants requested for yet another extension of time until 11 July 2025 to furnish the security deposit.

27 The Judge ultimately dismissed the application in SUM 1441. In other words, the applicants were not successful in obtaining yet another extension of time to 11 July 2025 to furnish the security deposit.

28 The applicants do not dispute the sequence of events listed at [26] above in their written submissions for the Application. Notably, the sixth respondent's assertion regarding the first applicant's personal undertaking (see [26(b)] above) is consistent with the first respondent's account that the applicants undertook not to proceed with the intended appeal if they failed to furnish the requisite funds by 25 June 2025.

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Events after the dismissal of SUM 1441

29 Notwithstanding the dismissal of their application in SUM 1441, the applicants continued to raise the requisite funds for the security deposit. They were finally able to do so sometime in or around October 2025 (*ie*, three months after their own proposed deadline of 11 July 2025 which was rejected by the Judge in SUM 1441 – see [27] above). They obtained the OA's sanction to pursue an appeal on 15 October 2025.

30 The Application was filed thereafter on 19 December 2025. This was after two abortive attempts at filing, on 28 November 2025 and 17 December 2025 respectively.

The parties' cases

The applicants' case

31 In the Application, the applicants seek an extension of time of four weeks from the date of the order sought to file and serve a notice of appeal against the Judge's decision in S 103. They say that their hands were tied as bankrupts by having to obtain the OA's sanction to commence an appeal, and to raise the substantial funds required to obtain the OA's sanction

32 The applicants also submit that their intended appeal is not a frivolous one, and that the Judge had made multiple errors of fact and law in the Judgment. They argue that the fact that: (a) the Judge himself stated during the first hearing of SUM 3448 that his judgment is not appeal proof; and (b) the OA had granted them sanction to pursue the appeal after having perused the legal opinion which they were required to submit, "strongly augments the position that [they] have a strong, arguable, far from a hopeless, appeal".

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33 Finally, the applicants contend that they will suffer prejudice if they are not granted an extension of time. In this regard, they submit that, should their application fail, they would lose their right to appeal only because they were prevented from meeting the requirements imposed on them due to their status as bankrupts and they would be "precluded from pursuing the very people who shacked [*sic*] [them] and put [them] in this predicament". In addition, they say that the respondents would be compensated by costs for the delay in filing the appeal and "which costs [they] have to date honoured every cent of".

The respondents' cases

34 Only the first, fifth and sixth respondents have filed written submissions for the Application. Their common position is that the Application should be dismissed with costs, for broadly similar reasons. As such, we will summarise their submissions together in this section.

35 The respondents emphasise the "unprecedented", "extraordinary" and "excessive" delay in the applicants' filing of the Application. They highlight that it has been more than 12 months since the original deadline to file a notice of appeal (*ie*, 13 December 2024) has lapsed. The first respondent, in particular, points out that it has been almost seven months since the "fifth deadline" (*ie*, the 27 June 2025 deadline which the Judge gave the applicants to raise the funds for the security deposit in SUM 1441 – see [26]) has passed.

36 Furthermore, the respondents submit that the applicants have not provided satisfactory reasons for their delay. The respondents say that the financial difficulties of the applicants do not afford them a sufficient justification for the delay. In fact, the first respondent goes as far as to say that the applicants' financial difficulties are not substantiated. The sixth respondent also highlights that the applicants had been aware of the requirement of

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furnishing a security deposit to the OA, as well as the quantum of the same, from as early as November 2024.

37 As for the merits of the applicants' intended appeal, the respondents submit that the applicants have not demonstrated that the appeal has any merits (or that it is not hopeless). In this regard, the first and fifth respondents argue that the intended grounds of appeal raised by the applicants are either unsubstantiated or relate to legal arguments which would be inconsequential in the sense of having no effect on the outcome of the Judge's decision.

38 Finally, the respondents contend that they will suffer prejudice which cannot be compensated by costs if an extension of time were granted. The first respondent, which has since been wound up, submits that it will continue to unnecessarily incur administrative and liquidation costs as well as further costs of the intended appeal should an extension of time be allowed. These costs, it says, will not be recoverable through the costs mechanism in the intended appeal. The fifth and sixth respondents also cast doubt on the applicants' ability to fulfil any adverse costs orders made against them in the Application and/or the intended appeal, given their repeated failure to raise the requisite funds in time in the past.

Whether the applicants should be granted an extension of time to file a notice of appeal

39 The source of an appellate court's discretion to grant an extension of time to file an appeal is O 19 r 25(2) of the ROC, which reads as follows:

> 25.— (2) The appellate Court may extend the time for filing and serving the notice of appeal on the appellant's application made *at any time*, and the lower Court may extend the time for filing and serving the notice of appeal if the appellant applies for such extension before the time expires.

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[emphasis added]

40 In exercising this discretion, the court typically has regard to the following four factors (*Lai Swee Lin Linda v Attorney-General* [2006] 2 SLR(R) 565 ("*Linda Lai*") at [45], relying on *Pearson Judith Rosemary v Chen Chien Wen Edwin* [1991] 2 SLR(R) 260 ("*Pearson*") at [15]):

(a) the length of the delay;

(b) the reasons for the delay;

(c) the chances of the appeal succeeding if time for appealing were extended; and

(d) the prejudice caused to the would-be respondent (*ie*, the respondent in the intended appeal) if an extension of time was in fact granted.

41 Of the four factors, the emphasis, in the first instance at least, is on the first two (*ie*, the length of the delay and the reasons for the delay) (*Lee Hsien Loong v Singapore Democratic Party* [2008] 1 SLR(R) 757 ("*Lee Hsien Loong*") at [19]). The last two factors, on the other hand, have been described as being "qualifying factors, the fulfilment of which [are] essential to enable the court to exercise its discretion" (*AD v AE* [2004] 2 SLR(R) 505 ("*AD*") at [13]). On the whole, the application should be on grounds "sufficient to persuade the court to show sympathy" to the applicant (*Pearson* at [20], quoted in *Linda Lai* at [45]). Moreover, when applying the abovementioned factors, the overriding considerations are that the ROC must *prima facie* be obeyed with reasonable diligence being exercised (*Linda Lai* at [45], citing *Thamboo Ratnam v Thamboo Cumarasamy* [1965] 1 WLR 8 at 12), and that there should be finality (*Linda Lai* at [45], citing *The Melati* [2004] 4 SLR(R) 7 at [37]).

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42 We will deal with each of these factors in turn.

The length of the delay

43 The courts have previously described much shorter periods of delay in these terms:

(a) In *AD* (at [11]), the Court of Appeal (the "CA") described a period of delay of 49 days as a "very substantial delay".

(b) In *Falmac Ltd v Cheng Ji Lai Charlie* [2014] 4 SLR 202 ("*Falmac*") (at [18]), the CA stated that a five-month delay could "hardly be considered ordinary".

(c) In *Lee Hsien Loong* (at [52]–[53]), the almost seven-month long delay was emphatically described as being "unprecedented in local case law" and "*nothing short of extraordinary*" [emphasis in original].

44 In the present case, the applicants filed the Application on 19 December 2025. This was over a year after the original deadline to file a notice of appeal had lapsed on 13 December 2024. Even if one were to calculate the period of delay from 27 June 2025 instead, since the original deadline for the applicants to file an appeal was extended until that date by the Judge pursuant to O 19 r 25(2) of the ROC (see [39] above), there would still have been a substantial delay of six months from that date to the time the applicants filed the Application. Hence, on any objective measure, the applicants cannot escape this Archilles' heel in their application. Indeed, they do not appear to dispute that the length of delay is anything but substantial (and quite rightly so).

45 The effect of such a substantial delay is that the reasons for the delay will be subjected to a more thorough and searching scrutiny by the court. As the

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CA emphasised in *Lee Hsien Loong* (at [22]), if the delay is not merely *de minimis*, the court *must* examine the reasons for such delay. A lengthier delay would also mean that the applicant needs to furnish very good reasons to persuade the court that its indulgence is merited (*Falmac* at [20]). In this regard, we are not convinced that the applicants have been able to do so.

The reasons for the delay

46 The gist of the applicants' submissions in relation to the reasons for their delay is that, as bankrupts, they had to cross many hurdles which were imposed on them by the OA as pre-conditions for the filing of an appeal. These included the need to raise funds to pay off the adverse costs orders for S 103 as well as to furnish the security deposit for the intended appeal. They say that, since 2017 (*ie*, the year in which S 103 was commenced), they "never stopped trying" and eventually raised $2,474,475.95 "to pay the OA to pay off all adverse cost [*sic*] orders ordered against [them] and to fight this fight". We note that this sum of $2,474,475.95 does not appear to include the security deposit for the intended appeal.

47 The gravamen of the applicants' case is that they had difficulties raising the requisite funds for the OA's sanction due to their impecuniosity. However, financial difficulties *per se* are not sufficient to justify an extension of time (*Linda Lai* at [48]). Moreover, it is not the applicants' case that it was the OA's actions *per se* which caused their delay in filing the Application. Indeed, it would appear that the OA's sanction was granted rather swiftly after the applicants had raised the requisite funds (see [29] above). As such, the raising of funds and, by extension, the reasons for the delay in doing so, were entirely within the applicants' hands.

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48 From as early as 12 November 2024, the applicants were informed by the OA of the need to furnish a security deposit for any party-and-party costs which may be ordered against the OA or the bankruptcy estate in the intended appeal. They were given a preliminary assessment of the amount of the security deposit required on 29 November 2024 and advised to commence making arrangements to procure the necessary funds from third parties. On 14 February 2025, the OA informed the applicants about the finalised amount of security to be deposited.

49 However, the applicants have, time and time again, failed to meet the various deadlines to raise the requisite funds despite representing to the Judge that they could do so. This happened on no less than four occasions. Although the applicants promised that the full security deposit could be furnished by 25 June 2025, failing which they would not proceed with the intended appeal, they were still not able to raise even one-third of the requisite amount by 26 June 2025 (see [26] above). It is also noteworthy that the applicants exceeded their own final proposed deadline of 11 July 2025 (see [26(d)] above) by around three months. They only managed to furnish the full security deposit in October 2025.

50 In fairness to the applicants, they did eventually obtain funds to pay substantial costs which they were ordered to pay the respondents for the trial below. However, notwithstanding this effort on their part, the fact remains that they were not able to provide the full security deposit to the OA within the deadlines ordered.

51 It is apparent from the procedural history of the Application (as summarised at [14]–[30] above) that the applicants were extended more than a considerable degree of laxity by the Judge for the filing of an appeal. As

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mentioned, they were given several extensions of time to file their appeal when they failed to meet the various deadlines which the Judge imposed. We stress that some of the deadlines were fixed based on their own representations and/or proposals. In essence, they failed to make good on their own assurances. Moreover, they have not, in our view, provided a satisfactory explanation as to why they were unable to do so. After the applicants paid off the outstanding costs orders in S 103 in February 2025, they had only the security deposit for the intended appeal left to furnish. The length of time which the applicants took to do so (*ie*, some eight months from February to October 2025) is especially puzzling given the fact that, on their own case, the security deposit was "a small sum" when compared to the over $2m in funds which they were able to raise to pay off the outstanding costs orders.

52 In this regard, the applicants have given a number of reasons as to why they faced difficulties raising the funds for the security deposit. They say that the United States-imposed tariffs had economically affected the parties who were supporting their fund-raising efforts and that one of their funders who was supposed to provide a banker's guarantee took longer than expected to do so because he and his wife had to undergo medical procedures. However, as the first respondent rightly points out, no direct evidence from the applicants' funders has been tendered, and no details have been provided on the applicants' third-party fundraising attempts. It is also curious that the applicants have not disclosed the quantum of the security deposit required by the OA as well as their correspondence with the OA regarding the quantum or arrangements for the security deposit for the intended appeal.

53 More importantly, the applicants have not satisfactorily explained why they had proposed certain deadlines which they were unable to meet. There is

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therefore no good reason why the applicants were not able to furnish the requisite security deposit for the grant of the OA's sanction in time.

54 Furthermore, even after the applicants obtained the OA's sanction on 15 October 2025, they only *attempted* to file the Application on 28 November 2025. In other words, there was still a delay of over a month in the applicants' attempt to file the Application after the OA's sanction was obtained. The applicants' explanation for this delay was that they "needed time to prepare the Originating Application and the supporting affidavit". We have no hesitation rejecting this explanation. This was not the first time the applicants had filed an extension of time application. It is inexplicable that they needed more than a month just to file the Application.

The chances of the appeal succeeding if time for appealing were extended

55 While the applicants say that the intended appeal has merit, they do not adequately explain why it has a prospect of success. We turn next to briefly discuss the merits of the intended appeal.

56 In assessing the chances of the appeal succeeding in an extension of time application, the threshold which an applicant must cross is a relatively low one – namely, he must demonstrate that the appeal is not hopeless (*AD* at [13]). The court will not, at this stage, go into a full-scale examination of the merits of the issues involved, and it is not necessary for an applicant to show that he will succeed in the appeal (*Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC(A) 5 ("*Newspaper Seng Logistics*") at [22]). In *Lee Hsien Loong* (at [63]), the intended appeal was adjudged to be hopeless because the applicant had raised issues that were "at best peripheral and at worst irrelevant" and did not address the main reasons for the lower court's decision.

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57 We first address the applicants' contention that it is relevant to consider that the OA's grant of sanction came after "perusing the legal opinion". In the absence of any material demonstrating how the legal opinion had factored into the OA's decision-making process, it is difficult for the court to place any weight on the OA's supposed consideration of that legal opinion. To the extent that the applicants are seeking to rely on the content of the legal opinion itself, we likewise fail to appreciate how any weight can be placed on such content when, as the first respondent rightly points out, the applicants have selectively reproduced certain portions of the legal opinion in the first applicant's affidavit and have not even identified the source of the legal opinion. Hence, no weight ought to be placed on the legal opinion and the OA's supposed consideration of the same in assessing the merits of the intended appeal.

58 In the present instance, the applicants raise seven intended grounds of appeal:

(a) The Judge erred in law when he "shackled" them to their pleaded case in not finding that there was a conspiracy and/or sub-conspiracies. In essence, the applicants say that the Judge should have found that there were sub-conspiracies made out on the facts even if the overall conspiracy (as it was pleaded) was not made out.

(b) The Judge failed to appreciate the evidence that points to a conspiracy on the part of two or more of the first to sixth respondents. The first applicant has, in his supporting affidavit, included a table listing the pieces of evidence which he says were not given sufficient consideration.

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(c) The Judge erred in law in stating that the first applicant was not allowed to claim for loss in the value of his FTMS shares (the "FTMS Ground").

(d) The Judge erred in law and in fact when he held that the sixth respondent did not make any representations (the "Representations Ground").

(e) The Judge failed to draw the relevant adverse inferences from the first and fifth respondents' conduct of having not disclosed documents during discovery that were subsequently disclosed during the trial.

(f) The Judge erred in law when he held that there was only commercial pressure and that was in and of itself insufficient to show anything untoward from the respondents.

(g) The Judge erred when he focused on the sixth respondent's losses because he failed to consider that the sixth respondent accomplished his aim of "taking over the much-coveted company valued at S$65 million, FTMS".

59 We note that the only ground on which the applicants challenge the Judge's finding that loss as a result of the conspiracy was not proven is the FTMS Ground. However, even if the applicants were to succeed in showing that the first applicant can claim for a loss in value of his FTMS shares as a result of the alleged conspiracy, they would still need to address the logically anterior question of whether the liquidation of FTMS (which presumably resulted in such loss in value of the shares) was done pursuant to such conspiracy. The Judge found that the applicants had failed to establish that the liquidation of

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FTMS was done pursuant to the alleged conspiracy, and the applicants do not appear to be challenging that finding. Hence, there would still be no causal nexus between the alleged conspiracy and any losses suffered by the applicants even if they succeed on the FTMS Ground.

60 If the applicants are unable to demonstrate that they suffered loss as a result of the alleged conspiracy, then their claims in lawful and unlawful means conspiracy must necessarily fail. The torts of lawful and unlawful means conspiracy are *not* actionable *per se*. In order for liability to be made out, loss *must* be established (*Group Lease Holding Pte Ltd v JTrust Asia Pte Ltd* [2023] SGHC(A) 37 at [8]; see also *EFT Holdings, Inc v Marinteknik Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 at [112(e)] and *Tuitiongenius Pte Ltd v Toh Yew Keat* [2020] 5 SLR 354 at [114(d)]). If the sole ground on which the applicants challenge the Judge's finding that they did not suffer any loss as a result of the alleged conspiracy is doomed to fail, then so too would their entire claim in conspiracy. To put it another way, the success of the applicants' intended grounds of appeal in relation to their conspiracy claim would be inconsequential.

61 Turning to the applicants' claim in misrepresentation, the Judge had dismissed this claim on the sole ground that it was not proven that certain alleged representations were made as a matter of fact. The applicants seek to challenge those findings on the Representations Ground.

62 In *Ong Wui Jin v Ong Wui Teck* [2008] SGHC 72 (at [15]), Andrew Ang J had, in assessing whether the appeal was a hopeless one, considered the trite proposition that an appellate court would not reverse findings of fact made by a lower court unless they were plainly wrong or against the weight of the evidence. Ang J ultimately concluded (at [16]) that the applicants were not able

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to mount even a minimum challenge to the trial judge's findings of fact because they did not point out the deficiencies in the trial judge's grounds of decision and did not refer to the evidence tendered in the trial below in their arguments.

63 Likewise, the applicants in the present case do not explain in sufficient detail how an appellate court could be expected to overturn the Judge's findings of fact that certain representations were not proven. They have instead made broad-brush and general assertions. For instance, they allege that the Judge "failed to look at the reality of the situation", "failed to consider the closeness of the relationship between the [first applicant] and the [sixth respondent]", and "failed to draw the relevant adverse inferences". This, in our view, falls far short of demonstrating the merits of their intended appeal.

The prejudice caused to the would-be respondents if an extension of time was granted

64 Finally, it is relevant to consider the prejudice caused to the respondents, and not the applicants, if an extension of time was granted. The fact that the applicants would be deprived of their right of appeal if an extension was not granted is not the kind of prejudice to be considered (*Lee Hsien Loong* at [24], citing *Wee Soon Kim Anthony v UBS AG* [2005] SGCA 3 at [53]–[54]). This is because an application for an extension of time arises from the default of an intended appellant, and every such appellant would inevitably suffer prejudice if the concept of "prejudice" encompasses the denial of the right to appeal. As such, it does not lie in the mouths of the applicants to assert that the "scales of prejudice tilt heavier on [their] side if this [extension of time] is refused".

65 As for prejudice to the respondents, it is important to note that the prejudice suffered must be one that cannot be compensated by costs (*Lee Hsien Loong* at [27], citing *S3 Building Services Pte Ltd v Sky Technology Pte Ltd*

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[2001] SGHC 87 at [69]). To that end, the prejudice must have been constituted by some form of irreversible or permanent change of position pursuant to judgment (*AD* at [14]; *Lee Hsien Loong* at [25], citing *Aberdeen Asset Management Asia Ltd v Fraser & Neave Ltd* [2001] 3 SLR(R) 355 at [44]).

66 In the present case, the first, fifth and sixth respondents have cast doubt on the applicants' ability to fulfil any adverse costs orders (which, by extension, may result in irremediable prejudice to them should the appeal proceed). We do not place much weight on this argument because, if the Application is allowed, it is open to these respondents to seek further security for the costs of the appeal over and above the usual security for costs of an appeal.

67 As regards the first respondent's argument that it will continue to incur unnecessary administration and liquidation costs if the Application was granted, we do not think this constitutes an irreversible or permanent change of position. The incurring of more costs, even if not met by an order for costs, is not necessarily sufficient to constitute prejudice to deny an extension of time if all the other factors are in favour of granting said extension. Unfortunately for the applicants, those other factors are not in their favour.

68 In our overall assessment, the fact that the respondents have not been able to demonstrate that they would suffer irremediable prejudice if an extension of time was granted does not tilt the balance in the applicants' favour.

Conclusion

69 In the circumstances, we dismiss the Application and order the applicants to pay the following costs to the respondents:

(a) $12,000 (all-in) to the first respondent;

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(b) $10,000 (all-in) to the fifth respondent; and

(c) $12,000 (all-in) to the sixth respondent.

70 We further order that the usual consequential orders are to apply.

Woo Bih Li
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

The first and second applicants in person;
Daniel Chia Hsiung Wen, Charlene Wee Swee Ting, Ker Yanguang and Tan Yi Liang (Prolegis LLC) for the first respondent;
Balakrishnan Ashok Kumar, Loh Song-en Samuel, Nee Hoong Yi Adriel and Shu Kit (Bird & Bird ATMD LLP) for the fifth respondent;
Lim Tahn Lin Alfred, Lye May-Yee Jaime and Rasveen Kaur (Meritus Law LLC) for the sixth respondent;
The second to fourth respondents absent and unrepresented.

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