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

[2026] SGHCR 27

Originating Application No 1121 of 2025 (Summonses Nos 616, 796, 800 and 894 of 2026)

Between

(1) Tumyu Limited

… *Applicant*

And

(1) TLC Northcote Development Limited
(2) TLC NZ Developments Pte Ltd
(3) TLC Contractors Ltd
(4) TLC NZ Construction Pte Ltd
(5) TLC Modular Pte Ltd
(6) TLC Holdings II Pte Ltd
(7) TLC Holdings I Pte Ltd
(8) Thao Li International Pte Ltd
(9) Eighty Eight Rubies Ltd
(10) Stone Robert Alexander
(11) Alistair William Raglan Sawer
(12) Richard William McDade
(13) Chew Kin Kok
(14) Ritankar Sahu

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Striking out — Whether appropriate to strike out application for pre-action production of documents and information]
[Civil Procedure — Production of documents — Whether applicant had reasonable basis for its intended claim for the purpose of obtaining pre-action production]

TABLE OF CONTENTS

Tumyu Ltd
v
TLC Northcote Development Ltd and others

[2026] SGHCR 27

General Division of the High Court — Originating Application No 1121 of 2025 (Summonses Nos 616, 796, 800 and 894 of 2026)
AR Randeep Singh Koonar
21, 22 and 27 April 2026

23 July 2026

AR Randeep Singh Koonar:

Introduction

1 The rules governing the pre-action production of documents and information under O 11 r 11 of the Rules of Court 2021 ("ROC 2021") are meant to assist claimants who have reasonable basis for their intended claim but are unable to properly plead their claim because they require certain documents or information to cover critical gaps in their knowledge. Conversely, pre-action production is clearly not meant to facilitate fishing expeditions premised on frivolous and speculative allegations, which are brought in the hope of manufacturing a claim. Originating Application No 1121 of 2025 ("OA 1121") was a plain and obvious case of such a fishing expedition. I allowed the defendants' applications in Summonses Nos 800 and 894 of 2026 ("SUM 800" and "SUM 894") and struck out OA 1121.

2 The applicant initially appealed against my decision to strike out OA 1121 by way of Registrar's Appeals Nos 111 and 112 of 2026. Those appeals were withdrawn on 9 July 2026. Notwithstanding this, I set out the full grounds of my decision. I do so since SUM 800 and SUM 894 involved a novel situation where the defendants had sought to strike out an originating application for pre-action production. These grounds also provide an opportunity to clarify certain aspects of the rules governing pre-action production under the ROC 2021.

Facts

Tumyu's investment in the Northcote Project

3 The applicant in OA 1121, Tumyu Limited ("Tumyu"), is a New Zealand incorporated company.

4 The 1st defendant, TLC Northcote Development Limited ("TLC Northcote"), is a New Zealand incorporated company that is in the business of property development. TLC Northcote was the developer of two residential apartment buildings located in Northcote, Auckland, New Zealand ("Northcote Project"). The Northcote Project is ongoing.

5 Tumyu's investment in the Northcote Project lies at the centre of the dispute between the parties.

6 Tumyu provided a loan of NZ$14 million ("Loan Amount") to TLC Northcote. On 1 October 2021, Tumyu and TLC Northcote signed a document known as the "Acknowledgment of Indebtedness". While the actual document was not adduced, Tumyu's unchallenged evidence was that the document recorded that: (a) TLC Northcote was liable to pay the Loan Amount to Tumyu as of 1 October 2021; and (b) Tumyu would be issued redeemable preference

shares in TLC Northcote, and if this was not done, Tumyu would have recourse to a redemption amount of NZ$21 million.

7 On 4 October 2021, Tumyu and TLC Northcote entered into a Subscription Agreement ("SA"). The material terms of the SA were as follows:

(a) Tumyu subscribed for 140 redeemable preference shares ("Shares") in TLC Northcote on the "Issue Date", and TLC Northcote agreed to issue the Shares on the terms set out in the SA (clauses 2.1 and 3.1 of the SA). The Shares comprised 1.48% of TLC Northcote's issued shares.

(b) The "Subscription Amount" for the Shares was NZ$14 million, which was to be paid on the Issue Date by setting off the Loan Amount against the Subscription Amount (clause 4.2 of the SA). Subject to the Issue Date occurring, the Loan Amount would be converted into the Shares (clause 4.1(b) of the SA).

(c) The Shares conferred on Tumyu the right to receive: (i) notices of shareholder meetings and to attend such meetings as an observer; (ii) reports and financial statements as the holders of the Shares may be entitled to receive; and (iii) monthly management financial reports, project management reports and quantity surveying reports (clause 5.3 of the SA). However, Tumyu did not have any voting rights in respect of any shareholder matter or the right to participate in or sign any shareholder resolution (clause 10.1 of the SA).

(d) TLC Northcote was to redeem the Shares on the "Redemption Date" (clause 7.1 of the SA). The Redemption Date was defined as the earliest of: (i) the date that is three months after the repayment of the

"Senior Creditor" and the "Mezzanine Lender"; (ii) the date that is three months after the date on which all [approvals] which are necessary to enable settlement of the sale of contracted units in the Northcote Project to occur have been issued; and (iii) the "Sunset Date" (clause 1.1 of the SA). The Sunset Date was defined to mean 31 July 2023 (clause 1.1 of the SA).

(e) If TLC Northcote failed to redeem the Shares by the "Interest Commencement Date", TLC Northcote had to pay Tumyu monthly interest of: (i) 8% per annum on the sum of NZ$14 million for the period commencing on the Interest Commencement Date and ending on 31 January 2023; and (ii) 14% per annum on the sum of NZ$21 million for the period commencing on 1 February 2023 and ending on the Sunset Date (i.e. 31 July 2023) (clause 7.2 read with clause 1.1 of the SA). The Interest Commencement Date was defined to mean the earlier of: (i) the date that was three months after repayment of the Senior Creditor and Mezzanine Lender; or (ii) 28 October 2022 (clause 1.1 of the SA).

(f) If TLC Northcote did not redeem the Shares by the Sunset Date, the unpaid Redemption Amount would become a debt due and payable to Tumyu and "Default Interest" would accrue on the unpaid Redemption Amount from the Sunset Date to the date Tumyu was paid in full, with such Default Interest capitalised on a monthly basis (clause 6.1 of the SA). Default Interest was defined to mean 25% per annum (clause 1.1 of the SA).

(g) Pertinently, Tumyu agreed that at all times prior to the Senior Creditor and the Mezzanine Lender being finally repaid, Tumyu's sole remedy for non-redemption of the Shares was to claim monthly interest before the Sunset Date and Default Interest after the Sunset Date (clause

7.3(a) of the SA). Tumyu further agreed not to exercise or seek to exercise any other right or remedy or make any claim against TLC Northcote for its failure to redeem the Shares or seek to enforce Tumyu's obligation to pay the Redemption Amount (clause 7.3(b) of the SA).

8 Tumyu's claims that the Shares were only issued on 1 November 2024. Tumyu claims this was in breach of clause 3.1 of the SA, which required TLC Northcote to issue the Shares by the "Issue Date". Tumyu did not, however, explain when the "Issue Date" as defined in the SA had occurred. In any event, nothing turns on this in the case before me.

9 It is not seriously disputed that TLC Northcote breached clause 7.1(a) of the SA by failing to redeem the Shares by the Sunset Date on 31 July 2023.

10 Between 31 July 2023 (i.e. the Sunset Date) and 21 April 2026 (when I heard SUM 800 and SUM 894), Tumyu had yet to commence proceedings against TLC Northcote for breach of the SA. When queried on Tumyu's failure to sue TLC Northcote, Tumyu's counsel, Mr Gursharn Singh Gill's ("Mr Gill"), response was that Tumyu believed there was a "bigger set of wrongdoings" underlying the breach of the SA. When I pointed out that this did not explain Tumyu's failure to sue TLC Northcote, Mr Gill said he did not have the reason.

11 I had little doubt that clause 7.3 of the SA was a significant impediment to Tumyu's ability to bring an action against TLC Northcote for breach of contract. That, however, was not something Tumyu could legitimately complain about, having freely agreed to clause 7.3 of the SA. Tumyu was also entitled to receive Default Interest on the unpaid Redemption Amount after the Sunset Date, which was the contractually agreed mechanism for compensating Tumyu for any delays in payment. While this is not directly relevant to the merits of

OA 1121, it sets the context in which OA 1121 was brought and provides insights on Tumyu's possible motivations for bringing the application.

Tumyu's demand for documents and information

12 On 26 February 2025 (about one year and seven months after TLC Northcote failed to redeem the Shares), Tumyu's present solicitors, PDLegal LLC, wrote to six of the defendants in OA 1121 to demand the production of documents and information relating to the Northcote Project ("26 February 2025 Letter"). Apart from TLC Northcote, which was the only party Tumyu had contracted with, the 26 February 2025 Letter was further addressed to the following five defendants, which were companies related to TLC Northcote:

(a) The 2nd defendant, TLC NZ Developments Pte Ltd ("TLC NZ Developments"). TLC NZ Developments is a Singapore incorporated company. It is one of two shareholders in TLC Northcote (the other being Tumyu), holding 98.52% of the issued shares.

(b) The 5th defendant, TLC Modular Pte Ltd ("TLC Modular"). TLC Modular is a Singapore incorporated company. It wholly owns TLC NZ Developments.

(c) The 6th defendant, TLC Holdings II Pte Ltd ("TLC Holdings II"). TLC Holdings II is a Singapore incorporated company. It wholly owns TLC Modular.

(d) The 7th defendant, TLC Holdings I Pte Ltd ("TLC Holdings I"). TLC Holdings I is a Singapore incorporated company. It wholly owns TLC Holdings II.

(e) The 8th defendant, Thao Li International Pte Ltd ("Thao Li"). Thao Li is a Singapore incorporated company. It holds 51% of the issued ordinary shares in TLC Holdings I and about 44% of the issued preferential shares in TLC Holdings I.

13 I will refer to TLC Northcote and its related companies as the "TLC Group".

14 The 26 February 2025 Letter was captioned "Breaches of [the SA] by [TLC Northcote] and Mismanagement of the Company to the Detriment of [Tumyu]". It alleged that:

(a) TLC Northcote had failed to disclose relevant information to Tumyu on the performance of the SA, including the occurrence of the "Issue Date", the financial standing of TLC Northcote, the status of and dealings with the Senior Creditor and the Mezzanine Lender. This was a breach of TLC Northcote's obligations to its shareholders and its "implied obligations" under the SA.

(b) TLC Northcote had breached clause 7.1 of the SA by failing to redeem the Shares by the Redemption Date. Tumyu would not hesitate to take action to protect its interests, including by seeking legal remedies against TLC Northcote, its holding companies, its ultimate beneficial owners and the directors of these companies.

(c) Tumyu had "strong reasons to believe" that the affairs of TLC Northcote were being conducted by its ultimate shareholders in a manner prejudicial to the interests of TLC Northcote and Tumyu. Tumyu also had reason to believe that funds raised by TLC NZ Developments, TLC Modular, TLC Holdings II and TLC Holdings I, had been utilised for the business of other TLC Group companies, to "deliberately defraud Tumyu of its investment".

(d) Several charges against the TLC Group companies were registered in favour of Eighty Eight Rubies Ltd ("88 Rubies") (the ninth defendant in OA 1121) after the SA was entered. Tumyu suspected that TLC Northcote was neglecting to perform its obligations under the SA and was instead diverting funds to its shareholders due to the existence of the charges.

15 Although Tumyu made several serious allegations in the 26 February 2025 Letter, these allegations were bereft of particulars and lacking in clarity. Based on these allegations, Tumyu made various demands against the TLC Group companies, including that: (a) TLC Northcote remedy its breach of the SA; (b) TLC Northcote redeem the Shares and pay Tumyu the Redemption Amount; (c) TLC Northcote disclose documents and information relating to its finances and its performance of the SA; and (d) the other TLC Group companies disclose their conflicts of interest which had affected the interests of TLC Northcote and all transactions entered into with 88 Rubies, Goldman Sachs and any other entities that had implications for TLC Northcote.

16 On 18 March 2025, the TLC Group companies' New Zealand solicitors responded to deny Tumyu's allegations and decline to produce the requested documents and information.

Tumyu commences OA 1121

17 Tumyu commenced OA 1121 on 9 October 2025. This was slightly over two years after TLC Northcote had failed to redeem the Shares and close to six months after the TLC Group companies had declined to produce the requested

documents and information. In addition to the recipients of the 26 February 2025 Letter, Tumyu named the following additional parties as defendants to OA 1121:

(a) The 3rd defendant, TLC Contractors Ltd ("TLC Contractors"). TLC Contractors is a New Zealand incorporated company and was a contractor for TLC Northcote.

(b) The 4th defendant, TLC NZ Construction Pte Ltd ("TLC NZ Construction"). TLC NZ Construction is a Singapore incorporated company. It wholly owns TLC Contractors. It is in turn wholly owned by TLC Modular.

(c) The 9th defendant, 88 Rubies. 88 Rubies is incorporated in the Cayman Islands. It owns 49% of the issued ordinary shares in Thao Li and approximately 42% of the issued preference shares in Thao Li. 88 Rubies is ultimately owned by Asia Debt Management Hong Kong Limited ("ADM").

(d) The 10th defendant, Stone Robert Alexander ("Stone"). Stone is a New Zealand citizen. Stone is a director of Thao Li and owns about 14% of the issued preference shares in Thao Li.

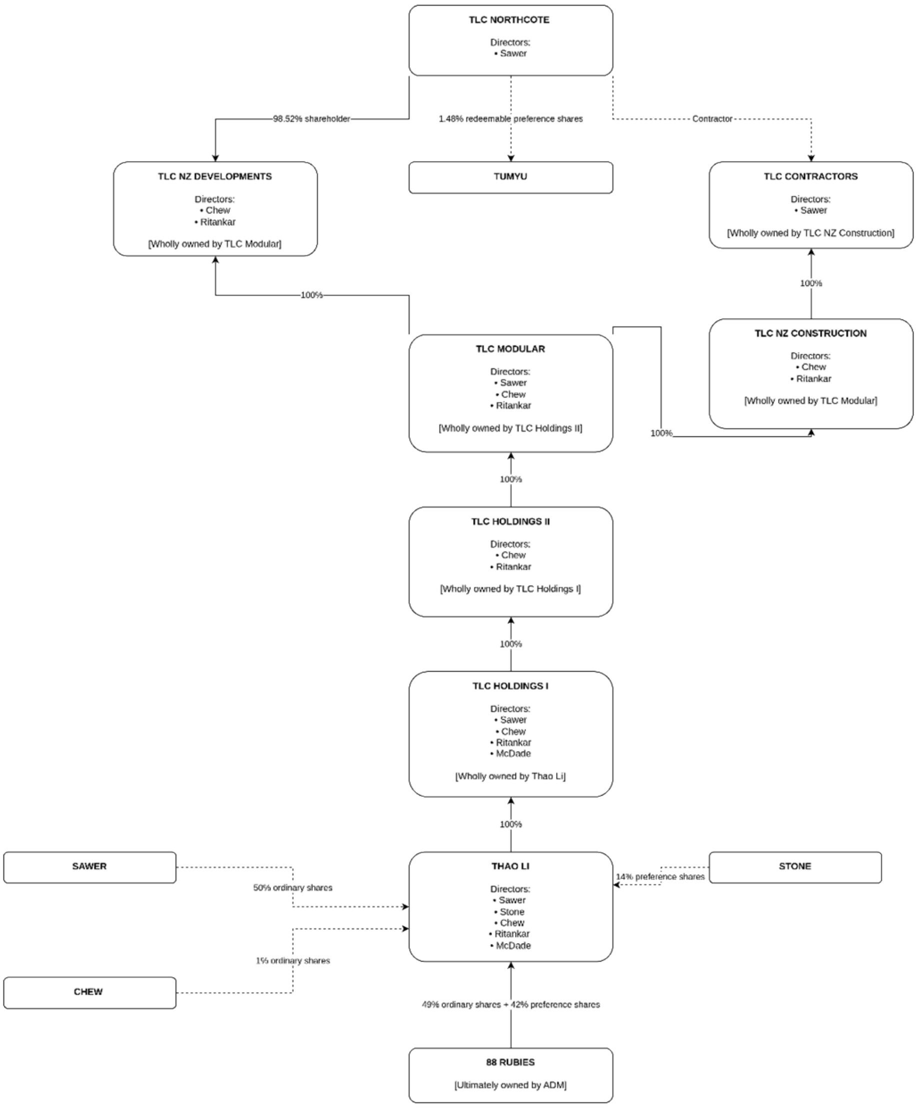
(e) The 11th defendant, Alistair Willian Raglan Sawer ("Sawer"). Sawer is a United Kingdom citizen. Sawer is a director of TLC Northcote, TLC Contractors, TLC Modular, TLC Holdings I and Thao Li and owns 50% of the issued ordinary shares in Thao Li.

(f) The 12th Defendant, Richard William McDade ("McDade"). McDade is a United Kingdom citizen. He is a director of TLC Holdings I, having been appointed by ADM as its board representative.

(g) The 13th Defendant, Chew Kin Kok ("Chew"). Chew is a Singapore citizen. He is a director of TLC NZ Developments, TLC NZ Construction, TLC Modular, TLC Holdings II, TLC Holdings I and Thao Li and owns 1% of Thao Li's shareholding.

(h) The 14th Defendant, Ritankar Sahu ("Ritankar"). Ritankar is an Indian citizen. He is a director of TLC NZ Developments, TLC NZ Construction, TLC Modular, TLC Holdings II and TLC Holdings I.

18 A diagram illustrating the relationship between the parties to OA 1121 is set out below:



19 Tumyu's claimed that it intended to commence an action in Singapore against the defendants for committing the tort of lawful and/or unlawful means conspiracy to injure Tumyu by, among other things: (a) engaging in various related party transactions with the intention of diverting funds to the detriment of TLC Northcote and Tumyu (which Tumyu referred to as the "Diversion

Scheme"); and (b) inducing TLC Northcote to breach its contract with the Tumyu.

20 Tumyu's purported basis for its intended claims was set out in paragraphs 14 to 23 of the affidavit of its sole director, Lin Qiu ("Lin"), which was filed in support of OA 1121 ("Lin's Affidavit"). I reproduce these paragraphs verbatim as far as possible since: (a) these paragraphs were *all* that Tumyu could muster as the basis for its intended claims; (b) many of Tumyu's allegations were incoherent, making them difficult to paraphrase; and (c) a simple perusal of these paragraphs will bring the serious difficulties with Tumyu's application in OA 1121 to the fore. The relevant paragraphs read:

> 14. After execution of the [SA], a first priority security interest in all shares held by [TLC NZ Developments] in [TLC Northcote] was created in favour of the [88 Rubies], pursuant to a General Security Deed dated on or about 19 December 2022. [Tumyu] suspects that the Defendants plotted a scheme to secure [88 Rubies'] investments to the detriment of [TLC Northcote] and/or [Tumyu].
>
> 15. Despite [Tumyu's] attempts (which will be elaborated upon in the course of this affidavit), [TLC Northcote] failed and/or neglected to disclose relevant information relating to the performance of the [SA], including:
>
> > (a) Occurrence of the 'Issue Date', as defined in the [SA];
> >
> > (b) Financial standing and position of [TLC Northcote];
> >
> > (c) Status of the Mezzanine Lender (if any) and the dealings with this lender, including outstanding obligations towards this lender on the date of the [SA] and thereafter; and
> >
> > (d) Status of the Senior Creditor (if any) and the dealings with this lender, including outstanding obligations towards this lender on the date of the [SA] and thereafter.
>
> 16. By not disclosing the above relevant information regarding the affairs of [TLC Northcote], at the behest of its shareholders across corporate layers (ie [TLC NZ Developments], [TLC Holdings II], [TLC Holdings I], [Thao Li], [88 Rubies], and [Stone], who are directly or indirectly, controlled by [Stone],

[Sawer], [McDade], [Chew] and [Ritankar], [TLC Northcote] has breached its obligations towards [Tumyu] under the [SA], and otherwise. Accordingly, save for TLC Contractors and TLC NZ Construction, the remaining Defendants have conspired to induce TLC Northcote to breach its obligations and duties towards the Applicant.

17. [TLC Northcote] has also deliberately breached its obligations under Clause 7.1 of the [SA], in furtherance of the conspiracy between the Defendants, by failing to redeem the [Shares] before the Redemption Date, which occurred on the Sunset Date of 31 July 2023, or earlier.

18. To-date, [Tumyu] has not received any payment towards the Redemption Amount.

19. Furthermore, [Tumyu] is of the view that there was a Diversion Scheme involving [TLC Northcote], [TLC NZ Developments], [TLC Contractors], [TLC NZ Construction], [TLC Modular], [TLC Holdings II], [TLC Holdings I] ("TLC Group Companies"). The TLC Group Companies have conducted themselves in a manner that is prejudicial to the interests of [TLC Northcote] and [Tumyu] to suit their self-serving interests and the debt financing arrangements between [Thao Li], [88 Rubies], [Stone] and [Sawer], or in any case, financing advanced by [88 Rubies] who exercises charges over all monies of [TLC NZ Developments], [TLC NZ Construction], [TLC Holdings II] and [TLC Holdings I].

20. Accordingly, to serve the interests of [Thao Li], [88 Rubies] and [Stone], [Sawer], [McDade], [Chew] and [Ritankar] have engaged in a conspiracy, through the [TLC Group Companies], and individually, and in furtherance of this conspiracy they have conducted themselves in such a manner that:

(a) Potential profits and revenue of [TLC Northcote] are diverted to the [TLC Group companies] so that [Tumyu's] claims against [TLC Northcote] remains unenforceable and inferior to the Senior Creditor and Mezzanine Creditors (as defined in the Subscription Agreement), which is [88 Rubies]. Accordingly, [TLC NZ Developments] and [Ritankar] induced [TLC Northcote] to breach its contract with [Tumyu] and conspired to injure [Tumyu] as well as [TLC Northcote]; and

(b) [TLC Northcote] under instructions from [Ritankar] removed [Tumyu] from the Project Control Group ("PCG") and deliberately restricted [Tumyu's] access to PCG reports. A copy of [TLC Northcote's] representative Mr Tonchi Glamuzina's email dated 10 July 2024 stating that he was directed by [Ritankar] to remove [Tumyu] and its representatives from the PCG and not

> share any PCG reports with [Tumyu] is enclosed herewith…
>
> (c) A critical fact to consider is that despite the non-completion of the Project, in or around September 2024, [TLC Northcote] was going to be removed from the Companies Register for failing to file its annual return. However, pursuant to an originating application filed by [Tumyu], the High Court of New Zealand passed orders against the removal of [TLC Northcote]. [All the Defendants] conspired and deliberately failed to file their annual returns with the intention of removing [TLC Northcote] from the Company registry of New Zealand to defraud its creditors, especially [Tumyu], since [88 Rubies'] investments in TLC Group Companies were in any case secured through other measures.
>
> 21. A copy of the affidavit filed by the director of [Tumyu] in the High Court of New Zealand is enclosed herewith…
>
> 22. Further, [Sawer], [Chew] and [Ritankar] have conflicts of interest as they sit as directors in most of the TLC Group Companies and are serving the interests of [Thao Li] and/or [88 Rubies]. This in itself has raises [sic] strong suspicions that [Sawer] and [Ritankar] are deliberately conspiring to act against the interests of [TLC Northcote] and [Tumyu].
>
> 23. [Tumyu] also has reason to believe that:
>
> (a) any funds raised by the TLC Group Companies have been utilised for other subsidiary companies and for the group businesses, to deliberately defraud [Tumyu] of its investment and any interest accrued thereon, pursuant to the conspiracy; and
>
> (b) [TLC Contractors] and [TLC NZ Construction] are serving as vehicles to divert funds from [TLC Northcote] and [TLC NZ Developments] to [TLC Modular], [TLC Holdings II] and [TLC Holdings I] as [TLC Contractors] has entered into related party transactions (construction contracts or other contracts) with [TLC Northcote].

21 Quite evidently, Tumyu's case rested almost entirely on assertions of its purported beliefs. Apart from the email mentioned at paragraph 17(b) of Lin's Affidavit and the affidavit mentioned at paragraph 21 of Lin's Affidavit, Lin did not explain how Tumyu came to hold these beliefs, let alone, provide evidence to support them.

22 Tumyu also took a blunderbuss approach in the scope of the documents and information that it requested.

23 Against TLC Northcote, Tumyu sought production of:

(a) All documents and information demonstrating its financial standing and position.

(b) All documents and information relating to the occurrence of the "Issue Date" as defined in the SA.

(c) General Security Deed dated on or about 19 December 2022 executed by TLC Northcote in favour of 88 Rubies.

(d) All documents and information relating to the status of debts owed to 88 Rubies and its dealings with 88 Rubies, including outstanding payment obligations to 88 Rubies on the date of the SA and as at present.

(e) All relevant documents and agreements relating to 88 Rubies replacing a Goldman Sachs-related entity as the Mezzanine Lender.

(f) Its statement of accounts, especially in relation to all transactions with any of the remaining defendants or any other related parties.

(g) All contracts entered into with TLC Contractors.

(h) A statement of accounts of all payments made to TLC Contractors along with supporting documents/invoices.

(i) A compilation of all reports of the PCG.

(j) A compilation of the minutes of all PCG meetings.

(k) All relevant documents, agreements, board resolutions in relation to the injection of any funds in TLC Northcote by TLC NZ Developments, TLC Modular, TLC Holdings II, TLC Holdings I, Thao Li, and 88 Rubies, including but not limited to the alleged injection of NZD 17million common equity in TLC Northcote in February 2025.

24 Against the other defendants, Tumyu sought production of:

(a) A full and frank disclosure of all or any conflicts of interest that they have with TLC Northcote or TLC NZ Developments which may or may not have affected the interests of TLC Northcote.

(b) A full and frank disclosure of all transactional documents entered into with 88 Rubies and/or any entity related to Goldman Sachs between each other and any of the other defendants.

(c) All documents and information relating to the charges set out at paragraph 9 of Lin's Affidavit which are held by 88 Rubies.

(d) Statement of accounts of all funds received by 88 Rubies against charges held by it.

(e) Statement of accounts of all funds injected by 88 Rubies and Stone into TLC Holdings I along with supporting agreements and a statement of how such investments were utilised.

(f) Statement of any or all monies received by the defendants (other than TLC Northcote) from the revenue generated by TLC Northcote.

(g) A full and frank disclosure of Stone, McDade and Ritankar's relationship with TLC Holdings I and 88 Rubies, respectively.

(h) All internal memoranda, notes, records or meetings or discussions and other documents in relation to the negotiation, preparation and execution of 88 Rubies replacing the Goldman Sachs-related entity as the Mezzanine Lender.

(i) All internal memoranda, notes, records of meetings or discussions and other documents in relation to the negotiation, preparation and execution of the charges held by 88 Rubies set out at paragraph 9 of Lin's Affidavit.

Defendants apply to strike out OA 1121

25 The defendants applied to strike out OA 1121 under O 9 r 16(1)(*a*) and (*c*) of the ROC 2021. Two striking out applications were filed. SUM 800 was filed by 88 Rubies and McDade, whom I will refer to as the "ADM Defendants". SUM 894 was filed by the remaining defendants, whom I will refer to as the "TLC Defendants".

26 The ADM Defendants filed two affidavits in support of SUM 800. The first was filed by Alexander Shaik ("Shaik"), a director of 88 Rubies, on behalf of 88 Rubies ("Shaik's Affidavit"). The second was filed by McDade in his own capacity ("McDade's Affidavit"). Their evidence was substantially similar and can be summarised as follows:

(a) ADM was a financier to the TLC Group. ADM first invested in the TLC Group's Vietnam business in January 2023. One of the conditions of ADM's investment was that part of the funds would be used for the Northcote Project.

(b) The Senior Creditor for the Northcote Project was supposed to be a local bank. However, due to delays in funding, ADM provided financing as the Senior Creditor sometime in July 2023. The Mezzanine Lender for the Northcote Project was initially a Goldman Sachs-related entity. However, ADM took over the mezzanine loan sometime in July 2024. When taking over the mezzanine loan, ADM acquired a 49% equity stake in TLC Holdings I. Finally, there was to be a "Subordinate Lender", which was Tumyu.

(c) Construction of the Northcote Project began in August 2021. However, the Northcote Project was severely impacted by external and internal events. These included the COVID-19 pandemic and extreme weather events in Auckland in January and February 2023. In addition to construction delays, the Northcote Project also ran significantly over its original budget. This had implications for Tumyu's returns given the Northcote Project's capital structure, but Tumyu had expressly agreed to this risk under the SA.

(d) By January 2025, all funds provided by ADM and Tumyu had been utilised. This necessitated the TLC Group making further equity injections totalling NZ$24 million into TLC Northcote, by subscribing for ordinary shares which ranked behind Tumyu's Shares in the distribution of the sale proceeds of the Northcote Project.

(e) The Northcote Project operated on a structure where all loan drawdown requests had to be reviewed and checked by an independent quantitative surveyor ("QS"). All drawdowns were independently verified by the QS, with only a handful of exceptions, which fell outside the scope of the QS's review. These expenses were separately verified by an independent financial advisory firm, Quantama (Singapore) Pte Ltd. The QS also produced regular drawdown reports documenting the sums disbursed for the Northcote Project, which were made available to Tumyu.

(f) The ADM Defendants were not part of any conspiracy to injure Tumyu. OA 1121 was a cynical attempt by Tumyu to fish for documents to manufacture a claim against the ADM Defendants for the materialisation of normal commercial risks that Tumyu had voluntarily agreed to assume.

27 The TLC Defendants did not file an affidavit in support of SUM 894. The TLC Defendants instead sought to rely on Shaik and McDade's Affidavits in support of their own application. Tumyu objected to the TLC Defendants doing so. I deal with this as [79]–[84] below.

28 In addition to applying to strike out OA 1121, the TLC Defendants and the ADM Defendants applied for security for costs against Tumyu by way of Summons No 616 of 2026 ("SUM 616") and Summons No 796 of 2026 ("SUM 796"), respectively. These applications became moot as OA 1121 was struck out.

Parties' Submissions and Issues

29 I set out the parties' arguments briefly to frame the issues which arise for determination in SUM 800 and SUM 894.

30 The TLC Defendants and the ADM Defendants advanced similar arguments, as follows:

(a) OA 1121 was liable to be struck out for disclosing no reasonable cause of action under O 9 r 16(1)(*a*) of the ROC 2021 or in the interest of justice under O 9 r 16(1)(*c*) of the ROC 2021. On the latter ground, OA 1121 was legally and factually unsustainable.

(b) The Court's power to order pre-action production was intended for an applicant with some basis for believing that they had a viable cause of action but were unable to properly plead a claim because they required certain documents and information to cover critical gaps in the potential claim. The power was not meant to facilitate fishing expeditions.

(c) Tumyu was attempting to obtain pre-action production to sniff around for potential causes of action. Tumyu had no reasonable basis for its belief that it may have a cause of action against the defendants in conspiracy.

(d) Tumyu had not received redemption payments because the Northcote Project had not been completed and there were no profits to be diverted. Even if funds became available to TLC Northcote, Tumyu's redemption rights under the SA were expressly subordinated to the Senior Creditor and the Mezzanine Lender's right to be paid first. Hence, the risk of non-redemption was one which Tumyu voluntarily undertook.

(e) Tumyu had alleged a wide-ranging and nebulous conspiracy to cause it loss. While Tumyu did not need to establish all the elements of conspiracy on the merits at this stage, there had to be some factual justification for alleging that such a potential conspiracy existed and Tumyu could not meet this threshold. The categories of documents and information sought by Tumyu were similarly vague and wide-ranging.

(f) Lin's Affidavit failed to demonstrate that the requested documents were within the defendants' possession or control and show why the documents were necessary to address the alleged gaps in Tumyu's knowledge.

(g) Tumyu had even less basis to seek production against the individual defendants as they were entitled to the protection of the *Said v Butt* principle.

(h) Even if the Court was not satisfied that OA 1121 did not disclose a reasonable cause of action based on Lin's Affidavit alone, Shaik and McDade's Affidavits placed a different complexion on matters.

31 In oral submissions, counsel for the TLC Defendants, Mr Chua Sui Tong ("Mr Chua"), advanced a further argument. Mr Chua submitted that based on Lin's Affidavit, Tumyu's position appeared to be that they were going to sue, and they were already able to plead a conspiracy. If that was Tumyu's position, it was not entitled to pre-action production as Tumyu would already be able to commence proceedings.

32 Tumyu's arguments were as follows:

(a) SUM 894 was procedurally defective because the TLC Defendants did not file a supporting affidavit. In this regard, the TLC Defendants could not rely on Shaik and McDade's Affidavits in support of their own application.

(b) SUM 800 and SUM 894 were fundamentally misconceived because they treated OA 1121 as if it were a substantive claim and invited the Court to assess the merits of the intended causes of action.

(c) The high threshold for striking out was not met:

(i) OA 1121 was legally sustainable because it was brought pursuant to O 11 r 11 of the ROC 2021 for a clear and recognised purpose of obtaining documents which were necessary to assess whether viable causes of action existed. The law did not require Tumyu to particularise or prove a complete cause of action before seeking pre-action production. The defendants' arguments went to the merits of the claim, which could only be assessed with the benefit of the documents sought.

(ii) OA 1121 was not factually unsustainable. Tumyu's claims were supported by a sufficient factual basis and were not speculative. Lin's Affidavit provided a reasonable factual basis for investigating whether the defendants' conduct gave rise to tortious wrongdoing. Shaik and McDade's Affidavits were bare denials and unverified assertions which went towards the merits of any eventual claim and did not justify striking out an application for pre-action production.

(iii) This was not a case where Tumyu already had knowledge of the facts required to commence proceedings, such that pre-action production was not necessary. Lin's Affidavit only set out Tumyu's belief of its potential causes of action. However, the evidence was circumstantial at best and not definitive of a cause of action.

(iv) The requested documents and information were directly relevant to the issues which were likely to arise under Tumyu's intended claims.

(v) There were no other countervailing considerations making pre-action production inappropriate.

33 Hence, there were three broad issues to be determined:

(a) What principles should govern the striking out of an application for pre-action production?

(b) Did the TLC Defendants' failure to file a supporting affidavit render SUM 894 procedurally defective?

(c) Should OA 1121 be struck out for disclosing no reasonable cause of action or in the interest of justice?

34 I deal with them in turn.

Decision

Principles governing the striking out of an application for pre-action production of documents and information

35 The present case was novel because the defendants had applied to strike out OA 1121, instead of filing reply affidavits and defending OA 1121 on its merits. In this regard, while the legal principles governing an application for the pre-action production of documents and information remained a key consideration in determining whether OA 1121 disclosed a reasonable cause of action and was legally and factually sustainable, the grounds and the high threshold for striking out also had to be met. I first consider the legal principles relating to pre-action production and then consider how these principles ought to apply in the context of an application to strike out an application for pre-action production.

Legal principles relating to pre-action production

36 The Court's power to order pre-action production of documents and information is set out under O 11 r 11(1) of the ROC 2021. The rule reads:

> **Production before action or against non-parties (O. 11, r. 11)**
>
> **11.—**(1) The Court may order the production of documents and information before the commencement of proceedings or against a non-party to identify possible parties to any proceedings, to enable a party to trace the party's property or for *any other lawful purpose, in the interests of justice.*
>
> …
>
> [emphasis added]

37 It can be seen that O 11 r 11(1) of the ROC 2021 is framed in general terms. The case authorities flesh out how the rule should be interpreted. In particular, four issues discussed in the case authorities merit closer examination in present case, namely: (a) the purpose of pre-action production; (b) the matters which an applicant must establish in an application for pre-action production; (c) the proper approach for determining whether it is in the interests of justice to order pre-action production; and (d) how the Court determines the materiality of the requested documents in an application for pre-action production. I turn to consider these issues.

(1) The purpose of pre-action production

38 The purpose of pre-action production is to assist applicants who have some basis for believing that they have a viable cause of action but are unable to properly plead their claim because they require certain documents and information to cover critical gaps in the intended claim: see *Gillingham, James Ian v Fearless Legends Pte Ltd and others* [2024] 6 SLR 697 ("*Gillingham*") at [17].

39 The overall objective is the saving of costs and time, and the efficient management of court processes. Pre-action production can avoid litigation if the applicant realises that his suspicions are unfounded, but if litigation is unavoidable, it helps identify the real issues in dispute: see *Gillingham* at [14], citing *Dorsey James Michael v World Sport Group Pte Ltd* [2014] 2 SLR 208 ("*Dorsey*") at [26].

(2) The matters which an applicant must establish in an application for pre-action production

40 Order 11 r 11(1) of the ROC 2021 simply sets out the purposes for which pre-action production may be ordered and when the Court may order pre-action production (i.e. where it is in the interest of justice). Order 11 r 11(1) can be contrasted with the detailed procedures prescribed under O 11 r 3, which governs the Court's power to order the production of specified documents in an action, after proceedings are commenced. Order 11 r 3 of the ROC 2021 reads:

> **Production of requested documents (O. 11, r. 3)**
>
> **3.**—(1) The Court may order any party to produce the original or a copy of a specific document or class of documents (called the requested documents) in the party's possession or control, if the requesting party —
>
> (*a*) properly identifies the requested documents; and
>
> (*b*) shows that the requested documents are material to the issues in the case.
>
> (2) If the requested documents are not in the party's possession or control, the Court may order that party to file an affidavit stating this, as well as whether that party had such possession or control previously and if so, when that party parted with possession or control and what has become of the requested documents.
>
> (3) Except in a special case, if the Court orders the parties to file and serve affidavits of evidence in chief of witnesses after pleadings have been filed and served but before any exchange

> of documents, the Court must not exercise its power under this Rule before the parties comply with the Court's order.

41 In *Yeap Seng Yen v Singapore General Hospital Pte Ltd* [2026] SLR (StC) 70 ("*Yeap Seng Yen*"), Deputy Registrar Gerome Goh Teng Jun ("DR Goh") held (at [20]) that the requirements under O 11 r 3 of the ROC 2021 also applied to an application for pre-action production under O 11 r 11. DR Goh synthesised the requirements under O 11 rr 3 and 11 in the following manner:

> 20 In my view, an applicant for pre-action discovery under O 11 r 11 of the ROC 2021 has to:
>
> > (a) properly identify the requested documents (O 11 r 3(1)(*a*) of the ROC 2021) and show grounds that the requested documents exist and the respondent was likely to have or had such documents in his possession, custody or power (O 11 r 3(1) of the ROC 2021);
> >
> > (b) state the purpose of the requested documents, ie, whether the requested documents are sought to identify possible parties to any proceedings, enable a party to trace the party's property or for any other lawful purpose;
> >
> > (c) set out the core substance of the putative case (*Kuah Kok Kim v Ernst & Young* [1996] 3 SLR (R) 485 at [31]) and show that the requested documents are material to the issues in the putative case (O 11 r 3(1)(*b*) of the ROC 2021); and
> >
> > (d) satisfy the court that making the order for pre-action discovery is in the interests of justice in consideration of the Ideals (O 3 r 1 of the ROC 2021) and the principles applicable in O 11 r 1(2) of the ROC 2021.

42 I broadly agree with DR Goh's summary of the matters that must be satisfied in an application for pre-action production. I only differ on whether there is a requirement for the applicant to establish the materiality of the requested documents to the issues in the putative case. In my view, the requirement of materiality applies differently in the context of pre-action production, such that the focus of the inquiry relates to how the requested documents would impact the *applicant's determination of whether he or she has*

a viable cause of action, as opposed to their materiality to the putative cause of action more generally. I elaborate on my reasons at [63] to [66] below.

(3) The proper approach for determining whether it is in the interests of justice to order pre-action production

43 O 11 r 11(1) of the ROC 2021 provides that a Court may order pre-action production where this is "in the interests of justice". The breadth of this standard raises questions as to how the Court's power is to be exercised, since any judicial discretion, however broad, must be exercised in a principled and consistent manner, albeit having regard to the facts of each case.

44 Both *Gillingham* (at [18]) and *Yeap Seng Yen* (at [22]) held that a multifactorial approach should be applied to determine whether ordering pre-action production would be in the interests of justice under O 11 r 11(1) of the ROC 2021. This multi-factorial approach has its roots in a line of earlier Court of Appeal decisions which interpreted the old provisions in the Rules of Court 2014 (Cap 322, R5, 2014 Rev Ed) ("ROC 2014") governing pre-action discovery and interrogatories. I first set out the relevant provision in the ROC 2014 for context before considering the case authorities.

(A) THE POSITION UNDER THE ROC 2014

45 The rules governing pre-action discovery were set out in O 24 rr 6 and 7 of the ROC 2014, which read:

> **Discovery against other person (O. 24, r. 6)**
>
> **6.**—(1) An application for an order for the discovery of documents before the commencement of proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the originating summons.
>
> …

> (3) An originating summons under paragraph (1) or a summons under paragraph (2) shall be supported by an affidavit which must —
>
> (*a*) in the case of an originating summons under paragraph (1), state the grounds for the application, the material facts pertaining to the intended proceedings and whether the person against whom the order is sought is likely to be party to subsequent proceedings in Court; and
>
> (*b*) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of the claim made or likely to be made in the proceedings or the identity of the likely parties to the proceedings, or both, and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.
>
> …
>
> (5) An order for the discovery of documents before the commencement of proceedings or for the discovery of documents by a person who is not a party to the proceedings may be made by the Court for the purpose of or with a view to identifying possible parties to any proceedings in such circumstances where the Court thinks it just to make such an order, and on such terms as it thinks just.
>
> …
>
> **Discovery to be ordered only if necessary (O. 24, r. 7)**
>
> **7.** On the hearing of an application for an order under [Rule 6], the Court may, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.
>
> [emphasis added]

46 The rules governing pre-action interrogatories were set out in O 26A rr 1 and 2 of the ROC 2014. As the rules on pre-action interrogatories are largely

identical to the rules on pre-action discovery set out above, it is unnecessary to reproduce them here.

47 *Kuah Kok Kim and others v Ernst & Young* [1996] 3 SLR(R) 485 ("*Kuah Kok Kim*") appears to be the first reported decision where the Court of Appeal squarely considered the scope of the Court's power to order pre-action discovery. The appellants had engaged the respondents to conduct a non-speaking valuation of the appellants' shares in a company. The appellants later obtained a separate valuation suggesting that the respondent's valuation was arrived at by mistake. The appellants applied for pre-action discovery of the respondent's working papers to decide if there was a breach of contract or negligence on the respondent's part. The respondent objected to the application on the ground that it was a fishing expedition as the appellants did not have a reasonable basis for their allegations of negligence or breach of contract. The Court allowed the application for pre-action discovery of the respondent's working papers.

48 *Kuah Kok Kim* established two key propositions.

49 The first proposition is that an applicant for pre-action discovery must have a *reasonable* basis for his or her intended claim. In the absence of this, pre-action discovery cannot be used simply to fish for information. The Court reasoned (at [31], [42] and [50]):

> 31 [W]here pre-action discovery is sought, *the plaintiff has a duty to set out the substance of his claim to enable a potential defendant to know what the essence of the complaint against him is*. This is because in the nature of pre-action discovery, the plaintiff does not yet know whether he has a viable claim against the defendant, and the rule is there to assist him in his search for the answer. *Thus the safeguards specified in the rules are to ensure that the plaintiff is not allowed to take advantage of the rules merely to enable him to go on a fishing expedition.*

> 42 The appellants had obtained another valuation from a reputable firm, KPMG Peat Marwick, which had placed the value of the shares between $3.17 and $3.26 per share, compared to the respondents' valuation of $2.15 per share. There was a significant disparity between the two valuations. Moreover, KPMG Peat Marwick had also given reasons for the basis of their valuation. *We are of the view that the appellants had shown that there was a reasonable basis for their allegations*. Moreover, the appellants had shown that this was sufficient to raise a cause of action, *albeit not necessarily a* good *cause of action*.
>
> 50 …[T]here must be some grounds for seeking pre-action discovery, bearing in mind that the provision should not be used for fishing expeditions, and that the normal course is to get "ordinary discovery" after commencement of proceedings.
>
> [emphasis added]

50 The second proposition, which is a corollary of the first, is that while an applicant for pre-action discovery must have a reasonable basis for the intended claim, this is not an overly stringent standard. The law recognises that an applicant for pre-action discovery may not be able to plead a fully particularised claim and allows leeway for that. The Court will not scrutinise the merits of the potential claim. Instead, a claim *without* a reasonable basis is considered one which is *frivolous or speculative*. The Court reasoned (at [34], [35] and [59]):

> 34 *Although the affidavit should state the cause of action, it is not necessary to give particulars of it*, even though it may be desirable. Indeed the rule does not state that particulars of the cause of action must be given. We do not agree with the respondents that "material facts" under r 7A(3)(*a*) meant all the facts sufficient to constitute the elements of the cause of action.
>
> 35 If the material facts had to be as precise as those normally pleaded in any cause of action, and if the appellants were in a position to depose to an affidavit to this effect, they could well be in a position to commence proceedings immediately. It would not be necessary to provide a scheme for discovery before action. *To be so precise would impose too onerous a burden on the appellants. We are of the opinion that as long as the appellants stated the facts sufficiently to explain why pre-action discovery was necessary, this was adequate.*
>
> …

> 59 …It was *not the court's function, at this stage of the application, to dwell into the merits of the case* and to determine, based on what little available evidence, whether there is a good claim or not. *The court's duty is only to ensure that the application was not frivolous or speculative or that the applicants were [not] on a fishing expedition.*
>
> [emphasis added]

51 The next major development in the law on pre-action discovery occurred in the Court of Appeal's decision in *Ching Mun Fong v Standard Chartered Bank* [2012] 4 SLR 185 ("*Ching Mun Fong*"). The appellant was a customer of the respondent bank. The appellant applied for pre-action discovery of the voice-logs of certain communications she had with the respondent in relation to two transactions which the respondent had conducted on her behalf. Pre-action discovery was sought in support of potential claims in breach of contract and negligence. The Court denied the application for pre-action discovery.

52 The Court held in *Ching Mun Fong* (at [18]) that an applicant must satisfy both the requirements of "relevance" under O 24 r 6(3) of the ROC 2014 and "necessity" under O 24 r 7 of the ROC 2014 to succeed in an application for pre-action discovery.

53 On the requirement of relevance, the Court observed (at [18]) that O 24 r 6(3)(*a*) of the ROC 2014 required an applicant to possess grounds for making the application as well as the material facts pertaining to the intended claim, while O 24 r 6(3)(*b*) presupposed that the applicant knew of the issues that were likely to arise out of the possible claim in requiring that the relevance of the documents be shown.

54 On the requirement of necessity, the Court observed (at [18]) that O 24 r 7 of the ROC 2014 suggested that there was some gap in the knowledge of the applicant which must be filled. Building on *Kuah Kok Kim* at [38], the Court

explained (at [19]–[20]) that one of the objectives of pre-action discovery was to allow a potential claimant to determine if he had a "good cause of action", which the Court defined (at [21]) as "one which is possible to fashion into a claim against a potential defendant, as opposed to a set of facts which does not give rise to any cause of action at all". On the other hand, pre-action discovery could not be used to finesse or strengthen the intended claim if the applicant was already able to commence proceedings. The Court summarised the operative principles as follows (at [23]]):

> …[T]he scheme of pre-action discovery is to accommodate the situation *where a potential plaintiff does not have sufficient facts to commence proceedings*. This is consistent with its purpose being to allow a potential plaintiff to determine whether he has a "good cause of action". *It follows that pre-action discovery is unnecessary where an individual is in a position to commence proceedings…*
>
> [emphasis added]

55 On the facts, the Court found (at [39]) that the pre-action discovery sought was not necessary because the appellant already knew what her intended causes of action were and the basis on which they were said to have arisen. The Court further found (at [40]) that the appellant was effectively seeking to determine whether she was likely to succeed in her intended causes of action as opposed to formulating a claim.

56 *Kuah Kok Kim* and *Ching Mun Fong* thus established that an applicant for pre-action discovery *must satisfy* two key requirements: (a) the applicant must have a reasonable basis for his or her intended claim; and (b) the applicant must not already possess sufficient facts to commence proceedings. In *Haywood Management Ltd v Eagle Aero Technology Pte Ltd* [2014] 4 SLR 478 ("*Haywood*"), Tay Yong Kwang J (as he then was) provided an illuminating explanation of how the two requirements interact (at [40]):

> 40 …[O]n one end of the spectrum, there exist cases where the applicant already has sufficient information to plead its case and is in a position to commence proceedings. On the other end, there are applications which are so frivolous or speculative in nature that the applicant should not be allowed to invade the documentary domain of the defendant. In order for an applicant to successfully obtain an order for pre-action discovery, he must fall somewhere in the middle ground, where he does not know whether he has a viable claim against the potential defendant and thus requires pre-action discovery to fill the gaps in his knowledge.

57 *Dorsey* is the Court of Appeal's most recent pronouncement on the law governing pre-action disclosure. The respondent there alleged that certain blog posts made by the appellant were based on material disclosed to the appellant in breach of confidence and were defamatory of it. Among other things, the respondent applied for leave to serve interrogatories on the appellant relating to: (a) the identity of the appellant's sources; (b) whether the appellant had received the confidential material; and (c) if the appellant had received the confidential material, the person(s) he received it from. The respondent contended that pre-action interrogatories would help them ascertain the nature of any breach of confidence and identify potential parties to the proceedings. The High Court granted leave to serve such interrogatories. The Court of Appeal allowed the appeal and set aside the High Court's grant of leave.

58 In *Dorsey* at [28], the Court of Appeal affirmed its earlier rulings in *Kuah Kok Kim* and *Ching Mun Fong* that the requirements of relevance and necessity were crucial considerations in deciding whether pre-action disclosure should be ordered. However, *Dorsey* emphasised (at [27]), that in addition to the requirements of relevance and necessity, the making of any order had to be "just" in all the circumstances. In particular, the Court (at [33]) described the test as one of "justness underpinned by necessity". The Court elaborated on the nature of the test as follows (at [47]–[50]):

> 47 As such, beyond the *obvious threshold of relevance*, it is clear that *necessity…remains the main cornerstone in determining whether pre-action interrogatories will be ordered*: *are the pre-action interrogatories applied for necessary for the claimant to ascertain if his cause of action is viable*? The jurisdiction by its very nature requires the court to acknowledge that some measure of imprecision in mapping out factual contours is permissible. *Yet, at the same time it must be borne in mind that this jurisdiction cannot be overstretched to allow claimants to sniff around for potential causes of action which are still at an amorphous, undefined stage. Nor can the procedure be employed for collateral reasons that suggest the commencement of proceedings is not the key consideration that underpins the relevant applicatio*n…
>
> 48 *Additionally, other facets of necessity such as notions of proportionality, the availability of alternative avenues to obtain the information and how intrusive those interrogatories are would naturally be taken into consideration as well*. A significant consideration against the making of an order is that the applicant can, at the time of the making of the application, immediately commence proceedings against an identified party in relation to the controversy at hand without the disclosure sought. If the applicant already has a complete cause of action against an identified party, orders should not be made with alacrity, as pre-action disclosure is then not necessary.
>
> …
>
> 50 *In its final analysis, the court ought to take a multi-factorial view and question whether it is just (as well as necessary) for the applicant to secure the information sought even before any proceedings are commenced*. In general, the applicant must show that the circumstances are such that the case differs from the normal…
>
> [emphasis added]

59 On the facts, the Court found (at [78]) that it was not just to order pre-action interrogatories against the appellant. The Court's reasons were that: (a) the confidential material alleged to have been disclosed to the appellant was already in the public domain; (b) the potential causes of action against the sources had no connection with Singapore; (c) the respondent already had a complete cause of action against the appellant which it had chosen not to pursue; and (d) there was a wider public interest in exposing alleged serious wrongdoing

such that it could not be said that this was a matter meriting early disclosure of the identity of the appellant's sources.

60 In my view, the multi-factorial approach articulated by *Dorsey* is properly understood to mean that *after* being satisfied that pre-action disclosure is relevant (in the sense that the applicant has a reasonable basis for the intended claim and the requested documents are logically relevant to the intended claim) and necessary (in the sense that the applicant is not already in a position to commence proceedings), the Court should then consider all other considerations (including countervailing factors) which are relevant to whether pre-action disclosure is just and should be ordered. In other words, even after *Dorsey,* relevance and necessity remained preconditions to pre-action disclosure being ordered, as was the established position under *Kuah Kok Kim* and *Ching Mun Fong* (see [58] above). However, *Dorsey* clarified that even where these pre-conditions are satisfied, an order for pre-action disclosure should only be made where it is just in all the circumstances.

(B) THE POSITION UNDER THE ROC 2021

61 Under O 11 r 11(1) of the ROC 2021, the requirements of relevance and necessity under the ROC 2014 provisions on pre-action disclosure have been subsumed under the single broad standard of whether pre-action production is "in the interests of justice".

62 Drawing on *Dorsey* and George Wei J's decision in *Intas Pharmaceuticals Ltd v DealStreetAsia Pte Ltd* [2017] 4 SLR 684 ("*Intas*")*,* the cases of *Gillingham* (at [18]) and *Yeap Seng Yen* (at [22]) held that a multifactorial approach should similarly be applied to determine whether an order for pre-action production would be in the interests of justice under O 11 r

11(1) of the ROC 2021. *Gillingham* and *Yeap Seng Yen* further identified the following non-exhaustive factors as being relevant to the inquiry:

(a) the applicant's intended cause of action and knowledge of the claim which shows whether the applicant has the requisite information to assess the viability of the intended claim;

(b) the need to guard against requests of a fishing and roving nature, which are brought in the hope of gathering information to make out a speculative claim;

(c) the seriousness of the injury and/or the loss and damage behind the complaint made;

(d) the reasonable expectations of non-parties in maintaining confidentiality and privacy, including in relation to their own private information, or to satisfy duties of confidentiality owed to others;

(e) the need to avoid unnecessarily inconveniencing, embarrassing or prejudicing non-parties by requiring them to disclose the information sought, especially when they may not or cannot be parties to any eventuating litigation;

(f) the danger that judicially administered orders or pre-action production can increase the expense of resolving disputes, such as through encouraging satellite litigation or claims that may not be, or have not been, commenced; and

(g) the nexus between the intended claim and Singapore.

63 *Gillingham* and *Yeap Seng Yen* also considered whether an applicant for pre-action production under O 11 r 11 of the ROC 2021 must show that the

requested documents or information are material. Unlike O 11 r 3 which governs the production of specific requested documents in an action (i.e. after proceedings have commenced), O 11 r 11 does not expressly provide for a requirement of materiality.

64 Under O 11 r 3 of the ROC 2021, the requesting party must show that the requested documents are "material to the *issues in the case* [emphasis added]". This requires the documents to have a *significant bearing* on an issue in the case, such that it could potentially affect the Court's ultimate decision. In the context of a production application in an action that has already been commenced, the issues in the case are determined from the parties' pleadings: see *Hu Yinan v Peh Chin Hua and others* [2026] SGHC 103 at [8], citing *Eng's Wantan Noodle Pte Ltd v Eng's Char Siew Wantan Mee Pte Ltd* [2023] SGHCR 17 at [49].

65 *Gillingham* and *Yeap Seng Yen* both held that the materiality of the requested documents or information must be shown under O 11 r 11(1) of the ROC 2021. However, they differed on what the requirement entails. In *Gillingham* at [17], Assistant Registrar Justin Yeo ("AR Yeo") held that the documents and information must be material *to the applicant's determination of whether there is a cause of action which can be fashioned into a viable claim*. In *Yeap Seng Yen* at [20(c)], on the other hand, DR Goh held that the requested documents and information must be material *to the issues in the putative case*.

66 I respectfully prefer AR Yeo's formulation over DR Goh's. It is pertinent to note that O 11 r 11 applies where proceedings have not commenced and the applicant does not yet know whether he has a good cause of action. Requiring the applicant to establish the materiality of the documents to the issues in a putative case is premature in the absence of pleadings and potentially

onerous for an applicant who does not even know if he or she has a good cause of action at that stage. Furthermore, under the ROC 2014 provisions, the relevant inquiry was whether pre-action disclosure was *necessary* for the applicant *to ascertain whether his cause of action was viable*: *Dorsey* at [47]. In my view, the focus of the inquiry remains the same under O 11 r 11 of the ROC 2021. Keeping with the broad architecture of O 11, the previous requirement of necessity should now be viewed through the lens of materiality, which would require the requested documents to have a *significant bearing on the applicant's determination of whether a good cause of action exists*.

67 I return to discuss the multi-factorial approach that was applied in *Gillingham* and *Yeap Seng Yen* to determine whether pre-action production should be ordered. I agree with my learned colleagues that a multi-factorial approach should apply in deciding whether pre-action production is in the interests of justice. A multi-factorial approach is generally intended to clarify that the Court must consider and evaluate all relevant matters when coming to its decision and that the facts of each case are of paramount importance. That said, one shortcoming of a multi-factorial approach is that it may not provide clear guidance on when and how to weigh the competing considerations, which may in turn, result in uncertainty and inconsistency in decision-making.

68 In my view, to address these concerns, the multi-factorial approach for determining whether pre-action production should be ordered can be structured as involving a two-stage inquiry:

> (a) At the first stage, the Court considers whether the threshold requirements for ordering pre-action production are met. Based on the case authorities, there are at least three threshold requirements: (a) first, the applicant must have a reasonable basis for his or her intended claim

(see [49]–[50] above); (b) the applicant must not already know sufficient facts and be in a position to commence proceedings (see [54] above); and (c) the requested documents or information must be material to the applicant's determination of whether a good cause of action exists (see [65]–[66] above). If the applicant fails to satisfy any of the threshold requirements, this will ordinarily be determinative, and pre-action production should not be ordered.

(b) If the threshold requirements are met, the Court moves to the second stage and considers all relevant factors (including those identified in *Gillingham* and *Yeap Seng Yen* at [62] above) to determine where the interests of justice lies. By the second stage, the applicant would have established a *prima facie* case for obtaining pre-action production and the Court's role is to determine whether there are countervailing considerations which may weigh against the applicant's interest in obtaining the documents or information.

69 I take this view for three reasons.

70 First, a multifactorial approach is not a matter of ticking boxes. Instead, the power to order pre-action production must be exercised with its purpose in mind, which is to assist a party who has a reasonable basis for an intended claim, but *requires* certain documents or information to fill critical gaps in his or her knowledge to determine whether a viable claim exists. This guides the threshold requirements at the first stage of the inquiry above. At the second stage of the inquiry, the relevance of each factor, and the weight to be attached to them, would also depend on the facts of each case.

71 Second, a two-stage inquiry accords with the nature of the factors themselves. If the Court finds that the applicant: (a) is fishing for evidence to support a frivolous or speculative claim (see [62(b)] above); or (b) already knows sufficient facts and is in a position to commence proceedings (see [62(a)] above), the other factors would not provide an independent basis for ordering pre-action production. Using the present case as an example, Tumyu relied on the fact that it had made serious allegations against the defendants (see [62(c)] above) as a reason why pre-action production should be ordered. While this factor might reduce the weight placed on (or outweigh) the respondent's interests in maintaining confidentiality over its documents and information (see for example, *Dorsey* at [73]), this plainly cannot be a reason for ordering pre-action production on its own. Another example would be a case where there are no confidentiality concerns (see [62(d)] above) or where the potential claim has a strong nexus with Singapore (see [62(g)] above). These factors would be irrelevant to whether pre-action production should be ordered unless the threshold requirements are met.

72 Third, a two-stage inquiry is consistent with the approach taken in the case authorities discussed above. In short, the threshold requirements are adapted from the requirements of relevance and necessity under the ROC 2014 provisions on pre-action disclosure, as discussed in the cases of *Kuah Kok Kim* and *Ching Mun Fong*. In *Dorsey* at [28], the Court of Appeal affirmed that these requirements are crucial considerations in deciding whether pre-action disclosure should be ordered. However, *Dorsey* further developed the law by emphasising (at [27]) that the making of any order for pre-action disclosure must be "just" in the circumstances, which is to be determined by applying a multi-factorial approach. This is consistent with how Wei J applied the law stated in *Dorsey* to the case before him in *Intas*. Notably, Wei J first considered whether the requirements of relevance and necessity were met, before deciding

whether it was just to order pre-action disclosure, applying a multi-factorial approach (see *Intas* at [36]).

Legal principles relating to striking out

73 I turn to the legal principles on striking out, which are well-established.

74 The defendants applied to strike out OA 1121 pursuant to O 9 r 16(1)(*a*) and (*c*) of the ROC 2021. These provisions read:

> **Striking out pleadings and other documents (O. 9, r. 16)**
>
> **16.**—(1) The Court may order any or part of any pleading to be struck out or amended, on the ground that —
>
> > (a) it discloses no reasonable cause of action or defence;
> >
> > …or
> >
> > (c) it is in the interests of justice to do so,
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly.
>
> (2) No evidence is admissible on an application under paragraph (1)(*a*).
>
> (3) This Rule applies to an originating application as if it were a pleading.
>
> …

75 A reasonable cause of action under O 9 r 16(1)(*a*) of the ROC 2021 is one with some chance of success where only the allegations in the pleadings are considered: see *Iskandar bin Rahmat v Attorney-General* [2022] 2 SLR 1018 ("*Iskandar*") at [17]. In an application to strike out an action commenced by an originating application, the affidavit filed in support of the originating application is treated as the equivalent of the claimant's pleadings in an action commenced by an originating claim: *Sullivan, Sir Cornelius Sean v Hill Capital Pte Ltd and another* [2025] 4 SLR 559 ("*Sullivan*") at [28]. Affidavits filed in

the striking out application itself should not ordinarily be considered: *Sullivan* at [29]. Nothing turned on this in the present case since the affidavit of Zhu Zhaoxin filed in reply to Shaik and McDade's Affidavits comprised mainly legal submissions which added little to the factual basis of OA 1121. Hence, based on the affidavit filed in support of the originating application alone, the Court's task is to evaluate whether the claimant's own evidence bears out the requisite factual substratum that would establish the legal cause of action advanced: *Sullivan* at [32].

76 The interests of justice limb under O 9 r 16(1)(*c*) of the ROC 2021 allows the Court to strike out a claim that is plainly or obviously unsustainable: see *Iskandar* at [19], referring to *The "Bunga Melati 5"* [2012] 4 SLR 546 ("*Bunga Melati 5*") at [33]. A claim is legally unsustainable if it is clear as a matter of law that even if a party succeeds in proving all the facts that he offers to prove, he will not be entitled to the remedy he seeks: see *Bunga Melati 5* at [39(a)]. In this regard, there is a clear overlap in whether a claim is legally unsustainable and whether it discloses no reasonable cause of action. A claim is factually unsustainable if it is possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance: *Bunga Melati 5* at [39(b)].

77 Finally, it is trite that the threshold for striking out is a high one and the power should only be exercised in plain and obvious cases: see *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18].

Tumyu's preliminary objections were without merit

78 I turn to deal with Tumyu's two preliminary objections to the defendants' striking out applications. Both were unmeritorious.

The TLC Defendants' failure to file a supporting affidavit did not make SUM 894 procedurally defective

79 Tumyu's first preliminary objection was that the TLC Defendants' failure to file a supporting affidavit meant that SUM 894 was procedurally defective and should be dismissed. Tumyu relied on O r 3 r 5(1) of the ROC 2021 which provides that "subject to [the ROC 2021], all applications to the Court in an action must be made by summons…and supported by affidavit". Tumyu further argued that the TLC Defendants could not rely on Shaik and McDade's Affidavits because these affidavits were filed for the ADM Defendants' separate striking out application in SUM 800 and the TLC Defendants had not "formally adopted" their evidence.

80 Tumyu's objections were a non-starter insofar as O 9 r 16(1)(*a*) of the ROC 2021 was the relevant ground for striking out. Order 9 r 16(2) of the ROC 2021 expressly provides that no evidence is admissible on such an application. Hence, contrary to Tumyu's submission that the absence of a supporting affidavit made SUM 894 procedurally defective, it would have been objectionable for the TLC Defendants to have filed a supporting affidavit.

81 Moreover, the real issue in a striking out application under O 9 r 16(1)(*a*) of the ROC 2021 is whether the claimant's case can withstand scrutiny on its *own terms*. Mr Gill submitted that the defendants' failure to file reply affidavits in OA 1121 made it challenging for Tumyu to establish a *prima facie* case of wrongdoing. This was untenable. As I pointed out to Mr Gill at the hearing, Tumyu could not rely on the absence of opposing evidence from the defendants to claim they were handicapped in discharging their *own burden* in OA 1121.

82 Insofar as the TLC Defendants had relied on O 9 r 16(1)(*c*) of the ROC 2021 as an alternative ground for striking out, Tumyu's objections became moot

in light of Mr Chua's confirmation at the hearing that the TLC Defendants would confine their grounds for striking out to O 9 r 16(1)(*a*) and not rely on O 9 r 16(1)(*c*) of the ROC 2021 as an additional ground. Be that as it may, since there appears to be a dearth of case law on the issue, I will briefly consider whether the TLC Defendants could rely on Shaik and McDade's Affidavits to support their own striking out application. In my view, there was nothing inherently objectionable about this.

83 First, in their summons for striking out, the TLC Defendants expressly stated that the evidence in support of their application was to be found in Shaik and McDade's affidavits. In my view, an analogy can be drawn with O 15 r 29 of the ROC 2021 which allows a party to use an affidavit filed in previous proceedings in subsequent proceedings by giving notice of the party's intention to do so and serving the affidavit on every other party. Notably, O 15 r 29 does not qualify the words "an affidavit" with reference to the party who filed it. A plain reading of O 15 r 29 therefore suggests that a party may seek to use or refer to any affidavit filed in previous proceedings, including affidavits filed by another party. This is sensible since a party may wish to invoke the procedure under O 15 r 29 to highlight contradictions in the opposing party's case. Parties may also be aligned in their interests, and it would be a waste of costs and time if every party is required to file an affidavit to rehearse the same facts. Turning to the requirements to be met to rely on O 15 r 29, SUM 894 gave Tumyu clear notice that the TLC Defendants intended to rely on Shaik and McDade's Affidavits. Any failure by the TLC Defendants to serve these affidavits would not have prejudiced Tumyu who had received them from the ADM Defendants.

84 Second, Tumyu's argument was effectively that the TLC Defendants had to file their "own" affidavit. However, it is trite law that there is no property in a witness. By extension, there cannot be a rule that a party can only rely on

affidavits filed by that party or a witness related to it. While reliance on affidavits deposed by non-party witnesses can raise issues relating to the relevance of the evidence to the party's case or the weight to be attached to it, this is not a reason to prohibit reliance on such affidavits entirely.

The defendants were not seeking to have the Court treat OA 1121 as if it were a substantive claim for relief or rule on the merits of the intended claims

85 Tumyu's second preliminary objection was that the defendants' striking out applications were misconceived because the defendants were treating OA 1121 as if it was a substantive claim for relief and were inviting the Court to assess the merits of the intended claim before the required pre-action production was obtained. Tumyu submitted that in an application for pre-action production, it was not required to establish a complete and fully particularised cause of action. Tumyu claimed that the defendants were applying the wrong legal standard by "demanding proof first and [providing] disclosure later", and this would defeat the purpose of pre-action discovery.

86 I agreed with Tumyu that OA 1121 and the striking out applications were not the proper forum to adjudicate on the substantive merits of Tumyu's intended claims. I also agreed that in an application for pre-action production, the applicant is not expected to plead a complete and particularised cause of action (see *Kuah Kok Kim* at [34], [35] and [59], discussed at [50] above). Insofar as the relevant query under O 9 r 16(1)(*a*) of the ROC 2021 was whether OA 1121 disclosed a reasonable cause of action, the phrase "cause of action" should be understood as referring to the *application for pre-action production* and not Tumyu's intended claims in respect of which pre-action production was being sought.

87 It did not follow, however, that the merits of Tumyu's intended claims were an irrelevant consideration in deciding whether OA 1121 disclosed a reasonable cause of action. As discussed at [49] and [56] above, an applicant seeking pre-production must have a reasonable basis for the intended claim, and pre-action production will not be ordered in support of frivolous or speculative claims (see *Kuah Kok Kim* at [31], [42] and [50]; *Haywood* at [40]). The merits of the intended claim are clearly relevant in this regard, although the standard applied by the Court is not "overly stringent" (see *Kuah Kok Kim* at [35] and [59]; *Dorsey* at [34]). At the same time, the standard is not an empty one. This is evident from the need for a "reasonable basis" for the intended claim. If an applicant for pre-action production cannot even cross the low threshold of showing a reasonable basis for the intended claim, based on the applicant's own uncontradicted evidence, this would fall squarely within the circumstances where such an application may be struck out for disclosing no reasonable cause of action.

88 In oral submissions, Mr Gill argued that the case law only required Tumyu to *identify* its intended cause of action. I disagreed with Mr Gill's characterisation of the case authorities. As I pointed out to Mr Gill at the hearing, it was insufficient for Tumyu to *state* its contemplated cause of action. Tumyu had made various allegations against the defendants in Lin's Affidavit, including serious allegations of fraud and misappropriation of company assets. There had to be a reasonable basis for Tumyu to make these allegations. This was precisely the defendants' case in seeking to strike out OA 1121. In fairness to Mr Gill, however, he conceded that if I was not satisfied that Tumyu had a reasonable basis for its intended claims, OA 1121 was liable to be struck out.

89 I thus disagreed with Tumyu that the defendants were seeking to have the Court apply the wrong legal standard in deciding whether OA 1121 should be struck out.

OA 1121 should be struck out

90 In applying the law to the facts, the key issue in SUM 800 and SUM 894 was whether there was a reasonable basis for Tumyu's intended claims, which was to be determined based on Lin's Affidavit alone. In my judgment, Tumyu plainly did not. On the contrary, Tumyu's intended claims were devoid of a factual basis and wholly speculative. OA 1121 was very type of impermissible fishing expedition that cases like *Kuah Kok Kim* (at [31]) and *Dorsey* (at [27] and [47]) have cautioned against.

Lin's Affidavit comprised unsubstantiated assertions and conjecture

91 According to Lin's Affidavit (at [5]), Tumyu believed it had potential claims against the defendants in lawful and unlawful means conspiracy. Tumyu broadly alleged that: (a) the defendants had induced TLC Northcote to breach the SA; and (b) the defendants had engaged in various related party transactions with the intention of diverting funds to the detriment of TLC Northcote and Tumyu. Tumyu's grounds for making these allegations bear close examination.

92 Tumyu first alleged that after the SA was executed, a charge was created in favour of 88 Rubies over all of TLC NZ Developments' shares in TLC Northcote (Lin's Affidavit at [14]). Tumyu "suspected" that the defendants had "plotted a scheme to secure [88 Rubies'] investments to the detriment of [TLC Northcote] and/or [Tumyu]". Tumyu however omitted to explain what gave rise to its suspicions (apart from the fact that a charge was created), let alone furnish any evidence of this. In this regard, I failed to see how a charge created in 88

Rubies' favour, over the assets of TLC NZ Developments, was likely to cause detriment to Tumyu who had no interest in TLC NZ Developments. I also failed to understand how the creation of the charge pointed towards the existence of a "plot" or "scheme" involving *all* the defendants to injure Tumyu. This was pure conjecture on Tumyu's part.

93 Tumyu next alleged that TLC Northcote had breached the SA by failing to disclose information relating to the performance of the SA to Tumyu (Lin's Affidavit at [15]). Tumyu claimed this was done at the behest of all the defendants save for TLC Contractors and TLC NZ Construction, and these defendants had induced TLC Northcote's breach of the SA. Tumyu's allegations were entirely unsubstantiated. Notably, Tumyu failed to even identify the source of TLC Northcote's purported obligation to disclose such information, when this ought to have been a matter within Tumyu's knowledge, as a party to the SA. Even if such an obligation existed, Lin's Affidavit was unclear on how TLC Northcote had breached it. However, the greatest difficulty with Tumyu's case was its contention that TLC Northcote's alleged breach was committed at the behest of all the defendants bar two. This was a bare assertion.

94 Tumyu next alleged that TLC Northcote had deliberately breached clause 7.1 of the SA by failing to redeem the Shares before the Redemption Date, which occurred on the Sunset Date at latest (Lin's Affidavit at [17]). Tumyu further alleged that this was done in furtherance of a conspiracy between *all* the defendants. As I observed at [9] above, it was not seriously disputed that TLC Northcote had failed to redeem the Shares by the Redemption Date, in breach of the SA. However, it was completely unclear how or why Tumyu had arrived at the belief that TLC Northcote's breach of the SA was the product of a conspiracy between *all* the defendants. Again, Tumyu did not explain this.

95 Tumyu next alleged that there was a "Diversion Scheme" involving the TLC Group companies (Lin's Affidavit at [19]). Tumyu claimed that the TLC Group companies had conducted themselves in a manner prejudicial to the interests of TLC Northcote and Tumyu, to serve their own interests and the debt-financing arrangements between Thao Li, 88 Rubies and Stone. Tumyu further claimed that potential profits and revenue belonging to TLC Northcote were diverted to the TLC Group companies so that Tumyu's claims against TLC Northcote remained unenforceable and inferior to the Senior Creditor and Mezzanine Lender's claims (Lin's Affidavit at [20]). According to Tumyu, the defendants had thus conspired to induce TLC Northcote to breach the SA and to injure Tumyu. Related to this, Tumyu further claimed to have "reason to believe" that: (a) funds raised by the TLC Group companies may have been utilised for other subsidiary companies and the group business to "deliberately defraud" Tumyu of its investment; and (b) TLC Contractors and TLC NZ Construction were being used as "vehicles" to divert funds away from TLC Northcote as TLC Contractors had entered into construction contracts with TLC Northcote (Lin's Affidavit at [23]).

96 Despite making serious allegations against the defendants, including fraud and the misappropriation of TLC Northcote's assets, Lin did not explain what facts and evidence his beliefs were based on. It was plainly insufficient for Tumyu to rely on the fact that the Shares were not redeemed by the Redemption Date to surmise that this must have been the result of a fraud perpetrated against it. Tumyu would have known that its investment in the Northcote Project carried commercial risks. And more importantly, Tumyu had voluntarily assumed those risks under the SA, having expressly agreed that its right to redeem the Shares would be subordinate to the Senior Creditor and the Mezzanine Lender being paid first. It is also noteworthy that under clause 5.3 of the SA, Tumyu was entitled to receive TLC Northcote's financial statements and project reports.

Tumyu did not suggest that it never received the documents it was entitled to. In fact, Lin's Affidavit (starting at p 132) exhibited TLC Northcote's annual report and financial statements for the year ending 31 December 2023. It is telling that despite having TLC Northcote's financial statements, Tumyu could not point to anything suggesting that TLC Northcote's funds may have been misappropriated or diverted. This was again pure conjecture on Tumyu's part.

97 Tumyu finally alleged that Sawer, Chew and Ritankar had conflicts of interests as they sat as directors in most of the TLC Group companies and were serving the interests of Thao Li and 88 Rubies (Lin's Affidavit at [22]). Tumyu claimed that this raised "strong suspicions" that they were "deliberately conspiring" to act against the interests of TLC Northcote and Tumyu. This was another unsubstantiated assertion by Lin. Notably, Lin failed to articulate what these conflicts of interest were or how this meant that Sawer, Chew and Ritankar were therefore likely to act in concert against the interests of TLC Northcote or Tumyu.

98 To downplay the glaring evidential deficiencies in its case, Tumyu relied on *Gillingham* (at [30]) to argue that at the pre-action stage, an aggrieved party may lack direct evidence of a conspiracy given the informational asymmetry between the aggrieved party and the potential conspirators. While I agreed with the general proposition stated in *Gillingham*, it did not assist Tumyu in the present case. In *Gillingham*, AR Yeo found (at [27]–[30]) that the conspiracy claim was sufficiently viable based on the evidence before him. Whether a potential claim is sufficiently viable is ultimately fact-dependent. In contrast to *Gillingham*, the same could not be said about Tumyu's intended claims, which were wholly unsubstantiated and speculative.

Tumyu had insufficient basis for believing there was a conspiracy

99 Even affording Tumyu significant latitude in making its case, bearing in mind the informational asymmetry between parties, and the fact that conspiracies are often conceived and carried out in private, Tumyu still had to demonstrate some basis for believing that there was *concerted action* between the defendants that was *intended to injure Tumyu*. Mr Gill fairly conceded this at the hearing. However, Mr Gill maintained that Tumyu had sufficient basis for its beliefs, and he raised four points to try to make good his submission. It is worth noting that Mr Gill's four points were not how Tumyu's case on conspiracy was framed in Lin's Affidavit. But given the high threshold for striking out, I consider them in turn and explain why I rejected them.

100 First, Mr Gill relied on the fact that 88 Rubies held charges over the assets of the TLC Group companies. Mr Gill submitted that this meant that monies belonging to TLC Northcote had the potential to be misused and diverted to the other TLC Group companies, to deprive the Tumyu of sums due under the SA. Mr Gill submitted that this was relevant because of the close relationship between the various TLC Group companies.

101 I rejected Mr Gill's submission. There was nothing inherently sinister about the fact that 88 Rubies held such charges over the assets of the TLC Group companies. Such charges are commonplace in business, and the existence of the charges was also a matter of public record. Equally, the corporate structure of the TLC Group companies on its own did not warrant an inference that funds were being misused and diverted away from TLC Northcote. Mr Gill's submission was overly speculative. Mr Gill himself appeared to recognise this, having repeatedly emphasised that he was not making allegations against the defendants but that this was just a "possibility".

102 Second, Mr Gill relied on the fact that in September 2024, TLC Northcote had failed to file its annual return, which resulted in the New Zealand Registrar of Companies giving notice that TLC Northcote would be removed from the Companies Register. Lin's Affidavit (at [20(c)]) alleged that the defendants had conspired to fail to file the annual return to remove TLC Northcote from the Companies Register to defraud its creditors, including Tumyu. Mr Gill's position was more measured. Mr Gill submitted that the defendants *did not object* to the removal of TLC Northcote from the Companies Register and it was Tumyu who applied to court to prevent this. Mr Gill sought to persuade me that some nefarious purpose could be inferred from the defendants' failure to object.

103 I rejected Mr Gill's submission. There was insufficient evidence as to the circumstances of TLC Northcote's failure to file the annual return to impute a nefarious purpose to it. If there was really a conspiracy to frustrate Tumyu's redemption of the Shares, it is inconceivable that the conspiracy would have been carried out so openly; and further, in a manner which could easily be, and ultimately was, thwarted by Tumyu. More importantly, it was unclear how TLC Northcote's failure to file its own annual return was indicative of a wider conspiracy between *all the defendants*. Finally, it was telling that while Lin had attributed a nefarious purpose to TLC Northcote's failure to file its annual return in OA 1121, when opposing TLC Northcote's removal from the Companies Register in New Zealand, Lin's reason was simply to allow Tumyu to bring a claim against TLC Northcote for the Redemption Amount and interest due under the SA. No wrongdoing was alleged or alluded to by Lin then. In fact, Lin acknowledged that the Northcote Project was incomplete, and Tumyu's recovery of the Redemption Amount was dependent on the completion of the Northcote Project and the apartment units being sold. This was a crucial (but

inconvenient) fact which Lin and Tumyu had conspicuously sought to avoid engaging with in OA 1121.

104 Third, Mr Gill submitted that Tumyu was "abruptly kicked out" of the PCG on 3 October 2024, and this was done at Ritankar's direction. According to Mr Gill, this showed that "actions were being taken in the background to Tumyu's detriment". Mr Gill relied on two emails adduced in Lin's Affidavit to support his submission. These emails were an exchange between one Martin Endlich ("Endlich") and one Tonchi Glamuzina ("Tonchi"). In the first email, Endlich had asked Tonchi for the invite for the rescheduled PCG meeting(s). In the second email, Tonchi informed Endlich that he had been directed by Ritankar to remove Endlich from PCG meetings and the distribution of PCG reports. Tonchi asked Endlich to consult Ritankar directly if he had any queries.

105 I rejected Mr Gill's submission. The two emails adduced by Tumyu were unhelpful without any context. To begin, there was no evidence that Endlich was even associated with Tumyu. Even assuming that he was, there was no evidence showing that Tumyu was entitled to attend PCG meetings. More importantly, Lin's Affidavit was silent on Tumyu reaction to its alleged removal from the PCG. If Tumyu truly believed that there was something untoward about this, or that it was being "abruptly kicked out" of the PCG, one would expect Tumyu to have objected or at least to have asked questions. This was especially when Tonchi had informed Endlich that he could raise any queries directly with Ritankar. Yet, there is a striking absence of evidence relating to Tumyu's reaction. This issue was also not canvassed by Tumyu's present solicitors in the 26 February 2025 Letter, and it surfaced for the first time in Lin's Affidavit. The circumstances hardly pointed to a possible conspiracy between the various defendants.

106 Fourth, Mr Gill submitted that when Tumyu sent the 26 February 2025 Letter to some of the TLC Defendants, to set out their concerns about the management of TLC Northcote and to demand the disclosure of documents to confirm that TLC Northcote's affairs were not being conducted to injure the Tumyu, the TLC Defendants did not provide the requested documents. Mr Gill sought to have me infer that because the TLC Defendants did not provide the requested documents, they must be hiding something.

107 I rejected Mr Gill's submission. It was for Tumyu to substantiate their allegations, or at least show a reasonable basis for making them. Tumyu had completely failed to do this. Tumyu could not then invert the burden and require the TLC Defendants to disprove the various bare allegations which were levelled against them.

108 Taken both individually and as a whole, Mr Gill's four points therefore did not show that Tumyu had sufficient basis for believing that there was a conspiracy between the defendants to injure Tumyu.

109 In all, Tumyu's intended claim in conspiracy was devoid of a factual basis. These difficulties were compounded in relation to Tumyu's case against each of the individual defendants. While Tumyu had alleged a wide-ranging conspiracy involving all 14 defendants, it has not explained why and how each of them may have been involved in the conspiracy, even in general terms. This underscored the wholly speculative nature of the application in OA 1121.

Tumyu was fishing

110 There were two further points which made it amply clear that OA 1121 was an impermissible fishing expedition.

111 The first related to the scope of the documents and information requested by Tumyu. To my surprise, Tumyu described its requests as being “targeted” and “appropriately confined”. This could not be further from reality. One only needs to refer to the expansive categories of documents and information requested (at [23]–[24] above) to see that Tumyu was effectively seeking full disclosure of all documents and information relating to the Northcote Project and the operations and finances of the TLC Group companies. As counsel for the ADM Defendants, Mr Nawaz Kamil (“Mr Nawaz”), pointed out, Tumyu’s request was akin to one seeking general discovery, and even in general discovery, it was unclear that Tumyu would be entitled to all the requested documents since the scope of discovery would be confined by the pleadings. I agreed with Mr Nawaz. OA 1121 was clearly not a targeted request made by an applicant looking to fill “critical gaps” in its knowledge to determine if it had a viable claim. Tumyu was instead seeking to have the defendants produce all manner of documents in the hope of uncovering something that might aid it in manufacturing a possible claim.

112 The second relates to the fact that Tumyu had not taken steps to commence proceedings against TLC Northcote for breach of the SA (see [10]–[11] above). Tumyu’s reasons for not doing so were unconvincing. In my view, Tumyu was more likely to have recognised the manifest difficulties with bringing a claim for breach of contract, arising from the express terms of the SA, and was now looking to other parties to underwrite its investment.

The high threshold for striking out was met

113 For the above reasons, it was plain and obvious that Tumyu did not have a reasonable basis for its intended claims against the defendants. Hence, OA 1121 did not disclose a reasonable cause of action and ought to be struck out

under O 9 r 16(1)(*a*) of the ROC 2021. For the same reasons, OA 1121 was also liable to be struck in the interests of justice under O 9 r 16(1)(*c*) of the ROC 2021 for being legally unsustainable, although there was no need to make a finding on this.

114 For completeness, I did not accept the TLC Defendants' alternative case for striking out, which was that Tumyu knew sufficient facts and was already in a position to commence proceedings. I disagreed with Mr Chua's submission that parallels could be drawn between the present case and *Ching Mun Fong*. Further, the TLC Defendants' alternative case appeared to be inconsistent with their primary case for striking out. In any event, nothing turns on this since the TLC Defendants did not abandon their primary case which clearly warranted OA 1121 being struck out.

Conclusion

115 I therefore allowed SUM 894 and SUM 800 and struck out OA 1121 pursuant to O 9 r 16(1)(*a*) of the ROC 2021.

116 It followed that the defendants' applications for security for costs in SUM 616 and SUM 796 were moot. I made no order on those applications.

117 On the issue of costs, I ordered that Tumyu pay: (a) the TLC Defendants' costs of OA 1121 and SUM 894, fixed at $12,000 (all-in); and (b) the ADM Defendants' costs of OA 1121 and SUM 800, also fixed at $12,000 (all-in). No further costs were ordered in respect of SUM 616 and SUM 796.

118 This leaves me to thank counsel for their able assistance.

Randeep Singh Koonar
Assistant Registrar

Gursharn Singh Gill and Ramachandran Doraisamy Raghunath (PDLegal LLC) for the applicant;
Chua Sui Tong and Dikaios Pang Siran (Rev Law LLC) for the first to eight, tenth, eleventh, thirteenth and fourteenth defendants;
Mohamed Nawaz Kamil (TLC Law Advocates LLC) for the ninth and twelfth defendants.