

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

[2026] SGHCR 29

Originating Claim No 743 of 2024 (Summons No 858 of 2026)

Between

Sain Finance and Transfer
NBFI LLC

... Claimant

And

- (1) E-Solo Print Pte Ltd
- (2) Norjinkhand Khaliunaa
- (3) Chuluunbat Bat-Enkh
- (4) Darren Chu Jia Wei

... Defendants

GROUND OF DECISION

[Civil Procedure — Judgments and orders — Judgment in default of defence
— Setting aside]

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Sain Finance and Transfer NBF I LLC

v

E-Solo Print Pte Ltd and others

[2026] SGHCR 29

General Division of the High Court — Originating Claim No 743 of 2024
(Summons No 858 of 2026)

AR Chua Rui Yuan

20 April, 11 May, 24, 30 July 2026

31 July 2026

AR Chua Rui Yuan:

1 This was an application to set aside a default judgment that had been entered against the fourth defendant. I allowed the application on the basis that the Statement of Claim on which judgment had been entered did not disclose a reasonable cause of action against the fourth defendant. I also ordered that the claims against the fourth defendant be struck out for the same reason.

2 The claimant's position was that it was either not permissible or not correct on the facts for me to rely on the defects in its pleadings as a ground for setting aside the default judgment and/or to strike out its claim on top of setting aside the default judgment. Although I had allowed the application with quite detailed reasons given to the parties, the claimant's counsel has requested that I make the grounds of my decision publicly available to serve as a record of my

decision and views on the relationship between the court's powers to set aside default judgments and to strike out claims or pleadings.

3 Having considered the request, I have obliged in the light of a suggestion in the claimant's submissions that the approach I have taken either represents an extension of, or is contrary to, the existing legal framework on setting aside of default judgments. I do not think that is so for the reasons explained below. But in the event the point is taken on appeal, which would be a welcome course if it is indeed contentious, I set out my reasons in more detail. If the matter ends here, furnishing my reasons may also serve the purpose of putting the approach I have taken, rightly or wrongly, into circulation so that it may be considered in future cases by other and more experienced registrars or appellate courts.

Background

4 The claimant, Sain Finance and Transfer NFBI LLC, is a company in the business of providing cross-border remittance services. The first defendant, E-Solo Print Pte Ltd, is a Singapore-incorporated company that is apparently in the business of commercial printing. The second and third defendants are Mongolian citizens who each hold 50% of the shares in the first defendant. They are the parents-in-law of the fourth defendant, Mr Darren Chu Jia Wei, a Singaporean citizen who is a director (but not shareholder) of the first defendant.

5 According to the claimant, based on representations made by the second defendant, the claimant and the first defendant entered into a contract in October 2021 under which the latter was to provide to the former cross-border remittance services from Mongolia to China. Although some initial transfers were made by the first defendant without incident, the claimant became suspicious of the credibility of the remittance services provided by the first defendant on or about

3 October 2022 due to discrepancies in the documents that the first defendant had produced to confirm that the moneys paid to it by the claimant had been paid to end recipients in China.

6 Shortly after, the second defendant informed the claimant that moneys that had been paid by it to the first defendant, totalling around \$380,000, could not be touched as they had been frozen in the first defendant’s bank account by the bank on suspicion that the first defendant was engaged in money laundering. In spite of the claimant’s demands for the moneys to be repaid to it, the first defendant did not do so. The first defendant also sent to the claimant fabricated letters from the bank and a non-existent law firm purporting to confirm that the moneys in the first defendant’s account had been frozen. In the circumstances, the claimant not surprisingly formed the view that it had been the victim of a scam.

7 The claimant brought the present action claiming that, in failing to perform the cross-border remittances that it had contracted to do and to account for the moneys paid to it, the first defendant had breached the contract entered into with the claimant. Apart from suing the first defendant for breach of contract, however, the claimant also joined the second to fourth defendants and brought claims against them personally. As against the fourth defendant, the claimant pleaded the following claims:

- (a) first, a claim for unlawful means conspiracy against all the defendants (at paras 48–52 of the Statement of Claim);
- (b) second, a claim to “lift the corporate veil to make the ... [fourth] defendant personally liable for the acts of the [first] defendant” which, while somewhat cryptic, was clarified by counsel for the claimant to

relate to the claimant's claim against the first defendant for restitution of the moneys paid to it on the basis of unjust enrichment (at paras 53–54 of the Statement of Claim); and

(c) third, a claim for inducing the first defendant's breach of the contract with the claimant (at paras 55–56 of the Statement of Claim).

8 The fourth defendant was initially represented (along with the other defendants) by solicitors who acted for him (and the other defendants) in filing a defence on jurisdiction and subsequently a jurisdictional challenge that was dismissed on 7 January 2025. According to the fourth defendant, his solicitors then informed him that nothing could be done, and because of that, the matter was left to lie there. Subsequently, the defendants' solicitors applied to discharge themselves – it appears that this was not done with the fourth defendant's knowledge, as he claimed to have been informed of this for the first time when I raised it at the hearing of this application. In these circumstances, a judgment in default of the filing of a defence on merits was obtained against all the defendants by the claimant on 12 February 2025. The fourth defendant filed the present application to set aside the default judgment against him on 18 March 2026.

9 As the conduct of the defendants' defence in this action raised a number of questions, I directed the fourth defendant to file a further affidavit to give explanations in response to the claimant's suggestion that he was guilty of egregious delay in bringing this application to set aside the default judgment over a year after it had been entered. I must confess, however, that the further affidavit raised more questions than it answered. I do not think it appropriate to ventilate these issues here and I mention the point only to acknowledge it as part

of the procedural history in this action as it was emphasised by the claimant. In the absence of a full picture from all parties, especially the individuals whose conduct were called into question by the fourth defendant and the claimant, I did not feel comfortable making any findings.

10 In any event, as I explain below, I did not think that the delay in bringing this application was a relevant consideration in the light of my view that the claimant's Statement of Claim disclosed no reasonable cause of action, as this undercut the need for the fourth defendant to explain both his default and the delay in bringing this application (see [28]–[29] below). I do accept, however, that the lapse of around one year between the entering of the default judgment and this application was not insignificant.

Decision

11 As a preliminary point, the claimant submitted that I should decline to hear the fourth defendant's application and instead stay it due to the fourth defendant's failure to satisfy the costs order for his and the other defendants' unsuccessful jurisdictional challenge. I declined to do so for two reasons. First, while the claimant relied on the decision of the Appellate Division of the High Court in *Huttons Asia Pte Ltd v Chen Qiming* [2024] 2 SLR 401, I considered that there was a difference between the context of unpaid costs by the appellant in an appeal and unpaid costs by the defendant in an application to set aside a default judgment. The former would have already participated substantively in the proceedings and would have already received the benefit of a determination of the parties' substantive rights through the first instance decision, but the latter would not. I do not say that the difference is necessarily one of kind, in that the court will *never* refuse to hear a setting aside application due to non-payment of

costs, but I think that there is a difference in the extent of unfairness as between the two situations.

12 Second, the unpaid costs order was in the sum of \$18,000 (all-in), for which all the defendants were jointly and severally liable. In my view, it would have been disproportionate to shut out the fourth defendant’s application *in limine* given that the judgment against him was for a sum of over \$360,000 (also on a joint and several liability basis as between the defendants).

The relevance of the merits of the claimant’s case in an application to set aside a regular default judgment

13 Coming to the application proper, in his written submissions, the fourth defendant conceded that the default judgment was a regular default judgment and advanced his case along the lines that the default judgment should be set aside because there was a triable issue. It was clear, however, that the focal point of the argument was not so much that he was disputing the facts that the claimant had alleged so that a trial should be necessary to determine the truth of the claimant’s allegations, but that the claimant had *not even sufficiently pleaded* all the facts needed to make out the various causes of action it had advanced against the fourth defendant to begin with. To give one example, as regards the conspiracy claim, the fourth defendant stated in his written submissions that:

The Statement of Claim does not identify any specific act, representation, instruction or transaction attributable to the 4th Defendant personally. The Claimant’s case, as against him, is pleaded in broad and general terms and appears to rely on his status as director.

14 It seemed to me that to fit this kind of argument into the rubric of “triable issue” involved a category error. A triable issue, in my view, presupposes that the claimant *has* pleaded the necessary facts for establishing his cause of action,

save that the defendant has disputed those facts to some degree, which in turn necessitates a trial to determine if the court should accept the account of the claimant (and thus find the cause of action established) or the defendant (and thus find the cause of action not established). If, however, the argument is that the Statement of Claim does not plead the necessary facts to make up the cause of action, a trial would be futile as the claimant would not be entitled to judgment even if he succeeds in proving every fact that has been alleged.

15 This, in substance, is the test for legal unsustainability in a striking-out application: a claim would be struck out if it is “clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks”: *The “Bunga Melati 5”* [2012] 4 SLR 546 at [39(a)]. It is axiomatic that a claim that discloses no reasonable cause of action even if all the facts pleaded by the claimant are assumed true is not one that should go to trial. One may put this in terms of there being no “triable issue”, albeit from the perspective of the *claimant*, and not the defendant. But seen from both perspectives, however, a “triable issue” is, as the phrase suggests, an issue that necessitates, or at least makes it worthwhile, to go to trial.

16 At the first hearing, I indicated this to the parties’ counsel and gave them liberty to file further submissions on the questions of: (a) the relevance (if any) of the merits (or lack thereof) of the claimant’s pleaded case in an application to set aside a default judgment; and (b) whether the correct response if a court formed the view that the claimant’s pleadings disclosed no reasonable cause of action should be (i) to set aside the default judgment; or (ii) to set aside the default judgment *and* strike out the claimant’s claim.

17 In its further submissions, the claimant argued, in response to the first question, that “when a setting aside application is before the Court, the Court should focus its merits review on the alleged defences raised by the defendant, and not on the viability of the claim itself”. Reliance was placed on the decision of the Court of Appeal in *Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 (“*Mercurine*”) for the proposition that the court should be “focused on the strength of the case that the defendant had to raise” when the default judgment was a “regular” default judgment (*ie*, one that was entered in accordance with the proper procedure). *Mercurine* is, of course, the guideline decision on the principles on setting aside of default judgments.

18 I did not accept the claimant’s submission. In my respectful view, they were in danger of missing the point, in that if the claimant’s case does not raise anything to defend to begin with because it does not disclose a reasonable cause of action, then it is somewhat meaningless to ask if the defendant’s defence has merit. The defect in the claimant’s right to judgment is intrinsic, rather than extrinsic, to the claimant’s case; the existence of an intrinsically viable case is a necessary condition for the court to even get into the question of whether the defendant has a viable defence to the claim.

19 For the same reason, while I did not disagree with the claimant that the Court of Appeal’s focus in *Mercurine* was on the applicable standard of review as to the merits of the defendant’s defence, it seemed to me that the absence of any discussion as to the need for the claimant’s case to disclose a reasonable cause of action was readily explicable on the basis that this was *assumed* by the court and formed the premise of its discussion. Indeed, if a court is able to set aside a default judgment on the basis that the defendant has a viable defence, it would seem to follow *a fortiori* that it should also be able to set aside a default

judgment on the logically anterior ground that the claimant’s case is defective by itself.

20 Tracing the provenance of the “triable issue” standard confirms this. The crux of *Mercurine* is that there should be an alignment of the standard of review taken to the defence raised by a defendant in the context of applications to set aside regular default judgments and applications for summary judgment. This is clear from the Court of Appeal’s rejection of the “real prospect of success” test for setting aside applications, attributed to the decision of the English Court of Appeal in *Alpine Bulk Transport Co Inc v Saudi Eagle Shipping Co Inc (The “Saudi Eagle”)* [1986] 2 Lloyd’s Rep 221, that had been understood as a higher standard than the test for obtaining leave to defend in summary judgment applications. The Court of Appeal’s conclusion, in this regard, was that it was “rather illogical to hold that the test for setting aside a regular default judgment should be any stricter than that for obtaining leave to defend in [a summary judgment] application”. The approach taken in the context of setting aside applications was modified, however, to take into account the fact that judgment would already have been entered, such that the merits of the defendant’s defence – tested on the triable issue standard – was not decisive but would be weighed alongside other factors such as the defendant’s explanations for the default that had led to default judgment being entered, the length of any delay in making the application to set aside the default judgment, and the reasons for this delay: *Mercurine* at [60], [65].

21 So, the understanding of what is a “triable issue” should be informed by its meaning in the summary judgment context. It is well-established there that the question of whether there is a triable issue only arises if the claimant has made out a *prima facie* case, that is, a case that entitles him to judgment based

on the pleadings and evidence before the court: see, for example, *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 at [43]–[44]. It is clear from this that, if the claimant fails to raise a *prima facie* case because his pleadings are liable to be struck out on the ground that they do not disclose a reasonable cause of action, the question of whether there is a triable issue simply does not arise. This is put beyond doubt by how the concept of a “*prima facie*” case was helpfully clarified by Goh Yihan J in *Mak-Levrion Kah Kay Natasha v R Shiamala* [2024] 4 SLR 616, as entailing that “the claimant’s case is considered on its own, *without* considering the defendant’s defences” [emphasis in original] (at [16]). Indeed, Goh J observed that, while this had previously never been expressly articulated in any decision on summary judgment (at [16]):

... this is clear from the courts’ approach to summary judgment applications, where the courts first assess the claimant’s case on its own. Only after the claimant has established a *prima facie* case, do the courts proceed to evaluate the defendant’s case.

Goh J makes the same point that I have already made above, which is that logic dictates that the question of the strength of the defendant’s case only arises if, as a condition precedent, the claimant’s case is of sufficient merit. This must apply to the context of setting aside regular default judgments given the express intention to align the approaches in setting aside of default judgments and summary judgment expressly articulated in *Mercurine*.

22 This suffices to make good the point from principle, but I mention, for completeness, that the claimant brought to my attention the decision of a Deputy Registrar of the District Court in *Wee Peng Huay v Wong Shee Ying @ Leslie Wong Sze Ying* [2023] SGDC 193, which had rejected a submission that there was an “implied requirement” in every application for default judgment that the

Statement of Claim disclose a reasonable cause of action before the claimant was entitled to apply for default judgment (at [18]–[24]).

23 It is worth highlighting, in the first place, that the decision did not really support the claimant’s argument because the Deputy Registrar considered it a “non-starter” that there was an implied requirement that a claim should disclose a reasonable cause of action in the context of an argument that a default judgment entered in such circumstances would be an *irregular* default judgment (at [18]). The question asked and answered there was therefore not whether the court could set aside a *regular* default judgment on the basis that the Statement of Claim disclosed no reasonable cause of action. I agree that, in so far as the regular-irregular dichotomy has been understood in terms of compliance with the procedure for entering default judgment, it is wrong in principle to build in a question of substantive merit into that dichotomy.

24 I also do not disagree to the extent that the Deputy Registrar was making the point that *a claimant* may apply to enter default judgment, and may succeed in doing so, even if his claim is unmeritorious. It is fair, if I may respectfully say so, for the Deputy Registrar to have doubted the practicality of expecting *the court* to scrutinise every Statement of Claim on which default judgment is sought to be entered and to consider its merits as if it were standing in the shoes of the defendant. There is, to my knowledge, no strict requirement in the Rules of Court 2021, but it is not unheard of for the court to review the Statement of Claim to identify any glaring problems if they present themselves. But seeing as our civil litigation system is based on an adversarial model, the starting point is that it is for the defendant, and not the court acting on its own motion, to highlight issues with the claimant’s case. I think it is therefore not incorrect to

say that a claimant may apply to enter judgment even if his Statement of Claim discloses no reasonable cause of action.

25 But, in my view, it is one thing to say that a claimant may *obtain* default judgment on a Statement of Claim that discloses no reasonable cause of action, and quite another to say that he should be entitled to *keep* a judgment entered in such circumstances once his right to judgment is challenged by the defendant. I do not think that the Deputy Registrar's remarks were meant to foreclose the possibility that the court could set aside a default judgment on the ground that the claim disclosed no reasonable cause of action. As I have explained, this flows, logically, from two premises: (a) the need for a *prima facie* case for the question of whether there is a triable issue to meaningfully arise; and (b) the alignment of the approach to the merits of the parties' cases as between applications for summary judgment and applications to set aside regular default judgments that underlies the decision in *Mercurine*.

26 For these reasons, I rejected the claimant's submission that the merits of its case were not a relevant consideration in the context of an application to set aside a default judgment. In my view, the fact that a claimant's case does not disclose a reasonable cause of action is a separate and independent basis for setting aside a default judgment. The follow-up question to this was what the correct response upon a finding of no reasonable cause of action should be.

27 I take this in two parts. First, as a matter of analytical structure, I was of the view that the merits of the claimant's case should be a threshold stage in the analysis as to whether a regular default judgment should be set aside. In *Mercurine*, having focused on the issue of the merits of the defence raised by

the defendant, the Court of Appeal conceived of what was, in substance, a two-step framework:

- (a) whether the defence meets the standard of a triable issue; and
- (b) if so, whether, balancing the merits of the defence against other relevant factors such as the explanation(s) given for the initial default that led to default judgment being entered, any delay in making the application for setting aside of the default judgment and the reason(s) for such delay, the court should give the defendant a chance to make his case at trial.

I would therefore modify this by interposing a threshold step on the need for the claimant's claim to disclose a reasonable cause of action, as follows:

- (a) whether the claimant's claim discloses a reasonable cause of action;
- (b) if so, whether the defence meets the standard of a triable issue; and
- (c) if so, whether, balancing the merits of the defence against other relevant factors such as the explanation(s) given for the initial default that led to default judgment being entered, any delay in making the application for setting aside of the default judgment and the reason(s) for such delay, the court should give the defendant a chance to make his case at trial.

28 In my view, the merits of the claimant's case should not be subject to any balancing exercise alongside countervailing factors in the same way as the

merits of the defendant's defence – amounting to a triable issue – are (under the third step above).

29 The reason lies in the underlying logic for there being such a balancing exercise *vis-à-vis* the defendant's defence. In a case where the court finds that the defendant has raised a triable issue, there is in that finding a finding of a *prospect* that the claimant may not be entitled to judgment in the event that the defence is proven and upheld at trial. A triable issue may ultimately fail; and, in that event, setting aside the default judgment would have been futile. Because of this possibility, the court should weigh the prospects of the defendant's success alongside other factors such as why default judgment was entered and any explanations the defendant may have for his procedural defaults thus far.

30 The position is different where the defect in the claimant's case arises from within his own pleadings. There is no doubt here that the claimant will not be entitled to judgment because this lack of entitlement is not dependent on anything the defendant has said or has undertaken to prove. Put another way, a claim that discloses no reasonable cause of action cannot prop itself up on stilts and metamorphose into a good cause of action based on procedural defaults by the defendant. The judicial process is a system for parties with valid substantive rights to obtain judgments enforcing those rights; it is not a punitive process that issues judgments for substantive relief against parties simply on the basis of their procedural defaults.

31 The second point concerns the appropriate response by the court in the event that it finds that a default judgment was entered based on a Statement of Claim that disclosed no reasonable cause of action. The first consequence, which I do not think is controversial, is that the default judgment should be set

aside. The second, which was disputed by the claimant, is that the court should also incline towards striking out the claim rather than allowing the claimant a second roll of the die by amending his pleadings.

32 The claimant submitted that “[f]or the court to go further to strike out the claim would be [to] overemphasise delving into the merits, and eclipse the balancing exercise that the Court undertakes, which is emphasised in *Mercurine* ...”. I did not accept this. As explained above, the question of balancing simply does not arise where the defect in the claimant’s entitlement to judgment arises out of *his own* case. What the court engages in a balancing of is the prospect of the defendant succeeding at trial against the risk that he does not. If there is no such doubt because the claim simply is bad in itself, it does not make sense to balance the claimant’s lack of a cause of action against the defendant’s conduct and explanations for his conduct: the scale will always tip towards the former and in favour of setting aside the judgment.

33 In my opinion, the starting point is that a court that should be inclined to strike out the claim on top of setting aside the default judgment. The reason for this is that, when a claimant pushes a Statement of Claim to judgment, he should be taken to have put his best foot forward and to have committed to that pleaded case. A claimant who has no reasonable cause of action has no business pleading such a claim, still less push it to judgment: *Chandra Winata Lie v Citibank NA* [2015] 1 SLR 875 at [45]. As a matter of policy, the claimant should not be allowed to engage in litigation by trial-and-error. The position is, of course, different when the claimant has not sought to obtain judgment but seeks to amend his pleadings before trial: there, he has not taken a step so significant that it can be taken as throwing the gauntlet down and committing to the case pleaded.

34 I do accept, however, that this is not an immutable rule. Much will depend on the extent of the deficiencies in the claimant’s case. If, for example, there are four elements to a cause of action and the pleadings on one are somewhat incomplete, it may be disproportionate to strike out the claim. But if the deficiencies are so stark that the claimant should really have known better rather than to push the matter to judgment, there may be less cause for sympathy in the absence of a cogent explanation. In the final analysis, it will be a value judgment for the court to make in every case, with an eye on considerations of proportionality.

The claimant’s pleadings disclosed no reasonable cause of action against the fourth defendant

35 Coming to the facts of this case, as mentioned at the outset, I was of the view that the Statement of Claim on which default judgment had been entered disclosed no reasonable cause of action against the fourth defendant. The overarching problem, in my view, was that there was little to no reference to the fourth defendant or any conduct of his in the pleadings for each of the three claims pursued by the claimant: (a) unlawful means conspiracy; (b) piercing the corporate veil so as to make the fourth defendant liable for the first defendant’s liabilities; and (c) inducing breach of contract.

36 I start with the claim for conspiracy (at paras 48–52 of the Statement of Claim). The fundamental difficulty here was that there was no actual pleading as to what the *fourth defendant* had done as part of, or in furtherance of, the conspiracy. It is trite that, in pleading that there was a “combination” between the defendants for the purpose of mounting a conspiracy claim, the claimant must “plead particulars of how the alleged conspirators combined, which entails pleading the role of each conspirator and his or her participation, *ie*, what he or

she did (or omitted to do) as part of the conspiracy”: *Kapital Fund SPC v Lee Tze Wee Andrew* [2024] SGHC 289 (“*Kapital Fund*”) at [81].

37 Next, turning to the attempt to pierce the corporate veil and to make the fourth defendant liable for the first defendant’s liabilities (at paras 53–54 of the Statement of Claim), counsel for the claimant settled on the position, after some probing, that the liability of the first defendant for which the claimant was seeking to extend to the fourth defendant related to the claimant’s claim against the first defendant for restitution of the moneys paid to it on the basis of unjust enrichment. However, all that was pleaded was a bare assertion that: (a) the fourth defendant was a director of the first defendant; and (b) the fourth defendant “knowingly carried on the business of the [first] [d]efendant with the intention of committing fraud against the [c]laimants by the [first] [d]efendant via the Cross Border Remittance Agreement”. In my view, this faced at least two difficulties:

(a) First, the basis on which the corporate veil was sought to be lifted was not entirely clear. The bases on which the corporate veil may be lifted or disregarded (if they exist at all) is notoriously a difficult issue, but our courts have often used expressions such as the company being the *alter ego* of its controllers, being a “mere sham or *façade*”, or the corporate form being abused for an improper purpose, to capture the idea. It appeared that the claimant relied on the last of these, in so far as using the first defendant as a vehicle of fraud would be an “improper purpose”, but that was of itself not particularly clear.

(b) Second, more problematically, the pleadings were bereft of any particulars and wholly conclusory. Even if the claimant could be taken to have pleaded the ground on which the corporate veil was to be lifted,

it is not sufficient to make a bare allegation using the language in which the ground is framed (for example, “the company was a sham or *façade*”), as the claimant must plead “facts sufficient to support th[e] ground”: *Mohamed Shiyam v Tuff Offshore Engineering Services Pte Ltd* [2021] 5 SLR 188 at [47]. This is important because allegations that the corporate veil should be lifted almost inevitably involve allegations of fraud or serious misconduct, and it is trite that such allegations must be pleaded with the utmost particularity: *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2020] 2 SLR 1256 at [116]. A pleading that does not identify any specific act or knowledge of the defendant, other than his position as a director in the company, cannot possibly suffice.

38 Finally, coming to the claim for inducing breach of contract (at paras 55–56 of the Statement of Claim), this was unsustainable because there was no pleading that the fourth defendant had acted in breach of his duties to the first defendant. The principle in *Said v Butt* [1920] 3 KB 497 (“*Said v Butt*”) protects a director for personal liability for the company’s breaches of contract if his acts are not a breach of duty to the company: *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd* [2018] 1 SLR 818 (“*PT Sandipala*”) at [62]. The onus is on the *claimant* to prove that the defendant-director’s acts constituted a breach of his duties to the company: *PT Sandipala* at [65]; *Kapital Fund* at [90]. It is axiomatic that the claimant must therefore plead this for it to be within the scope of the issues at trial. The claimant did not do so *vis-à-vis* the fourth defendant. Indeed, to his credit, when I highlighted this to the claimant’s counsel, it was conceded in the claimant’s further submissions that its claim for inducing breach of contract was unsustainable because of the *Said v Butt* principle.

The appropriate response in the light of my findings

39 In the light of my conclusion that none of the three claims pleaded by the claimant disclosed a reasonable cause of action against the fourth defendant, I assessed that the correct response in the circumstances of this case was for the default judgment to be set aside and for the claims against the fourth defendant to be struck out in their entirety.

40 The essential reason was that the deficiencies in the Statement of Claim were glaring. They were not minor deficiencies that could be easily remedied by a minor amendment. This was especially striking because all of the claims involved allegations of fraud and dishonesty, which should not be made lightly. The inertia against allowing the claimant to have a second go at the fourth defendant, which I have suggested ought to be the starting point, applied with full force here.

Conclusion

41 For the foregoing reasons, I set aside the default judgment against the fourth defendant and ordered that the claim against him be struck out.

42 After hearing the parties on costs, I fixed the costs of the application in the sum of \$10,000 (all-in), to be paid by the claimant to the fourth defendant. I also awarded costs of \$5,000 (all-in) for the action, also to be paid by the

claimant to the fourth defendant, in view of my decision striking out the action as far as the fourth defendant was concerned.

Chua Rui Yuan
Assistant Registrar

Ow Joshua (Pereira & Tan LLC) for the claimant;
The first defendant absent and unrepresented;
The second defendant absent and unrepresented;
The third defendant absent and unrepresented;
Lim Teck Hock Richard (Richard Lim & Company Advocates &
Solicitors) for the fourth defendant.
