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

[2026] SGHCR 30

Originating Claim No 153 of 2026 (Summons No 1463 of 2026)

Between

Da Hui Shipping (Pte) Ltd (in creditors' voluntary liquidation)

… *Claimant*

And

Shook Lin & Bok LLP

… *Defendant*

JUDGMENT

[Admiralty and Shipping — Admiralty jurisdiction and arrest — Action *in rem*]
[Civil Procedure — Extension of time]
[Civil Procedure — Striking out]
[Contract — Breach — Causation — Loss of chance]
[Restitution — Unjust enrichment — Unjust factors]
[Restitution — Subrogation]
[Tort — Negligence — Causation — Loss of chance]

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TABLE OF CONTENTS

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Da Hui Shipping (Pte) Ltd (in creditors' voluntary liquidation)
v
Shook Lin & Bok LLP

[2026] SGHCR 30

General Division of the High Court — Originating Claim No 153 of 2026
(Summons No 1463 of 2026)
AR Wee Yen Jean
22 June 2026

3 August 2026 Judgment reserved.

AR Wee Yen Jean:

Introduction

1 HC/OC 153/2026 ("the Suit") is the claimant's claim against the defendant – its former counsel – for breaching its duty to act with reasonable care and skill in providing it with legal advice and services. At the heart of the claim is the claimant's assertion that the defendant's failure to take the correct procedural steps to advance and protect the claimant's position in earlier court proceedings caused the claimant to lose its chance of obtaining its desired outcomes in those proceedings, and additionally caused the claimant to incur unnecessary costs and expenses.

2 The application before me – HC/SUM 1463/2026 ("SUM 1463") – is the defendant's application to strike out the claimant's claim, as well as for an extension of time to file its defence if the claim is not struck out. The defendant's

case in support of striking out centres around causation: the defendant contends that the claimant cannot establish that its pleaded losses were *caused by* the defendant's alleged acts or omissions. More specifically, the defendant's position is that even if it had taken the correct steps, the claimant *would not have succeeded* in obtaining its desired outcomes in the earlier proceedings, having regard to the decisions that were rendered by the General Division of the High Court ("the High Court") and the Court of Appeal in those proceedings and in related proceedings.

3 This somewhat unusual background, and the wide-ranging arguments made by the parties on the procedural and substantive viability of the claims that the claimant made (or could have made) in the earlier proceedings, made the application before me quite a complex one. By way of illustration, the parties filed written submissions totalling nearly 140 pages, referred me to a total of nearly 90 authorities, and made over seven hours of oral submissions at the full-day hearing of this matter, the shape and emphasis of which differed in some material respects from the parties' written submissions. These dealt with issues including the scope of the court's admiralty jurisdiction *in rem* under the High Court (Admiralty Jurisdiction) Act 1961 ("HCAJA"); non-contractual subrogation to proprietary interests and, in this connection, the recognition of new unjust factors in the law of unjust enrichment; whether the claimant should be permitted to amend its pleadings to introduce a new claim based on the equity of exoneration; and, underlying all of these issues, how a court ought to assess the *loss of a chance of a desired litigation outcome* which turns on how a *hypothetical court* – including a hypothetical *appellate* court – might have decided certain substantive questions if different procedural steps had been taken, in circumstances where the law governing those substantive questions is itself not settled.

4 I reserved judgment after hearing the parties' oral submissions. This is my decision on the application.

Background

5 The full factual background leading up to the Suit and SUM 1463 has given rise to considerable litigation to date. I summarise only the facts that bear directly on the determination of SUM 1463. As no pleaded defence has been filed, these facts are drawn primarily from the claimant's statement of claim filed on 11 February 2026 ("the SOC").

The parties and related entities

6 The claimant, Da Hui Shipping (Pte) Ltd (in creditors' voluntary liquidation) ("Da Hui"), is a Singapore-incorporated company that owned the vessel known as the *Sea Equatorial*.[1] Da Hui is one of the companies within the "Xihe Group", and it has been in creditors' voluntary liquidation since November 2021.[2] An Rong Shipping Pte Ltd ("An Rong") is another Singapore-incorporated company within the Xihe Group, and it owned the vessels known as the *Ocean Goby* and the *Ocean Jack*. I refer to the *Ocean Goby* and the *Ocean Jack* collectively as "the Vessels".[3]

7 The defendant, Shook Lin & Bok LLP ("SLB"), is a firm of solicitors. On or around 1 December 2021, Da Hui engaged SLB to provide legal advice and services in connection with its affairs ("the Retainer").[4] SLB advised and

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1 Statement of Claim dated 11 February 2026 ("SOC") at paras 1 and 4(a).

2 SOC at para 13; 1st affidavit of Tam Chee Chong dated 12 June 2026 ("Da Hui's Reply Affidavit") at paras 1 and 8.

3 SOC at paras 4(b) and 4(c); 2nd affidavit of Zhang Yiting dated 13 May 2026 ("SLB's Supporting Affidavit") at para 7.

4 SOC at paras 2 and 14.

acted for Da Hui from December 2021 to sometime in 2024 or 2025. The precise date on which SLB ceased to act for Da Hui was not made known to me by the parties.

8 As the Suit concerns what SLB allegedly did or failed to do after it was engaged by Da Hui, I set out the remaining factual background in three parts: first, the events that had taken place *before* SLB was engaged; second, the events that took place *after* SLB was engaged; and third, Da Hui's commencement of the Suit against SLB and what followed thereafter.

Events that had taken place before SLB was engaged

9 On or around 24 August 2018, Da Hui and An Rong had jointly entered into a secured term loan facility agreement ("the Loan Agreement") with the Bank of America NA, Singapore Branch ("BofA"), to refinance their vessels. The credit extended by BofA to Da Hui and An Rong under the Loan Agreement was to be drawn down in three tranches, which were each to be used for the refinancing of the *Sea Equatorial* ("Tranche A"), the *Ocean Goby* ("Tranche B") and the *Ocean Jack* ("Tranche C"), respectively. Da Hui and An Rong were jointly and severally liable to repay the loan, and the loan was secured by – among other things – a mortgage of each vessel in favour of BofA.[5]

10 As Da Hui and An Rong were subsequently unable to meet their obligations under the Loan Agreement, the *Sea Equatorial* – Da Hui's vessel – was sold on or around 14 October 2020. By 11 December 2020, BofA had applied the *Sea Equatorial*'s sale proceeds as follows, as it was entitled to do under the Loan Agreement:[6]

5 SOC at paras 3–5.

6 Da Hui's Reply Affidavit at pp 101–102 and 264.

(a) One part was applied in full satisfaction of the principal and interest outstanding in respect of Tranche A of the Loan Agreement, which was for the refinancing of the *Sea Equatorial*.

(b) Another part was applied in partial satisfaction of the principal and interest outstanding under Tranches B and C of the Loan Agreement, which were for the refinancing of An Rong's Vessels.

(c) The balance was applied towards various costs and expenses incurred by BofA under the Loan Agreement.

The sums so applied towards the debt under Tranches B and C and BofA's costs and expenses, amounting to US$13,021,856.67, formed the subject of a claim in contribution that Da Hui would later assert against An Rong ("the Contribution Claim").[7]

11 I pause here to note that, notwithstanding that 11 December 2020 was the date by which the *Sea Equatorial*'s sale proceeds had actually been applied by BofA in the manner described above, BofA informed the relevant parties on 24 May 2021 that it would "treat the effective date of application" of these sale proceeds as 14 October 2020, this being the date on which BofA had received these sale proceeds.[8] I refer to the letter in which this was communicated by BofA as "BofA's May 2021 Letter".

12 Subsequently, to recover the outstanding sums due to it under the Loan Agreement, BofA commenced admiralty proceedings *in rem* against the *Ocean Goby* in HC/ADM 92/2021 ("ADM 92") on or around 23 August 2021, and

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7 SOC at paras 6–7.

8 Da Hui's Reply Affidavit at p 264.

against the *Ocean Jack* in HC/ADM 94/2021 ("ADM 94") on or around 26 August 2021. On the same dates, warrants of arrest were issued and the vessels were arrested by BofA. BofA also obtained default judgments in ADM 92 and ADM 94 on 14 October 2021 and 20 October 2021 respectively.[9]

13 Separately, other parties – including PetroChina International (Singapore) Pte Ltd ("PetroChina") and Societe Generale, Singapore Branch ("SocGen") – had also commenced admiralty actions *in rem* against one or both of the Vessels.[10]

Events that took place after SLB was engaged

14 As mentioned at [7] above, on or around 1 December 2021, Da Hui engaged SLB under the Retainer.

15 On or around 30 December 2021 and 10 February 2022 respectively, the *Ocean Jack* and the *Ocean Goby* were sold by orders of court and the sale proceeds were paid into court.[11] On or before 13 January 2022, SLB received a copy of BofA's May 2021 Letter. Da Hui pleads that this put SLB on notice that Da Hui had claims against An Rong arising from the application of the *Sea Equatorial*'s sale proceeds towards the debt in respect of Tranches B and C of the Loan Agreement.[12]

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9 SOC at paras 8 and 10–11.

10 SOC at para 9.

11 SOC at para 12.

12 SOC at para 16.

16 On or around 4 July 2022, An Rong entered into compulsory liquidation.[13]

17 On or around 12 October 2022, SLB became aware of ADM 92, ADM 94, and the admiralty actions commenced by PetroChina and SocGen against the Vessels.[14] On or around 20 October 2022, Da Hui lodged its proof of debt with An Rong's liquidators for an amount corresponding to the quantum of its Contribution Claim.[15]

18 On 28 November 2022, SLB advised Da Hui that it could commence "originating claims and/or applications" to pursue the following potential claims in respect of the sale proceeds of the Vessels: (a) a personal claim against An Rong in contribution (*ie*, the Contribution Claim); and (b) the proprietary remedy of subrogation as a remedial response to the Contribution Claim ("the Subrogation Claim").[16]

19 On 20 April 2023, the High Court in ADM 94 determined the priority of claims in respect of the sale proceeds of the *Ocean Jack*. Pursuant to this determination, sums were paid out to various parties (which did not include Da Hui), and a residual sum of US$39,217.73 remained in court in respect of ADM 94.[17]

20 SLB, acting for Da Hui, then took the following steps to assert Da Hui's claim to the residual sale proceeds of the Vessels.

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13 SOC at para 18.

14 SOC at paras 19–20.

15 SOC at para 21.

16 SOC at para 22.

17 SOC at paras 23–24.

21 On 24 April 2023, SLB (on Da Hui's behalf) commenced HC/OA 418/2023 ("OA 418") against An Rong, seeking two declarations: first, a declaration that An Rong was indebted to Da Hui in the sum of its Contribution Claim; and second, a declaration that Da Hui was entitled to be subrogated to any extinguished securities held by BofA pursuant to the Loan Agreement, including BofA's mortgages over the Vessels (*ie*, the Subrogation Claim).[18]

22 On 27 April 2023, SLB (on Da Hui's behalf) applied to intervene in ADM 92 and ADM 94.[19]

23 On 16 October 2023, the High Court in ADM 92 – at a hearing at which SLB was in attendance – determined the priority of claims in respect of the sale proceeds of the *Ocean Goby*. At this hearing, SLB informed the court that Da Hui took no position on the order of ranking. Pursuant to this determination, sums were paid out to various parties (which again did not include Da Hui), and a residual sum of about US$1,579,763.95 and S$786,685.90 remained in court in respect of ADM 92.[20] I refer to the residual sums that remained in court in respect of ADM 92 and ADM 94, together with the accrued interest on those sums, collectively as the "Balance Sale Proceeds".

24 After the payment out from the sale proceeds of the Vessels in ADM 92 and ADM 94, BofA's claims arising out of the Loan Agreement were fully satisfied.[21]

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18 SOC at para 25.

19 SOC at para 26.

20 SOC at paras 27–29.

21 Claimant's Written Submissions dated 12 June 2026 ("CWS") at paras 15 and 81.

The High Court's decision on OA 418

25 On 16 November 2023, a High Court judge ("the Judge") dismissed Da Hui's claims for declaratory relief in respect of its Contribution Claim and its Subrogation Claim in OA 418. The Judge's grounds of decision were published on 28 June 2024, and reported in *Da Hui Shipping (Pte) Ltd (in creditors' voluntary liquidation) v An Rong Shipping Pte Ltd (in liquidation) (Societe Generale, Singapore Branch and another, non-parties)* [2025] 4 SLR 816 ("*Da Hui (HC)*"). Briefly:

(a) In respect of the Subrogation Claim, while the Judge was prepared to proceed on the basis that subrogation was not precluded by the fact that Da Hui had only contributed towards the *partial* discharge of its and An Rong's joint and several liability to BofA (see *Da Hui (HC)* at [49] and [56]), the Judge "did not think that it was possible for Da Hui to be subrogated to a security that had already been fully enforced and therefore spent in the hands of BofA" (see *Da Hui (HC)* at [67]).

(b) While the Judge found that the Contribution Claim was meritorious in principle, the Judge disallowed Da Hui's prayer for a declaration that An Rong was indebted to it in the sum of the Contribution Claim, "without prejudice to the adjudication of the proof of debt filed by Da Hui with An Rong's liquidators". The Judge took the view that, having refused the prayer for a declaration in respect of the Subrogation Claim, there was "no basis or justification" for allowing the prayer relating to the Contribution Claim. The Judge noted that Da Hui had already filed its proof of debt with An Rong's liquidators in respect of its claim in contribution, and held that "[w]hether An Rong was in fact indebted to Da Hui in the amount claimed for was a matter that could be determined in the adjudication of debts filed in An Rong's liquidation" (see *Da Hui (HC)* at [68]).

26 On 29 February 2024, SLB (on Da Hui's behalf) filed an appeal against the Judge's decision in OA 418, and this was later transferred to the Court of Appeal as CA/CA 62/2024 ("CA 62").[22] At some point between the filing of the appeal papers and the hearing of the appeal in March 2025, SLB ceased to act for Da Hui and was replaced by new counsel.

The Court of Appeal's decision on CA 62

27 On 23 June 2025, the Court of Appeal declined to hear and accordingly dismissed CA 62. The Court of Appeal's reasons are set out in *Da Hui Shipping (Pte) Ltd (in creditors' voluntary liquidation) v An Rong Shipping Pte Ltd (in liquidation) (Societe Generale, Singapore Branch and another, non-parties)* [2025] 1 SLR 998 ("*Da Hui (CA)*"). It should be noted that Da Hui's appeal in CA 62 was primarily against the Judge's holding that the remedy of subrogation was not available because BofA had fully enforced the mortgages over the Vessels (see *Da Hui (CA)* at [58]).

28 In brief, the Court of Appeal declined to hear CA 62 due to the "fundamental procedural objection" that OA 418 was a non-admiralty *in personam* action against An Rong, in which Da Hui sought to acquire proprietary rights to the sale proceeds of the Vessels via subrogation to BofA's extinguished security rights (see *Da Hui (CA)* at [5], [8], [61] and [70]). Such proprietary claims in respect of a mortgage on a vessel fell within the jurisdiction of the court seised of admiralty jurisdiction under the HCAJA, and were ordinarily resolved within the system of admiralty law (see *Da Hui (CA)*

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22 SOC at paras 34–35.

at [62] and [64]). Without a judgment *in rem* against the Vessels on a claim coming within the scope of the HCAJA, it was not possible for Da Hui to obtain payment out of the sale proceeds of the Vessels, or to apply for a re-ordering of priorities to the sale proceeds, which had already been determined in favour of other claimants with statutory rights of action *in rem* who had obtained judgment against the Vessels (see *Da Hui (CA)* at [6], [68] and [80]).

Subsequent developments

29 On 8 August 2025, Da Hui commenced admiralty actions in HC/ADM 93/2025 and HC/ADM 94/2025 (collectively, "Da Hui's Admiralty Actions") against the sale proceeds of the *Ocean Goby* and the *Ocean Jack* respectively. Shortly thereafter, on 19 August 2025, Da Hui filed HC/SUM 2337/2025 and HC/SUM 2338/2025 (collectively, "the Stay Applications") seeking a stay of the applications that PetroChina and SocGen had filed for payment out of the sale proceeds of the Vessels, pending the resolution of Da Hui's Admiralty Actions.

30 However, the Stay Applications were dismissed by another High Court judge on 3 September 2025, with full written grounds issued on 15 September 2025 in *The "Ocean Goby" and another matter* [2025] SGHC 183 ("*The Ocean Goby*"). Da Hui's application for permission to appeal against the dismissal of the Stay Applications, in CA/OA 24/2025 ("the Permission to Appeal Application"), was dismissed by the Court of Appeal on 21 October 2025. Consequently, the Balance Sale Proceeds were authorised to be released to PetroChina and SocGen, rendering the continuation of Da Hui's Admiralty Actions futile as the subject of those actions had been dissipated.[23]

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[23] SOC at paras 38–43.

Da Hui's commencement of the Suit against SLB

31 On 11 February 2026, Da Hui – now represented by Eugene Thuraisingam Asia LLC – commenced the present Suit against SLB.

32 I summarise the key elements of Da Hui's pleaded case below.

(a) SLB breached an express or implied term of the Retainer and/or its duty of care to Da Hui – which required SLB to exercise reasonable care and skill in advising and acting for Da Hui[24] – by:[25]

(i) failing to advise Da Hui adequately on the applicable procedural requirements, material risks, and available procedural options for pursuing its objective of obtaining payment out of the sale proceeds of the Vessels;

(ii) failing to take the necessary steps for Da Hui to invoke the court's admiralty jurisdiction *in rem*;

(iii) adopting and pursuing a fundamentally flawed procedural strategy that was legally incapable of achieving Da Hui's objective; and

(iv) failing to take reasonable steps at critical junctures to protect and preserve Da Hui's position pending the taking of the necessary *in rem* steps (such as by seeking a deferral or other appropriate directions at the time priority orders were determined and when payment out steps were being taken in ADM 92 and ADM 94).

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24 SOC at para 15.

25 SOC at paras 44–51.

(b) Da Hui would have commenced the relevant admiralty actions *in rem* and would have taken the appropriate steps at an earlier stage if it had been properly advised by SLB.[26]

(c) By reason of SLB's breaches, Da Hui suffered various heads of loss and damage:[27]

(i) the loss of the value of the payment it would have received from the Balance Sale Proceeds, on a *pari passu* basis, based on the Contribution Claim ("the First Claim");[28]

(ii) in the alternative to (i), the loss of the value of a real and substantial chance of receiving the payments set out at (i) ("the Second Claim");[29]

(iii) the loss of a real and substantial chance of obtaining subrogation-based relief in the admiralty court, which would have entitled it to be paid out of the Balance Sale Proceeds in priority to PetroChina and/or SocGen ("the Third Claim");[30]

(iv) professional fees, disbursements, and wasted and/or adverse costs of and incidental to the commencement and continuation of OA 418, CA 62 and related proceedings, which did not – and could not, without the necessary *in rem* steps –

26 SOC at paras 52–53.

27 SOC at para 54.

28 SOC at paras 55–56.

29 SOC at para 57.

30 SOC at para 58.

secure access to any portion of the sale proceeds ("the Fourth Claim");[31]

(v) costs of and incidental to steps taken following the dismissal of CA 62 (including the Da Hui Admiralty Actions, the Stay Applications, and the Permission to Appeal Application) in so far as these steps were reasonable mitigation taken in response to SLB's breaches. Here, Da Hui seeks liquidator's costs, legal costs, interest paid to other parties, and adverse costs awarded against Da Hui ("the Fifth Claim").[32]

33 To be clear, while SLB has yet to file a pleaded defence to the Suit, I will refer to SLB's as-yet-unfiled defence to Da Hui's pleaded claims as the "Defence". The Defence was originally due to be filed and served on 13 March 2026, but two extensions of time were granted by consent, until 8 May 2026. On 9 May 2026, SLB sought a further extension of time until 5 June 2026 to file the Defence, but Da Hui objected to any further extension of time. On 11 May 2026, the Registrar's Case Conference assistant registrar ("the RCC AR") refused SLB's request for a further extension of time and directed SLB to file its Defence by 13 May 2026.[33]

34 On 13 May 2026, SLB filed SUM 1463. Prayer 1 of SUM 1463 is SLB's application to strike out the whole or part of Da Hui's action against it, while prayer 2 seeks an extension of time for SLB to file its Defence.

31 SOC at para 59.

32 SOC at para 60.

33 Da Hui's Reply Affidavit at para 44.

35 One further decision of the High Court was identified by the parties as part of the relevant background, even though it was delivered after the commencement of the Suit. This is the decision of the Judge in Re *Da Shun Shipping (Pte) Ltd* [2026] SGHC 75 ("*Da Shun*"), which was delivered on 8 April 2026. While it involved different (albeit related) parties, the facts of *Da Shun* were held to be "in substance indistinguishable" from those in *Da Hui (HC)* (see *Da Shun* at [63]–[69]). In *Da Shun*, the Judge held that the company that stood in a similar position to Da Hui – An Wei Shipping Pte Ltd (in creditors' voluntary liquidation) ("An Wei") – was not entitled to be subrogated to BofA's security interest in the sale proceeds of the vessel known as the *Sea Latitude* (see *Da Shun* at [37] and [93]).

Issues to be determined

36 The principles governing a striking out application are not in dispute. It is well established that the bar for succeeding in a striking out application is a high one, and that the court's power to strike out is a draconian one to be exercised in plain and obvious cases. SLB bears the burden of showing that Da Hui's claims in the Suit are obviously unsustainable and that it is impossible, not just improbable, for those claims to succeed: see, for example, *Leong Quee Ching Karen v Lim Soon Huat and others* [2023] 4 SLR 1133 at [25] and [26].

37 SLB's case in support of striking out rests on the alleged *legal* unsustainability of Da Hui's pleaded claims, which – SLB submits – would justify striking out under any or all of the three limbs of O 9 r 16(1) of the Rules of Court 2021 ("ROC 2021").[34] A claim is legally unsustainable if it is "clear as a matter of law at the outset that even if a party were to succeed in proving all

34 Defendant's Written Submissions dated 12 June 2026 ("DWS") at para 32.

the facts that he offers to prove he will not be entitled to the remedy that he seeks": see *The "Bunga Melati 5"* [2012] 4 SLR 546 ("*The Bunga Melati*") at [39(a)]. SLB contends that this high threshold is met because, even if the factual allegations pleaded in the SOC are assumed to be true, *Da Hui would not have succeeded in asserting a claim against the Balance Sale Proceeds in any event*, based on either the Contribution Claim or the Subrogation Claim. Therefore, Da Hui cannot, as a matter of law, establish that SLB's alleged breaches *caused* it to suffer the losses pleaded in its SOC.[35] This is the specific basis for striking out that SLB relies on in this application, and I therefore do not venture into any other causation-related issues (such as remoteness of damage).

38 Da Hui's pleaded case in its SOC, as set out at [32(c)] above, is not primarily that it *would have* succeeded in asserting a claim against the Balance Sale Proceeds based on the Contribution Claim and the Subrogation Claim, but instead that it had a *real and substantial chance* of doing so. That is how Da Hui's Second and Third Claims have been framed. Where a claimant's loss depends upon the hypothetical actions of an independent third party (here, the hypothetical court dealing with Da Hui's claims in relation to the sale proceeds of the Vessels), the claimant must prove as a matter of causation that it had a *real or substantial – as opposed to speculative – chance* that the third party would have acted so as to confer the relevant benefit on it. If the claimant succeeds in establishing this, the evaluation of the chance is part of the assessment of the quantum of damage, with the range lying somewhere between something that just qualifies as "real or substantial" on the one hand and near certainty on the other: see *Asia Hotel Investments Ltd v Starwood Asia Pacific Management Pte Ltd and another* [2005] 1 SLR(R) 661 at [47] and *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong (a firm)* [2007] 4 SLR(R) 460 at [147].

35 SLB's Supporting Affidavit at paras 14–15 and 26–27; DWS at paras 2 and 7–9.

39 I pause here to note that, because of the way in which the Second and Third Claims are framed and the nature of the chance that Da Hui says it lost, this is not a typical case of alleged legal unsustainability. Properly understood, SLB's case in this striking out application is not that the facts Da Hui has pleaded cannot, as a matter of law, entitle it to the remedies it seeks in the Suit based on its claims for breach of contract and negligence. Instead, it is that causation is not established as a matter of *fact* because Da Hui could not as a matter of *law* have succeeded in its Contribution Claim or its Subrogation Claim *in the earlier proceedings*. In this sense, SLB's case for striking out might have been more aptly framed as one based on *factual* unsustainability, albeit that such factual unsustainability would be based on the legal unsustainability of the underlying claims that Da Hui says it had and lost a chance of succeeding on. This, however, was not an argument that either party made before me. In any event, I do not think the strict classification of the relevant claims as either *legally* or *factually* unsustainable is determinative in this particular case. This distinction is intended to "*more clearly elucidate* what a court means when it holds that an action is 'plainly or obviously' unsustainable" [emphasis in original] (see *The Bunga Melati* at [39]). Whether the relevant claims are *plainly or obviously* unsustainable remains the overarching inquiry (see [36] above).

40 Bearing in mind this legal framework, alongside the specific arguments made by the parties, I consider the following issues and sub-issues in turn:

(a) Preliminarily:

(i) how Da Hui's pleaded case on the *breaches* allegedly committed by SLB ought properly to be characterised, as this informs the rest of the analysis on what those breaches can be said to have *caused*;

(ii) whether, as Da Hui argues, the disputed issues of causation involved in this case are not suitable for summary determination against it in this striking out application; and

(iii) whether, as Da Hui argues, SLB's failure to file a pleaded Defence, and its conduct in this connection, warrants the dismissal of this striking out application.

(b) Whether Da Hui's *First, Second and Third Claims* are obviously unsustainable because it is plain and obvious that Da Hui had no real or substantial chance of succeeding in its Contribution and Subrogation Claims, with or without SLB's breaches. This in turn requires a consideration of:

(i) the significance of the decisions of the High Court and the Court of Appeal in *Da Hui (HC)*, *Da Hui (CA)*, *The Ocean Goby*, Da Hui's Permission to Appeal Application and *Da Shun*;

(ii) whether the Contribution Claim could have fallen within the scope of the High Court's admiralty jurisdiction under s 3(1)(*c*) of the HCAJA;

(iii) whether the Subrogation Claim would have failed on the merits, in view of the Judge's reasons for dismissing that claim in *Da Hui (HC)* and for dismissing An Wei's subrogation claim in *Da Shun*; and

(iv) whether Da Hui also had an arguable claim to a proprietary equitable charge over the Vessels based on the equity of exoneration.

(c) Whether Da Hui's *Fourth and Fifth Claims* are obviously unsustainable because it is plain and obvious that the relevant costs and expenses would have been incurred by Da Hui in any event, with or without SLB's breaches.

(d) Whether, even if Da Hui cannot establish causation in respect of its First to Fifth Claims, its *contractual claim for breach of the Retainer* would still enable it to obtain nominal damages for breach of contract, and therefore should not be struck out.

(e) Finally, whether – if Da Hui's claims are not struck out in full – SLB should be granted an *extension of time* to file its Defence to the Suit, and if so on what terms.

Preliminary and overarching issues

41 I begin with the three preliminary and overarching issues outlined at [40(a)] above.

Characterising Da Hui's pleaded case

42 First, it is necessary to be precise about the nature of SLB's alleged breaches, as pleaded by Da Hui. These are summarised at [32(a)] above. As counsel for SLB highlighted (and counsel for Da Hui quite reasonably did not dispute), these pleaded breaches revolve around SLB's failure to take the correct *procedural steps*, in relation to invoking the court's admiralty jurisdiction *in rem*, that were necessary for Da Hui to pursue its objective of obtaining payment out of the sale proceeds of the Vessels, and of doing so in priority to PetroChina and SocGen. It is *not* Da Hui's pleaded case that SLB failed to advance any *substantive arguments* – for example, on the operation of subrogation – before the High Court or the Court of Appeal in the earlier proceedings.

43 On this basis, SLB's submissions focused on what prospects of success the Contribution Claim and Subrogation Claim would have had if they had been brought in an admiralty action *in rem*.[36] In his oral arguments, counsel for SLB laid emphasis on the fact that the Judge in *Da Hui (HC)* had dealt with both the Contribution Claim and the Subrogation Claim on their merits (as they were presented to the Judge at the time). It was only in the Court of Appeal that the "fundamental procedural objection", relating to how the court's jurisdiction over those claims had been invoked, prevented the substantive consideration of these claims.

44 This, however, risks characterising Da Hui's pleaded case a little too narrowly. In my view, a fairer characterisation of Da Hui's pleaded case on breach is that it is not *only* that SLB ought to have advised it to bring its claims in an admiralty action *in rem*, as opposed to ordinary civil proceedings. Da Hui's pleaded case is *also* about SLB's failure to take the appropriate procedural steps – both to commence admiralty actions *in rem* against the Vessels or their sale proceeds, and to take steps to preserve Da Hui's position in relation to the residual sale proceeds pending the determination of those admiralty actions *in rem – at the right times*. This is clear from the references in Da Hui's SOC to:

(a) SLB's failure to advise Da Hui of the option of taking "timely steps", after it was put on notice of Da Hui's potential claims and became aware of the existence of the admiralty actions commenced by BofA, PetroChina and SocGen and the residual sale proceeds in court, "to preserve Da Hui's position pending determination of the

[36] DWS at paras 6, 37, 45 and 55.

jurisdictional issue" of whether the High Court's admiralty jurisdiction could be invoked in respect of Da Hui's intended claims;[37]

(b) SLB's failure to advise Da Hui about "the risk that without promptly commencing an admiralty action *in rem* and obtaining judgment *in rem*, Da Hui would lose a meaningful opportunity to compete for distribution of the residual sale proceeds of the [Vessels] against other *in rem* judgment creditors such as PetroChina and SocGen";[38]

(c) SLB's failure to take "reasonable steps at critical junctures to protect and preserve Da Hui's position pending the taking of necessary *in rem* steps";[39]

(d) SLB's failure to advise Da Hui "in a timely manner to take the necessary *in rem* steps at an earlier stage";[40] and

(e) the fact that, by reason of SLB's breaches, Da Hui did not commence an admiralty action *in rem* against the Vessels or their sale proceeds "at the material time(s)".[41]

45 In other words, the relevant counterfactual is not limited to one where either the High Court in October or November 2023 (when OA 418 was heard and decided) or the Court of Appeal in March or June 2025 (when CA 62 was heard and decided) would have considered – or reconsidered – the Contribution

37 SOC at para 47(c).

38 SOC at para 50(b).

39 SOC at para 51.

40 SOC at para 53.

41 SOC at para 52.

and Subrogation Claims on their merits. Instead, the relevant counterfactual requires the court to consider what would have happened if, from the time SLB was put on notice of Da Hui's potential claims against An Rong (which Da Hui says was on or before 13 January 2022 – see [15] above) and after SLB became aware of ADM 92, ADM 94, and PetroChina and SocGen's admiralty actions against the Vessels (which Da Hui says was on or around 12 October 2022 – see [17] above), SLB had *promptly* taken steps to commence an admiralty action *in rem* on Da Hui's behalf, and had also taken *timely* steps to protect and preserve Da Hui's position in the interim.

46 This is important because it bears on this court's assessment of the chances of success that Da Hui's Contribution Claim and Subrogation Claim would have had in achieving Da Hui's desired outcomes in the earlier proceedings – which correspond to the First, Second and Third Claims – *but for* SLB's alleged breaches. In evaluating those chances, it cannot be assumed that the hypothetical court would have *applied* the relevant legal principles to Da Hui's claims in the same way that they were in fact applied in *Da Hui (HC)* and reached the same conclusions, because the facts relevant to those claims might themselves have been materially different if SLB had taken the appropriate procedural steps more promptly. I return to this point at [63], [66] and [123]–[127] below.

Whether the disputed issues of causation involved should be determined summarily

47 Next, I deal with Da Hui's submission that the disputed issues of causation raised by SLB are not suitable for summary determination – and summary determination *against Da Hui* – at the striking out stage, because they require the court to determine what would have happened in the counterfactual scenario where SLB had pursued an alternative litigation strategy, based on

contested questions of admiralty law, the construction of statutory provisions, and the assessment of the value of a chance in a loss of chance claim.[42]

48 In my view, this argument does not have much force. There is no reason in principle why the court hearing a striking out application at an interlocutory stage would not be sufficiently equipped to assess whether, based on the material before it, Da Hui's claims are obviously unsustainable because causation is not established. The fact that the court is undertaking this assessment at an interlocutory stage, without the benefit of production of documents or cross-examination at trial, is adequately taken into account by the high threshold for succeeding in a striking out application mentioned at [36] above. If the court is persuaded that this threshold is met, then no useful purpose is served in allowing those claims to proceed to trial.

49 This is all the more so in the present case, where the resolution of the specific issues of causation that are in dispute between the parties does not turn on *evidence*. Instead, both parties rely primarily on *legal submissions* to persuade the court of the hypothetical judicial determinations that they say would or might have been made but for SLB's alleged breaches. The legal questions that are raised by those submissions fall well within the scope of what can be determined at an interlocutory stage.

Significance of SLB's failure to file its Defence

50 In oral submissions, counsel for Da Hui also submitted that SLB's failure to file a pleaded Defence to date should be fatal to its striking out application, because a party should not be permitted to rely on matters that are

[42] CWS at paras 217–220.

not pleaded in support of striking out, and SLB's conduct in this regard was abusive and ought not to be condoned.

51 In this regard, Da Hui relied on *Cosmetic Care Asia Ltd and others v Sri Linarti Sasmito and others* [2023] SGHCR 4 ("*Cosmetic Care*"), where the assistant registrar ("AR") dismissed the defendants' striking out application and held that the plaintiffs' pleadings disclosed a reasonable cause of action. In so holding, the AR rejected the defendants' attempt to rely on the defence of waiver by election because that defence had not been pleaded in their Defence and Counterclaim. The AR articulated two broad reasons for this approach (see *Cosmetic Care* at [52]–[62]):

(a) First, if a defendant were permitted to raise a substantive defence in a striking out application which was not found in its pleadings, this could lead to absurd results – such as if a claim were struck out on the basis of an unpleaded defence that the defendant might not have been able to rely on at trial. In *Cosmetic Care*, where the Defence and Counterclaim had already been filed, the AR noted that there was "no certainty that any application by the defendant to include the new defence in its pleadings would succeed".

(b) Second, as a matter of procedural fairness, parties should be bound by the four corners of their pleadings so that they have proper notice of the other party's case and a fair opportunity to respond to it. In *Cosmetic Care*, the defendants' arguments on waiver were raised for the first time in their final reply affidavit filed in support of their striking out application, such that the only opportunity that the plaintiffs had to deal with those arguments was in their written and oral submissions.

52 I do not think *Cosmetic Care* stands for the proposition that a party who has not yet filed a pleaded defence cannot succeed in an application to strike out the other party's claim. *Cosmetic Care* was a case where the defendants had already filed a Defence and Counterclaim, but sought to rely on an additional, unpleaded defence in support of striking out. It does not follow *a fortiori* that where a defendant has not yet filed *any* pleaded defence, *all* of its arguments in support of striking out are technically unpleaded and should be rejected on that ground. Such a rule would mean a defendant must file a defence in order to succeed on a striking out application, even if the claim as pleaded by the claimant is entirely unmeritorious. There is no basis in the ROC 2021 or in the Ideals set out in O 3 r 1 of the ROC 2021 for such a rule. The two specific concerns raised by the AR in *Cosmetic Care* also do not justify such a rule. First, the possibility that the defendant might not be allowed to *amend* its existing pleadings to include its arguments in support of striking out in its defence does not arise where no defence has yet been filed. Second, the defendant's case in support of striking out should ordinarily be set out in its supporting affidavit for the striking out application, such that the claimant would have an adequate opportunity to respond to that case in its own affidavit and submissions.

53 In response to my questions at the hearing, counsel for Da Hui accepted that *Cosmetic Care* did not stand for such a broad proposition, and that at most it stood for the proposition that, in appropriate circumstances, the court would be justified in dismissing a striking out application based on the defendant's lack of pleading. Those appropriate circumstances, he submitted, were supplied in this case by SLB's "abusive" conduct in tactically withholding its Defence; not clearly stating a summary of its grounds for striking out in its supporting affidavit, and instead supplementing these in its written submissions and again in its oral submissions; and filing two supplemental bundles of authorities very shortly before the hearing of SUM 1463.

54 While I accept that SLB's conduct in SUM 1463 left something to be desired (and I deal with this further in relation to SLB's application for a further extension of time to file its Defence), I do not think these are circumstances where the dismissal of the striking out application would be warranted by the absence of a pleaded defence, or by the (related) concern that Da Hui has not had proper notice of SLB's case in support of striking out and a fair opportunity to respond. SLB's main arguments in support of striking out are legal arguments based on the effect of the decisions of the High Court and the Court of Appeal with which Da Hui is already familiar, and SLB's affidavit in support of SUM 1463 had already stated its position that Da Hui's Contribution Claim and Subrogation Claim were legally unsustainable in light of the legal principles affirmed in *Da Hui (HC)* and *Da Shun* and in view of the observations made in *The Ocean Goby*.[43] In my view, Da Hui has had an adequate opportunity to respond to those aspects of SLB's case.

55 However, to the extent that SLB's arguments for striking out Da Hui's First, Second and Third Claims on the distinct ground of *abuse of process* (on the basis that those claims seek to mount a collateral attack on the Judge's decision in *Da Hui (HC)*) and SLB's arguments for striking out Da Hui's *Fourth and Fifth Claims* were not set out in its supporting affidavit, I accord them little weight, as I do not think Da Hui has had an adequate opportunity to respond to them. I deal with SLB's arguments on abuse of process and collateral attack at [62]–[64] and SLB's arguments on the Fourth and Fifth Claims from [137] below.

43 SLB's Supporting Affidavit at paras 15–27.

Whether Da Hui's First, Second and Third Claims should be struck out

56 I turn now to the first main issue: whether Da Hui's First, Second and Third Claims are obviously unsustainable because it is plain and obvious that Da Hui had no real or substantial chance of succeeding in its Contribution and Subrogation Claims, even if they had been brought in an admiralty court.

Significance of the existing decisions of the High Court and Court of Appeal

57 In this case, the court's assessment of Da Hui's chances of succeeding on the Contribution Claim and/or the Subrogation Claim, but for SLB's alleged breaches, does not take place in a vacuum. There are five decisions of the High Court and the Court of Appeal relating to those claims and similar claims.

58 As noted at [43] above, the Judge dealt with both the Contribution Claim and the Subrogation Claim on their merits in *Da Hui (HC)* and dismissed them for the reasons summarised at [25] above. In *Da Hui (CA)*, the Court of Appeal dismissed Da Hui's appeal on procedural grounds, and said nothing about the substance of the Judge's decision or reasons in *Da Hui (HC)*. In *The Ocean Goby*, the High Court – in dismissing Da Hui's Stay Applications – observed that "there was no indication at all in *Da Hui (CA)* that the Court of Appeal had overturned or set aside in some other way the High Court's decision in *Da Hui (HC)*", and that even though the appeal in CA 62 was dismissed on procedural grounds, "this still mean[t] that the Court of Appeal left the High Court's decision in *Da Hui (HC)* standing" (see *The Ocean Goby* at [32]). Da Hui's Permission to Appeal Application in respect of this decision was dismissed by the Court of Appeal (see [30] above).

59 Subsequently, in *Da Shun*, the Judge – having noted that the facts of that case were "in substance indistinguishable" from those in *Da Hui (HC)* –

reiterated his analysis of Da Hui's Subrogation Claim in *Da Hui (HC)* and dismissed An Wei's subrogation claim (see [35] above).

60 As Da Hui urges me to find that its Subrogation Claim was arguable on the merits notwithstanding the Judge's decisions in *Da Hui (HC)* and *Da Shun*, counsel for SLB made additional oral submissions regarding the weight that should be given to those decisions in this striking out application. At the hearing, these were advanced as SLB's primary submissions. The overarching argument made by these submissions is that these five decisions affirm that the merits of Da Hui's Contribution and Subrogation Claims were fully and finally determined by the Judge in *Da Hui (HC)*.

(a) First, counsel for SLB argued that as a matter of *stare decisis*, I am bound by the decisions of the High Court and the Court of Appeal, and therefore need not and should not independently examine the merits of Da Hui's Contribution and Subrogation Claims based on the arguments Da Hui now wishes to make regarding those claims. Singapore law as it stands today is as set out by the Judge in *Da Hui (HC)* and *Da Shun*, and that is the law I am bound to apply in assessing whether Da Hui had any real or substantial chance of success.

(b) In addition, counsel for SLB argued that Da Hui is effectively seeking to mount a collateral attack on the Judge's decision in *Da Hui (HC)*, which is an abuse of process, and this provides an independent basis for striking out Da Hui's claims.

(c) For completeness, I add that counsel for SLB also made submissions on *res judicata*, but ultimately seemed to acknowledge that this was not on point and that he was not relying on the existing High Court and Court of Appeal decisions having any strict preclusive effect.

61 I do not think SLB's reliance on *stare decisis* is apposite. It is not in dispute that an assistant registrar is bound by decisions of a High Court Judge as a matter of *stare decisis*. But that is not the point here. The real question in this case is not what legal principles I should apply as an assistant registrar, but what a hypothetical High Court and possibly also a hypothetical Court of Appeal – which would *not* be bound by the Judge's decisions in either *Da Hui (HC)* or *Da Shun* – might have decided if the earlier proceedings had been brought differently. As counsel for Da Hui correctly pointed out, this application of *stare decisis* is not a defence that SLB would have been able to rely on at trial before a High Court judge. Striking out Da Hui's claim on the basis of *stare decisis* would thus lead to the sort of absurd situation that was contemplated in *Cosmetic Care* at [54] (see also [51(a)] above).

62 For similar reasons, I would not strike out Da Hui's First, Second and Third Claims on the ground that they seek to mount a collateral attack on the Judge's decision in *Da Hui (HC)*, so as to be an abuse of process. For the reasons explained at [55] above, I give SLB's arguments on this point little weight. But even engaging with those arguments on their merits, I would not agree with them.

63 Counsel for SLB referred me to *Kwa Ban Cheong v Kuah Boon Sek and others* [2003] 3 SLR(R) 644 ("*Kwa Ban Cheong*"), where the High Court held that the court could find an abuse of process even if the matter was not strictly *res judicata* – for example, if it was an attempt to relitigate issues which had for real or practical purposes been decided in earlier proceedings, and to mount a collateral attack on a final decision (see *Kwa Ban Cheong* at [30]–[31]). But the specific issues raised by Da Hui's First, Second and Third Claims were *not* decided in the earlier proceedings. The question raised by these claims is whether SLB's alleged breaches caused Da Hui to lose a chance of obtaining its

desired outcomes in the earlier proceedings, because – without these breaches – the entire set of proceedings through which Da Hui's Contribution and Subrogation Claims were advanced would have been brought differently, and might have unfolded differently (whether at first instance or on appeal). While this may require the court to consider the possibility that the High Court or Court of Appeal may have decided differently from the Judge, even on the same facts, the court in the Suit is not being asked to pronounce on the validity or finality of the Judge's decision, but instead on the chance that Da Hui might have been able to obtain its desired remedies in the earlier proceedings but for SLB's alleged breaches. Further, as I have noted at [46] above, on Da Hui's case, the factual premises upon which the Judge's decision in *Da Hui (HC)* was made might themselves have been materially different in the relevant counterfactual, which might have led to a different result even if the same legal analysis was applied.

64 I am therefore unable to accept SLB's argument that, because of *stare decisis*, I need not and should not examine the merits of Da Hui's Contribution and Subrogation Claims with regard to the submissions Da Hui now makes regarding those claims. I also do not think that Da Hui making these submissions in SUM 1463 is a collateral attack on the Judge's decision in *Da Hui (HC)*, or otherwise an abuse of process. That said, my assessment of whether Da Hui's Contribution Claim and/or Subrogation Claim would have failed regardless of SLB's breaches should nevertheless be informed by the reasoning and decisions in *Da Hui (HC)* and *Da Shun*. That is because, even in the counterfactual where SLB had acted as Da Hui says it should have, the High Court would still have had to deal with the legal premises of the Contribution and Subrogation Claims, and these decisions provide an indication of how a High Court judge might have dealt with those legal premises.

The Contribution Claim (underlying the First and Second Claims)

65 With this in mind, I turn to the parties' arguments regarding the Contribution Claim. The key issue in this regard is whether it is plain and obvious that Da Hui had no real or substantial chance of succeeding on its Contribution Claim in an admiralty action *in rem*, so as to be able to seek payment out of the Balance Sale Proceeds on this basis.

66 This, in turn, depends on whether Da Hui could have invoked the High Court's *admiralty jurisdiction* in respect of the Contribution Claim. The *merits* of the Contribution Claim are not in dispute between the parties in SUM 1463, and rightly so given the Judge's finding that Da Hui "did, in principle, have a claim in contribution against An Rong" for the sale proceeds of the *Sea Equatorial* that had been applied towards An Rong's share of the debt under the Loan Agreement: see *Da Hui (HC)* at [38]. The Judge noted that it was settled law that a co-debtor who discharged more than his fair share of a debt would have a right to claim contribution for the excess against his other co-debtors; found that the Contribution Claim was not barred by the terms of the Loan Agreement; and determined that the evidence suggested that Da Hui and An Rong understood that the burden of meeting their obligations to BofA should be split proportionately and not equally (see *Da Hui (HC)* at [32]–[33] and [37]). The Judge's decision to disallow Da Hui's prayer for a declaration in respect of the Contribution Claim flowed not from its lack of merit, but from the circumstances in which that prayer was made – by this time, Da Hui had already filed its proof of debt in respect of the Contribution Claim, and the Judge held that this claim could be determined in the adjudication of debts filed in An Rong's liquidation (see *Da Hui (HC)* at [68], as well as [17] and [25(b)] above). But if SLB had promptly taken steps to commence an admiralty action *in rem* in respect of the Contribution Claim, as Da Hui pleads it should have, those

steps might have been taken *before* An Rong entered into compulsory liquidation on or around 4 July 2022, and this consideration would then have fallen away.

67 I therefore focus on the jurisdictional issue. The relevant limb of s 3(1) of the HCAJA that Da Hui says it would have relied on is s 3(1)(*c*), under which the High Court has admiralty jurisdiction over "any claim in respect of a mortgage of or charge on a ship or any share therein". Section 4(2) of the HCAJA then provides that the High Court's admiralty jurisdiction "may in the cases mentioned in section 3(1)(*a*), (*b*), (*c*) and (*r*) be invoked by an action *in rem* against the ship or property in question". This *in rem* jurisdiction is "created and limited by statute", and the HCAJA "lays down the conditions, which must be satisfied before a claimant avails himself of the right to institute *in rem* proceedings against a ship": see *The "Alexandrea"* [2002] 1 SLR(R) 812 ("*The Alexandrea*") at [10], citing *The "Ohm Mariana" ex "Peony"* [1992] 1 SLR(R) 556 ("*The Ohm Mariana*") at [15].

68 SLB submits that the Contribution Claim would not have fallen within s 3(1)(*c*) of the HCAJA and therefore would not have enabled Da Hui to obtain a judgment *in rem* against the Vessels.[44] Da Hui, on the other hand, submits that it is arguable that the Contribution Claim could have fallen within the scope of s 3(1)(*c*), as a claim "in respect of" a mortgage of or charge on a ship.[45]

69 I note at the outset that the issue of whether Da Hui would have been able to invoke the High Court's admiralty jurisdiction in respect of the Contribution Claim was not decided by either the Judge in OA 418 or the Court

44 DWS at paras 40–46.

45 CWS at paras 45–64.

of Appeal in CA 62, or indeed in any of the other existing decisions relating to Da Hui or Da Shun. I therefore approach this issue afresh.

Applicable threshold

70 I first consider the applicable threshold that Da Hui needs to cross in respect of this jurisdictional question.

71 In this regard, the parties referred me to *The Bunga Melati*. There, the respondent had applied to strike out the appellant's admiralty action *in rem* on the basis that it had not been in a contractual relationship with the appellant, and so was not liable to the appellant in contract or unjust enrichment, such that it was not "the person who would be liable on the claim in an action *in personam*", as required under s 4(4)(*b*) of the HCAJA. The respondent had also challenged the court's admiralty jurisdiction under O 12 r 7 of the Rules of Court (2014 Rev Ed). In this context, the Court of Appeal considered the standards of proof involved in invoking the High Court's admiralty jurisdiction. The Court of Appeal first endorsed the "clear distinction" drawn by the High Court judge below between *challenging admiralty jurisdiction* and *striking out* a plaintiff's claim, and clarified that there was no requirement that a plaintiff show a good arguable case on the *merits* before admiralty jurisdiction could be invoked under the HCAJA at the *jurisdictional* stage. Instead, it was when a plaintiff's invocation of admiralty jurisdiction was *subsequently challenged* that the plaintiff would additionally need to show (in addition to satisfying the jurisdictional requirements in ss 3 and 4 of the HCAJA) a good arguable case on the merits of its claim, in order to avoid having its claim struck out pursuant to the normal rules of civil procedure: see *The Bunga Melati* at [90]–[91], [96], [98] and [104].

72 It follows from this distinction that different thresholds apply to this court's assessment of the *jurisdictional* question of whether the Contribution Claim is one in respect of which the High Court's admiralty jurisdiction *in rem* could have been invoked, and its assessment of the *merits* of the Contribution Claim. In respect of the issue of jurisdiction, a further distinction should be drawn between jurisdictional *facts* and jurisdictional *questions of law*: see *The Bunga Melati* at [107]–[109]. An example of a challenge to jurisdictional facts, under s 3(1)(*l*) of the HCAJA, is where the dispute relates to whether bunkers supplied by the plaintiff to the defendant ship were supplied as a consumable (in which case the claim would be "in respect of goods … supplied to a ship for her operation" as required by s 3(1)(*l*)), or as a commodity (in which the claim would be an ordinary civil claim for payment): see *The Bunga Melati* at [122] (*per* Chan Sek Keong CJ, concurring). In contrast, jurisdictional questions of law concern whether the claim is of the *type or nature* required by the relevant limb of s 3(1). For jurisdictional questions of law, the plaintiff only needs to show "*an arguable case* that its claim is of the type or nature required by the relevant statutory provision", or (putting the point differently) "that its claim is of the *same legal character* as the s 3(1) limb it is relying on" [emphasis in original]: see *The Bunga Melati* at [111]–[112].

73 In the present case, the parties' dispute regarding the jurisdictional question is not one involving jurisdictional facts – there is no dispute that there was *in fact* a "mortgage of … a ship", namely the mortgages of the Vessels in favour of BofA which secured the Loan Agreement (see [9] above). Instead, the dispute concerns the interpretation of the words "in respect of" in s 3(1)(*c*) of the HCAJA, and whether the connection between the Contribution Claim and the mortgages in this case could have satisfied that threshold. This does not turn on any findings of fact, and is purely a jurisdictional question of *law*. Thus, what Da Hui would have had to show in order to invoke the High Court's admiralty

jurisdiction under s 3(1)(*c*) is that it had an *arguable case* that the Contribution Claim was indeed "in respect of" the mortgages.

*Interpretation of s 3(1)(*c*) of the HCAJA*

74 In his oral submissions on the interpretation of s 3(1)(*c*) of the HCAJA, counsel for Da Hui drew a helpful analytical distinction between the *type of instrument* that engages s 3(1)(*c*) (*ie*, "a mortgage of or charge on a ship or any share therein") and the *quality of the connection* between that instrument and the relevant claim (*ie*, "in respect of"). The focus of the question of interpretation that arises in this case is the latter. In my view, the various cases interpreting and applying this provision must be read with this distinction in mind.

75 For this reason, some of the authorities that SLB sought to rely on are not on point, and counsel for SLB acknowledged as much when I posed this question to him at the hearing. SLB referred me to the High Court's decision in *The "Bridge"* [1998] 2 SLR(R) 185 ("*The Bridge*") and the English High Court's decision in *Cassa Nazionale Della Previdenza Marinara v Proceeds of Sale of the Italian Steamship Acrux (Banca di Sicilia intervening)* [1965] 3 WLR 80 ("*The Acrux*"). Both of those decisions dealt with the *type of instrument* that would engage s 3(1)(*c*) or its English equivalent.

(a) In *The Bridge*, the question before the court was whether a particular rule, found in the rules of a mutual protection and indemnity shipowner's association, created a mortgage or charge in the nature of a mortgage in the association's favour. The court held that it did not, as it simply furnished a contractual lien and did not accord any proprietary or even security interest in the vessel to the association: see *The Bridge* at [9]–[13].

(b) In *The Acrux*, the question before the court was whether a statutory obligation to pay insurance contributions constituted a "charge" on the ship within the English equivalent of s 3(1)(*c*), and the court held that it did not. This was because the word "charge" in that provision "relate[d] to a charge in the nature of a mortgage, and would not cover a charge or lien for wages". It was in this context that the court held that the English equivalent of s 3(1)(*c*) "relate[d] solely … to a right in the property of a ship": see *The Acrux* at 89.

76 These holdings thus related to whether the relevant *instrument* was in the nature of a "mortgage of or charge on a ship". Neither of these decisions addressed the *quality of the connection* required between the mortgage or charge and the relevant claim.

77 As the parties had not been able to locate any local authorities on the interpretation of "in respect of" in s 3(1)(*c*) of the HCAJA,[46] the parties referred me to local authorities on other limbs of s 3(1) of the HCAJA and to foreign authorities on equivalent provisions. I consider these in turn.

78 I start with *The Alexandrea*. There, the relevant limb of s 3(1) was s 3(1)(*l*), which referred to "any claim *in respect of* goods or materials supplied to a ship for her operation or maintenance" [emphasis added]. Belinda Ang Saw Ean JC (as she then was) held that there was "no need to construe the words 'in respect of' as 'arising out of'" (in order to rely on the wide interpretation of those words to mean "connected with"), as "[t]he words 'in respect of' in themselves import *a broad rather than a restrictive meaning* to the activities described in that provision" [emphasis added]. Ang JC went on to observe that

46 CWS at para 53.

"[t]he words 'in respect of' are wide words and … they should not be unduly restricted". That said, s 3(1)(*l*) "plainly contemplates *a defined link* between the claim and the goods or material supplied to a ship" [emphasis added]: see *The Alexandrea* at [21], [24] and [26]–[27].

79 In *The "Catur Samudra"* [2010] 2 SLR 518 ("*The Catur Samudra*"), the relevant limb of s 3(1) was s 3(1)(*h*), which referred to "any claim *arising out of* any agreement *relating to* the carriage of goods in a ship or to the use or hire of a ship" [emphasis added]. Steven Chong JC (as he then was) held that, while the courts had "leaned towards a broad interpretation of the expression 'arising out of' to enlarge the types of claims as falling within s 3(1)(*h*)", they had "adopted a narrow interpretation" of the expression "relating to" that required some "reasonably direct connection" between the agreement on which the claim is based, and the use or hire of the ship (or the carriage of goods in a ship). Thus, only claims made under agreements that were themselves *directly related* to the use or hire of a ship (or the carriage of goods in a ship) fell within s 3(1)(*h*): see *The Catur Samudra* at [29] and [32]–[35].

80 It was in the context of analysing the ambit of the expression "relating to" that Chong JC considered the quality of the connection required between the relevant *agreement* on the one hand, and the *use or hire of the ship* on the other hand. In this regard, Chong JC held that s 3(1)(*h*) would not include claims based on *separate agreements* which were *one step removed* from the agreement for the use or hire of the vessel, those being agreements that were only *indirectly* related to the use or hire of the vessel: see *The Catur Samudra* at [35] and [46]. Applying these principles to the facts, Chong JC held that the plaintiff's claim against the defendant – which was based on a guarantee signed by the defendant to secure the due performance and payment of a third party's obligations under a bareboat charterparty, under which the plaintiff had agreed to lease the vessel

to the third party – did *not* fall within s 3(1)(*h*). The guarantee was not an agreement which in itself related to the use or hire of the vessel; rather, the sole purpose of the guarantee was to provide *financial protection* to the plaintiff against the risk of default by the third party under the bareboat charterparty. The plaintiff had argued that, because it was a *condition precedent* under the bareboat charterparty for the defendant to execute the guarantee, the guarantee was an agreement "relating to" the bareboat charterparty. But Chong JC rejected this argument, holding that "an agreement which in itself is not an agreement intrinsically related to the use or hire of a vessel cannot be transformed into such an agreement simply by characterising it as a term or condition precedent of the charterparty", as this "would have the effect of altering the 'direct connection' test into a 'but for' test", and that would "enlarge the admiralty jurisdiction of the High Court to cover claims which were never contemplated to have the right of arrest": see *The Catur Samudra* at [35] and [37].

81 On this close reading of *The Catur Samudra*, there appears to me to be an important distinction between s 3(1)(*c*) and s 3(1)(*h*) of the HCAJA. As Chong JC noted in *The Catur Samudra* at [29], there are *two* connecting phrases which govern the proper construction of s 3(1)(*h*): "arising out of" (which defines the necessary connection between the *claim* and the *agreement*) and "relating to" (which defines the necessary connection between the *agreement* and the *use or hire of a ship* (or the *carriage of goods in a ship*, as the case may be)). In contrast, s 3(1)(*c*) itself makes clear that the relevant instrument – here a mortgage or charge – must be "a mortgage *of* or charge *on* a ship or any share therein" [emphasis added], and thus requires an immediate connection between the mortgage (or charge) and the *ship* in question. But the words in s 3(1)(*c*) that define the necessary connection between the *claim* and the mortgage or charge – namely, "in respect of" – were given a broad interpretation by Ang JC in *The Alexandrea* (subject to the requirement of a "defined link") (see [78] above),

and even in *The Catur Samudra* Chong JC observed that the analogous words "arising out of" had been given a broad interpretation (see [79] above). The plaintiffs' "condition precedent" argument was rejected by Chong JC in relation to the interpretation of the words "relating to" (which governs a *different* connection necessary to bring a claim within the scope of s 3(1)(*h*)), and *not* in relation to the interpretation of the words "arising out of".

82 For similar reasons, I do not think that Da Hui's reliance on the cases of *Gatoil International Inc v Arkwright-Boston Manufacturers Mutual Insurance Co and others* [1985] AC 255 ("*Gatoil*") or *Caravelle Investments Ltd v Martaban Ltd* [1999] FCA 1505 ("*Caravelle*") is apposite. Da Hui relies on these cases in support of the proposition that the requisite link between the Contribution Claim and the mortgages is that of a "reasonably direct connection". But the issue in both of these cases was the interpretation of the expression "relating to", in the context of a provision referring to "any claim arising out of … any agreement *relating to* the carriage of goods in any ship" [emphasis added] (in *Gatoil*) and a provision referring to "a claim *relating to* … title to, or ownership of, a ship" [emphasis added] (in *Caravelle*). Indeed, *Gatoil* was considered by Chong JC in interpreting the expression "relating to", for the purposes of the necessary connection between the relevant *agreement* and the specified activities: see *The Catur Samudra* at [33]. While the Federal Court of Australia in *Caravelle* did, following *Gatoil*, apply the "reasonably direct connection" test to the connection between the *claim* and the ownership of the relevant ship (see *Caravelle* at [13]–[16]), this does not add much to Da Hui's case in view of the position taken in the local authorities discussed at [78]–[81] above.

83 The parties also referred me to the decision of the Judicial Committee of the Privy Council ("the PC") in *Bow, McLachlan & Co Limited v The Ship*

"Camosun" and the Union Steamship Company of British Columbia, Limited [1909] 1 AC 597 ("*The Camosun*"). There, the PC held that a cross-claim for unliquidated damages under a contract distinct from the relevant mortgage – specifically, the shipowners' claim against the mortgagee for the alleged breach of a contract relating to the building of the ship, which had been partly secured by the mortgage – did *not* fall within the scope of s 11 of the Admiralty Court Act 1861 (UK), which conferred admiralty jurisdiction "over any claim *in respect of* any duly registered mortgage" [emphasis added]. The PC opined that this provision "seemed to be confined to claims *by mortgagees*" [emphasis added]: see *The Camosun* at 598 and 609–610. Counsel for SLB submitted that there was nothing in the Parliamentary debate on the Courts (Admiralty Jurisdiction) Bill, which later became the HCAJA, to suggest that it was intended to expand the scope of the courts' admiralty jurisdiction in relation to mortgages beyond claims *by mortgagees* to enforce their mortgages (see State of Singapore, *Legislative Assembly Debates, Official Report* (16 December 1961), vol 15 at cols 2376–2381 (K M Byrne, Minister for Health and Law)).

84 Distilling the principles from the relevant cases that were cited to me, the local authorities have endorsed a broad interpretation of the words "in respect of", and have held that they are "wide words" that "should not be unduly restricted", save that they require "a defined link" between the claim and (under s 3(1)(*c*)) the mortgage or charge: see, in particular, [78] and [81] above. I do not think that the PC's observation in *The Camosun* that s 11 of the Admiralty Court Act 1861 (UK) "seemed to be confined to claims by mortgagees" can be taken to limit the scope of s 3(1)(*c*) of the HCAJA to claims *by* mortgagees or chargees – such a narrow reading is not supported by the wording of s 3(1)(*c*) or the broad interpretation that the local authorities have given to the words "in respect of". *The Camosun* may stand for the more limited proposition that a claim under a contract that is *distinct* from the relevant mortgage is not a claim

"in respect of" the mortgage. But, given the local authorities discussed above, it is at least *arguable* that the Singapore courts might hold that a claim that is not brought *under* a mortgage or charge or to *enforce* the mortgage or charge may nevertheless be "in respect of" the mortgage or charge, whether by distinguishing or declining to follow this aspect of *The Camosun* or by holding that *The Camosun* does not stand for such a general proposition.

85 In the circumstances of this case, it is in my view at least arguable that the Contribution Claim was "in respect of" the mortgages of the Vessels.

86 I first note that, even if the words "in respect of" are interpreted broadly, they should not be interpreted so broadly as to include even connections that are incidental, peripheral or merely "but for". That would not be supported by the words themselves or by the policy considerations regarding the scope of admiralty jurisdiction *in rem*. The ability to invoke the High Court's admiralty jurisdiction *in rem* brings with it the powerful right to effect an arrest of the ship: see *The Alexandrea* at [10], citing *The Ohm Mariana* at [15]. As the Court of Appeal cautioned in *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 at [51], the arrest of a ship is "a very powerful invasive remedy" that "can lead to tremendous inconvenience, financial distress and severe commercial embarrassment". Thus, in *The Catur Samudra* at [37], Chong JC cautioned against "enlarg[ing] the admiralty jurisdiction of the High Court to cover claims which were never contemplated to have the right of arrest". My analysis therefore should not be taken to mean that *any* claim arising from a loan that happens to be secured by a mortgage or charge of a ship is *ipso facto* "in respect of" the mortgage or charge.

87 In this case, however, it is at least arguable that there was a *sufficiently close connection* between the Contribution Claim and the mortgages of the

Vessels, so as to establish the requisite "defined link" between the Contribution Claim and the mortgages of the kind contemplated in *The Alexandrea*. The mortgages were not merely part of the surrounding commercial context in which the Contribution Claim arose. The mortgages that secured the Loan Agreement were part of a cross-collateralised security arrangement under which value from one vessel could be realised and applied to discharging debts arising in respect of the other vessels. The relevant "payment" made by Da Hui for An Rong's benefit, which formed the basis of the Contribution Claim, arose directly from the operation of that cross-collateralised security arrangement – *ie*, the application of the sale proceeds of Da Hui's mortgaged vessel, which BofA had received as the mortgagee of that vessel, towards satisfying debts referable to the Vessels that were owned by An Rong.

88 Thus, while it is no doubt true (as SLB argued) that a personal claim in contribution can be made in the absence of and independently of any mortgage, and as such *without more* may not have any link to a mortgage, the Contribution Claim was not an ordinary personal claim in contribution, nor can it (as SLB argued) *only* or *at most* be characterised as one in respect of the Loan Agreement. The quality of the connection between the Contribution Claim and the mortgages of the Vessels, as explained at [87] above, was – in my view – significantly stronger than what these characterisations would suggest.

89 For these reasons, I do not think it is plain and obvious that Da Hui had no real or substantial chance of obtaining a judgment *in rem* against the Vessels based on its Contribution Claim. It is at least arguable that the Contribution Claim was "in respect of" a mortgage of a ship, such that Da Hui could have invoked the High Court's admiralty jurisdiction in respect of this claim, and the merits of the Contribution Claim are not presently in dispute. I therefore decline to strike out the First and Second Claims on this jurisdictional ground.

The Subrogation Claim (underlying the Third Claim)

90 I now turn to the Subrogation Claim. The key issue here is whether it is plain and obvious that Da Hui had no real or substantial chance of succeeding on the Subrogation Claim in an admiralty action *in rem*, and thus of being paid out of the Balance Sale Proceeds in priority to PetroChina and/or SocGen.

91 In respect of the Subrogation Claim, no jurisdictional question arises as it is not disputed that Da Hui's claim to be subrogated to the securities held by BofA pursuant to the Loan Agreement, including BofA's mortgages over the Vessels, would have fallen within the scope of s 3(1)(*c*) of the HCAJA. I note, for completeness, that the position SLB took (on behalf of Da Hui) in the earlier litigation was that it "would not be appropriate to invoke the admiralty jurisdiction" in respect of the Subrogation Claim because the remedy of subrogation to BofA's extinguished security rights could not be treated as "a mortgage or charge on a ship" under s 3(1)(*c*) of the HCAJA, as it relied on "the legal fiction of … the mortgage being kept alive" (see *Da Hui (CA)* at [73]). However, no such argument was pursued in SUM 1463.

92 I therefore consider whether the Subrogation Claim had a real or substantial chance of success on its merits.

93 A few preliminary points should be made about subrogation. Da Hui's Subrogation Claim, as the Judge noted in *Da Hui (HC)* at [41], was "a putative *non-contractual* right of subrogation to a *proprietary* interest (*ie*, ship mortgages) upon the discharge of a secured debt" [emphasis in original]. This equitable remedy of subrogation operates to prevent or reverse unjust enrichment: see *Da Hui (HC)* at [42]. It is well established that a claimant who wishes to seek a remedy based on unjust enrichment from the Singapore courts

must first be able to establish an *unjust factor* that is recognised as a matter of Singapore law.

94 SLB argues that the Subrogation Claim would have failed on the merits for the same reasons that it was dismissed by the Judge in *Da Hui (HC)* and for the same reasons that the Judge dismissed An Wei's subrogation claim in *Da Shun*.[47] Da Hui, on the other hand, argues that the Subrogation Claim had a real or substantial chance of success because – contrary to what the Judge held in *Da Hui (HC)* or *Da Shun* – the unjust factor of secondary liability arose on the facts; there was a proprietary interest of BofA's to which Da Hui could have been subrogated at the relevant time; and the public policy concerns weighing against subrogation would not have arisen if SLB had invoked the High Court's admiralty jurisdiction timeously.[48]

95 At the outset, I note that many of Da Hui's submissions on the merits of the Subrogation Claim were new arguments that do not appear to have been advanced before either the Judge in OA 418 or the Court of Appeal in CA 62. Given that Da Hui's Third Claim is for the loss of the chance of succeeding on the Subrogation Claim *in the earlier proceedings*, this court should be cautious about treating Da Hui's arguments on the merits of the Subrogation Claim that are now being advanced for the first time as going directly towards establishing a real or substantial chance of success that was lost as a result of SLB's alleged breaches, since those arguments might not have been before the hypothetical court in any event. As noted at [42] above, it is not Da Hui's pleaded case that SLB failed to advance any *substantive arguments* before the High Court or the Court of Appeal in the earlier proceedings.

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47 DWS at paras 47–55.

48 CWS at paras 83–175.

96 For the reasons explained at [93] above, in order to have had any real or substantial chance of obtaining the subrogation-based relief it sought in respect of the Balance Sale Proceeds, Da Hui must first have been able to establish that a *recognised unjust factor* applied on the facts of its case. This was not disputed by the parties. I therefore deal with this threshold issue first.

Unjust factor

97 In my view, having regard to the approach taken in the relevant Singapore authorities, and applying the reasoning articulated in those authorities on when an unjust factor will be recognised and found to apply, it is plain and obvious that Da Hui had no real or substantial chance of persuading a hypothetical Singapore court that a recognised unjust factor would have justified subrogation in its case.

98 I first consider the Judge's decision in *Da Shun*. Although the question of whether Da Hui could rely on any recognised unjust factor in support of its Subrogation Claim was not addressed in *Da Hui (HC)*, *Da Shun* squarely addressed whether any unjust factor would have justified the subrogation of An Wei to BofA's security interest in the *Sea Latitude*, on facts that the Judge found to be materially and in substance similar to those in *Da Hui (HC)* (see *Da Shun* at [69]). The Judge's decision in *Da Shun* therefore provides the closest available indication of how a Singapore court might have approached this analysis in Da Hui's case. As such, although *Da Shun* was decided after the Suit was filed, its relevance to the present analysis is not disputed.

99 In *Da Shun*, the Judge explained that it did not suffice for a claimant to assert that an enrichment was "unfair" in some abstract sense. In this connection, the Judge referred (at [47] of *Da Shun*) to the UK Supreme Court's decision in *Lowick Rose LLP (in liquidation) v Swynson Ltd* [2018] AC 313

("*Lowick Rose*"), where Lord Sumption observed (at [30]–[31]) that equitable subrogation operates to prevent or reverse unjust enrichment in cases of *defective transactions*, by replicating (as far as possible) the element of the transaction whose absence made the transaction defective:

> *The cases on the use of equitable subrogation to prevent or reverse unjust enrichment are all cases of* ***defective transactions****. They were defective in the sense that* ***the claimant paid money on the basis of an expectation which failed****. …*
>
> Two things … are clear. The first is that the role of the law of unjust enrichment in such cases is to characterise the resultant enrichment of the defendant as unjust, because the absence of the stipulated benefit disrupted a relevant expectation about the transaction under which the money was paid. The second is that *the role of equitable subrogation is to replicate as far as possible* ***that element of the transaction whose absence made it defective****.* This is why subrogation cannot be allowed to confer a greater benefit on the claimants than he has bargained for … It can be seen that *the fact that all the cases relate to defective transactions is not just an adventitious feature of the disputes that happen to have come before the courts. It is fundamental to the principle on which they were decided.*
>
> [emphasis added in italics and bold italics]

100 The Judge found that there was no unjust factor to ground An Wei's subrogation claim. First, the Judge noted that An Wei had not identified any viable or recognised unjust factor in its affidavits and submissions, and had instead largely articulated its position based on "mere alleged factual inequities" – namely, that it was unfair for An Wei to bear Da Shun's share of the debt using the sale proceeds of An Wei's vessel, and for An Wei to have paid more than its rateable share of the debt due to BofA. That concern was "*already addressed* by the available *in personam* remedy of *contribution*", and An Wei had to "do more and establish an unjust factor or event recognised at law" in order to additionally obtain "a *proprietary* and *priority* interest by way of subrogation to BofA's security" [emphasis in original] (see *Da Shun* at [58]).

101 The Judge went on to consider whether the unjust factor of *failure of basis*, which had been recognised in a number of English cases involving subrogation, might assist An Wei. Even if this was recognised as an unjust factor in Singapore law, however, the Judge held that "no failure of basis ha[d] been demonstrated in this case, or any other recognised unjust factor or event" (see *Da Shun* at [59]–[60]). The Judge's reasoning on this point (at [61] of *Da Shun*) should be set out in full:

> On the facts, An Wei was under an existing legal obligation to repay the *entire* debt to BofA, having entered into the Facility Agreement as a joint and several borrower alongside Da Shun. There was ***no shared assumption, expectation or intention (nor was any evidence adduced) that An Wei would obtain,*** **over and above** ***any rights of contribution it may have had against Da Shun, any security or proprietary benefit over the Vessel in the event the sale proceeds of its own mortgaged vessel were utilised to discharge BofA's debt***. Nor was An Wei compelled to make the payment in circumstances of legal necessity that would support equitable relief. ***It was An Wei's commercial decision to enter into the Facility Agreement on joint and several terms and to offer its vessel as cross-collateralised security for the Loan.*** The subsequent realisation of the debt by BofA upon An Wei and Da Shun's default under the Facility Agreement was thus ***entirely consistent with the risk allocation that An Wei had knowingly accepted***. In short, what eventually transpired (*ie*, BofA enforcing its claim against both Da Shun and An Wei's vessels for different and unequal sums) was ***entirely consistent with the very bargain that An Wei entered into***. ***There was no failure of basis, or any normative defect in the transaction or defeated expectation that An Wei could point to in aid of its case.*** In my judgment, since no legally recognised unjust factor or event arises on the present facts for the reasons I have given above, no question of equitable subrogation arises either.
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> [emphasis in original in italics; emphasis added in bold italics]

102 Given that Da Hui's Subrogation Claim would have been brought on the same factual premise as An Wei's, SLB submits that Da Hui would similarly not have been able to establish an unjust factor and thus would not have

succeeded in its Subrogation Claim.[49] Da Hui, however, submits that the unjust factor of "secondary liability" – which does not appear to have been relied on before the Judge in *Da Shun* – would have justified subrogation on these facts.[50]

103 I am unable to accept Da Hui's submission.

104 First, as a matter of *authority*, Da Hui has pointed to no Singapore authorities that suggest that subrogation would have been granted in circumstances of this kind, or that "secondary liability" is a recognised unjust factor in Singapore law. Even in English law, it is far from clear that the English courts today would accept "secondary liability" as a freestanding unjust factor justifying subrogation.

105 In this regard, Da Hui relies on English texts such as *Goff & Jones on Unjust Enrichment* (Charles Mitchell KC, Paul Mitchell & Stephen Watterson eds) (Sweet & Maxwell, 10th Ed, 2022) ("*Goff & Jones*") at para 39-30 and Charles Mitchell & Stephen Watterson, *Subrogation: Law and Practice* (Oxford University Press, 2007) ("*Mitchell & Watterson*") at paras 6.02–6.03, which state that subrogation is "widely available", on the basis of "secondary liability", where a claimant has discharged a common liability resting on himself and another, and that subrogation to the creditor's rights is a "supplementary measure" that such a claimant has "also commonly been afforded" to support the primary remedy of contribution or reimbursement. Da Hui also relies on *Michael Leon v Kensington Mortgage Company Limited and another* [2023] EWHC 121 (Ch) at [62]–[66], where the English High Court proceeded on the basis of this approach to the availability of subrogation in a case where

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49 DWS at para 51(a).

50 CWS at paras 83–100.

the applicable principles were not in dispute between the relevant parties. However, the fact remains that a more restrictive position was taken by the UK Supreme Court in *Lowick Rose* (as set out at [99] above), which requires a *defective transaction* – where the claimant has paid money on the basis of an expectation which failed – before subrogation will be allowed. *Goff & Jones* (at paras 39-35 and 39-36) opines that Lord Sumption's account of the basis for equitable subrogation "cannot be regarded as an exhaustive account of the circumstances in which subrogation may be available" because it is "incapable of explaining the availability of subrogation where a common liability is discharged", and that a defective lending transaction involving a defeated expectation of security "is not the only circumstance in which subrogation to another's extinguished security might seem warranted as a mechanism for reversing a defendant's unjust enrichment". But even if there are other classes of cases where equitable subrogation may have been allowed by the English courts in the past, which cannot be accommodated within Lord Sumption's account, the latter is still a positive statement of English law by an apex court. The upshot of all this is that there is insufficient support in the authorities for Da Hui's suggestion that a Singapore court might have taken the affirmative step of allowing subrogation in a broader range of cases based on a principle of "secondary liability".

106 Second, as a matter of *principle*, I do not think Da Hui's arguments would have persuaded a Singapore court to accept "secondary liability" as an unjust factor justifying subrogation in the circumstances of Da Hui's case.

107 It is, of course, possible that new unjust factors may come to be recognised by the Singapore courts. In his oral submissions, counsel for Da Hui referred to *Esben Finance Ltd and others v Wong Hou-Lianq Neil* [2022] 1 SLR 136 ("*Esben*"), where the Court of Appeal recognised the concept

of "lack of consent", in an attenuated form, as an unjust factor in Singapore law. Counsel for Da Hui suggested that this supported Da Hui's position that "secondary liability", too, might have found favour with the Court of Appeal. However, while I agree that *Esben* is instructive as to how a hypothetical Court of Appeal might have approached the question of whether "secondary liability" should be recognised as an unjust factor in Singapore, I find that the reasoning adopted and the principles laid down in *Esben* instead support *SLB's* position that a hypothetical court in Singapore would *not* have found that there was an unjust factor to ground the Subrogation Claim.

108 In *Esben*, the Court of Appeal made clear that the incremental recognition of novel unjust factors in Singapore, and thus the expansion of the scope of unjust enrichment in Singapore law, is subject to two limits (see *Esben* at [240]–[252]):

> (a) First, a claim in unjust enrichment will generally not be available where there is an *existing alternative cause of action on the same facts*, and the courts will be slow to recognise a new unjust factor if (or to the extent that) it covers ground already traversed by a more established legal principle, so as to ensure that unjust enrichment does not encroach on *other established common law and equitable doctrines* without very good reason for doing so.
>
> (b) Second, the unjust factor must describe a transfer of property or value that is *unjust*. This requires, at the minimum, that there must generally be no *legal basis* which would justify the court declining to reverse the transfer of property or value in question. For example, in *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308, the existence of a *valid contract* for the sale of the

relevant shares and the making of the relevant payment to a third party precluded a claim in unjust enrichment against the third party to recover that payment, because permitting such a claim would "undermine the contract and the contractual allocation of risk" between the parties involved. In other words, the valid contract and contractual allocation of risk in that case justified the court declining to reverse the relevant transfer.

109 Both of these considerations weigh against the recognition of "secondary liability" as an unjust factor that would justify Da Hui's Subrogation Claim. Indeed, while *Esben* was not cited in *Da Shun*, these considerations featured in the Judge's reasoning that there was no unjust factor to ground An Wei's subrogation claim. In respect of the first limit, as noted at [100] above, the Judge observed that the "mere alleged factual inequities" of An Wei bearing Da Shun's share of the debt due to BofA were already addressed by the available *in personam* remedy of contribution (see *Da Shun* at [58]). In respect of the second limit, as noted at [101] above, the Judge emphasised that it was An Wei's "commercial decision" to enter into its loan agreement with BofA on its terms and to offer its vessel as cross-collateralised security for the loan, and that BofA's subsequent enforcement of its claim against Da Shun and An Wei's vessels for different and unequal sums was "entirely consistent with the risk allocation that An Wei had knowingly accepted" and with "the very bargain that An Wei entered into". There was "no shared assumption, expectation or intention" that An Wei would obtain, *over and above* any rights of contribution against Da Shun, any *security or proprietary benefit* over the *Sea Latitude* in the event that the sale proceeds of its own vessel were utilised to discharge BofA's debt (see *Da Shun* at [61]). The same considerations would have militated against allowing Da Hui's Subrogation Claim, which was premised on a materially similar factual matrix.

110 Indeed, although the Judge did not expressly consider the question of whether "secondary liability" ought to be recognised as an unjust factor, the Judge's reasoning in *Da Shun* expressly rejects the *premises* underlying the recognition of such an unjust factor (or, at least, an unjust factor in the form that Da Hui argues would have supported its Subrogation Claim). Based on the passages in *Mitchell & Watterson* at [6.07]–[6.11] that Da Hui relies on, the unjust factor of secondary liability would support a claim in unjust enrichment wherever a claimant has discharged a liability that was borne by both himself and the defendant (in circumstances where the creditor is entitled to recover in full from either the claimant or the defendant, but not both), to the extent that the burden of that liability should "properly" have been borne by the defendant.[51] But these are precisely the "mere alleged factual inequities" which the Judge held were insufficient to justify the granting of a proprietary and priority interest by way of subrogation (see *Da Shun* at [58]). Further, in so far as Da Hui relies on statements in the English texts to the effect that subrogation goes *hand in hand* with a personal claim for contribution, this premise was also rejected by the Judge's reasoning in *Da Shun* that – in order for a party to obtain a proprietary and priority interest *over and above* any personal rights of contribution – that party would have to "do more" and establish an unjust factor that would warrant departing from the allocation of risk that was accepted as part of the parties' bargain (see [100] and [109] above).

111 To put the point another way, returning to Lord Sumption's explanation of the law on equitable subrogation in *Lowick Rose*, the present case is not one where the parties' transaction pursuant to the Loan Agreement was *defective* because Da Hui had entered into it *expecting to obtain any proprietary or priority interest in the Vessels* in the event that BofA applied part of the sale

[51] CWS at para 101.

proceeds of the *Sea Equatorial* towards discharging An Rong's share of the debt due under the Loan Agreement, as BofA was entitled to do. In these circumstances, it is entirely unclear why Da Hui should be allowed to obtain such an interest via subrogation. Indeed, that would confer a greater benefit on Da Hui than what it had bargained for, which Lord Sumption cautioned subrogation could not be allowed to do (see [99] above).

112 While it is possible that a different court might take a different view, especially given that Da Hui's arguments on "secondary liability" as an unjust factor justifying subrogation engage questions that have not been settled in Singapore law, that does not prevent this court from determining whether Da Hui's position is plainly or obviously unsustainable based on the law as it stood at the time the Subrogation Claim would have been brought.

113 In this connection, counsel for SLB referred to *Ng Chee Tian and another v Ng Chee Pong and others* [2025] 3 SLR 235 ("*Ng Chee Tian*"), where the High Court rejected the argument that uncertainty in the relevant areas of the law of unjust enrichment was, by itself, a reason to allow the claim to proceed to trial instead of striking it out. The High Court accepted that the issues of law raised were "conceptually knotty", but held that there was little reason to leave them to trial because the merits of the legal arguments in that case were not anchored on any *factual* finding and so did not turn on what a trial court might make of the facts (see *Ng Chee Tian* at [82]). This applies with equal force in the present case, as the parties' arguments on the applicable unjust factor are purely *legal* arguments that do not depend on any factual findings.

114 The High Court went on to explain that, "when the legal hurdles appear insurmountable or contrary to the logic of past decisions, it does not make sense to allow the claims to proceed on the tenuous premise that it is always

theoretically possible (though highly implausible) that 'another High Court Judge can come to a different conclusion' to the issues at hand", especially since "many areas of law are never truly settled". Thus, even at the interlocutory stage, "[a] certain amount of judgment would invariably be needed for assessing whether the legal arguments possess a reasonable prospect for succeeding if the matter proceeds to trial" (see *Ng Chee Tian* at [85]).

115 The present case involves a somewhat different inquiry, as the question is not whether the Subrogation Claim *has* a reasonable prospect for succeeding at trial today, but rather whether the Subrogation Claim *had* a real or substantial chance of succeeding in the High Court exercising its admiralty jurisdiction or in the Court of Appeal, *in the earlier proceedings*, but for SLB's alleged breaches. In these circumstances, uncertainty in the relevant areas of law might be given greater weight in assessing the *chance* that Da Hui says it had and lost. But in order for Da Hui to have a legally sustainable claim against SLB today based on the loss of that chance, it must still show that that chance was *real or substantial*, and not merely speculative. In my view, having regard to the "logic of past decisions", and in particular the careful approach adopted in *Esben* to the recognition of new unjust factors and the persuasive force of the Judge's reasoning in *Da Shun*, the legal hurdles that Da Hui's Subrogation Claim would have faced appear to me to render the prospect of that claim succeeding quite speculative.

116 For these reasons, I am persuaded that it is plain and obvious that Da Hui had no real or substantial chance of succeeding on the Subrogation Claim in an admiralty action *in rem*. Even supposing, for Da Hui's benefit, that the possible unjust factor of "secondary liability" might have been raised on its behalf before the Judge (or another High Court judge) or before the Court of Appeal, or that the court might have considered the application of this possible

unjust factor on its own motion (which is itself highly speculative), I do not think Da Hui's arguments regarding "secondary liability" would have found favour.

117 For completeness, I briefly address the significance of s 2 of the Mercantile Law Amendment Act 1856 (2020 Rev Ed) ("MLAA") because it was mentioned in passing in the concluding paragraphs of Da Hui's written submissions as an alternative or additional basis upon which Da Hui could have acquired rights of subrogation.[52] The parties did not make any substantive submissions on the MLAA in SUM 1463, and I do not think reliance on s 2 of the MLAA would have provided Da Hui with a separate route to obtaining subrogation-based relief. As the Judge explained in *Da Hui (HC)* at [46], s 2 of the MLAA "essentially codified the common law rules on subrogation to extinguished security interests", and "this provision confers nothing more or less than what has long been available at common law". The Judge reiterated this in *Da Shun*, adding that s 2 of the MLAA "does not recalibrate the existing law or do away with any of the prerequisites for the remedy of subrogation under the common law", and in particular "does not … dispense with the requirement of proving an unjust factor" (see *Da Shun* at [80]). Accordingly, the absence of a recognised unjust factor would have been fatal to Da Hui's Subrogation Claim even if Da Hui sought to rely on s 2 of the MLAA.

118 This suffices for me to conclude that Da Hui did not have any real or substantial chance of obtaining subrogation-based relief in respect of the Balance Sale Proceeds, and this renders the Third Claim – which is premised on the assertion that SLB's alleged breaches *caused* it to lose such a chance – obviously unsustainable. However, as the parties also made extensive

52 CWS at para 245.

submissions on whether there was *any proprietary interest* to which Da Hui could have been subrogated and whether subrogation would have been refused on *policy grounds* at the material time, I deal with those issues next.

Proprietary interest

119 On the issue of whether there was any proprietary interest to which Da Hui could have been subrogated at the material time, SLB relies on the Judge's finding in *Da Hui (HC)* that there was, at the time of that decision, "*no proprietary interest* left to which Da Hui could succeed or be subrogated" [emphasis in original] (see *Da Hui (HC)* at [63]). This was, in the Judge's view, the "key difficulty" that stood in the way of Da Hui's subrogation prayer (see *Da Hui (HC)* at [57]). The Judge arrived at this conclusion for the following reasons:

(a) The Judge began by distinguishing between two kinds of securities: (i) securities that had been extinguished in a "technical sense" (and usually by operation of law) upon the *discharge of the secured debt*, and (ii) securities that had been *fully enforced* by the creditor. Subrogation was possible in the former situation as the court could, "by resort to an established legal fiction, treat the security as subsisting for the purposes of allowing the subrogee to succeed to it and, if need be, enforce it as against the principal debtor". However, the parties had not presented any authority for subrogation being allowed in the latter situation (see *Da Hui (HC)* at [43] and [58]).

(b) Approaching this question from first principles, the Judge held that a claimant could *not* be subrogated to security interests that had been "fully enforced and … therefore spent" (see *Da Hui (HC)* at [58]).

(c) The Judge reasoned that "the vice that the remedy [of subrogation] seeks to cure is the *unconscionability* of the defendant insisting on being restored to his collateral – or the defendant denying the claimant's entitlement to an interest in the collateral – in circumstances where the claimant had met the burden of discharging the defendant's liability to his creditor", and that underlying this was "the assumption that the defendant in fact possesses (or will in due course possess) a right or interest which he cannot in good conscience keep the claimant out of" (see *Da Hui (HC)* at [60] and [62]).

(d) Applying these principles in this case, there was "no question" of An Rong acting unconscionably in denying Da Hui any security interest in the Vessels, because An Rong's equities of redemption had been "completely extinguished" by the full enforcement of the mortgages over the Vessels and the passing of clean title to the Vessels to their respective buyers pursuant to their judicial sales. As An Rong "retained no residual interest whatsoever in the [V]essels thereafter, there was no question of An Rong regaining any securities unfairly" (see *Da Hui (HC)* at [63]).

(e) Conversely, it was plain that all of BofA's interests as mortgagee of the Vessels "had either been extinguished by operation of law, or merged into the admiralty *in rem* causes of action BofA possessed as mortgagee and the judgments BofA had obtained in ADM 92 and ADM 94" (see *Da Hui (HC)* at [63]). Thus, by the time OA 418 was filed, BofA had already *fully enforced and spent* the securities it had in the form of the mortgages over the Vessels (see *Da Hui (HC)* at [57]).

120 SLB also relies on the Judge's subsequent decision in *Da Shun*, which elaborated on and applied the reasoning summarised above. In *Da Shun* at [64], the Judge stated that he had denied the Subrogation Claim in *Da Hui (HC)* because "subrogation is unavailable when the mortgagee's security interest is spent as a result of the security itself being realised to discharge the primary debt". On the facts of *Da Shun*, the Judge held that the security held by BofA over the *Sea Latitude* had – like BofA's security over the Vessels – been spent and extinguished upon the *completion of the sale* of that mortgaged vessel and the *distribution of the sale proceeds to BofA*, and "the remedy of subrogation cannot operate to revive a security that has been spent and thereby extinguished" (see *Da Shun* at [69]–[72]). The Judge found it "immaterial" that the realisation of BofA's security in *Da Hui (HC)* had taken place through an admiralty arrest and the judicial sale of the Vessels, whereas the realisation of BofA's security in *Da Shun* had taken place through the sale of the *Sea Latitude* by Da Shun's liquidators; what mattered was that "BofA's secured debt was fully satisfied by liquidating *the mortgaged vessel* and converting it into cash through a court sanctioned process" [emphasis in original] (see *Da Shun* at [70]).

121 On this basis, SLB submits that BofA's security interests in the Vessels had been fully realised by the time any Subrogation Claim could have been pursued, because SLB only received a copy of the Loan Agreement and other relevant loan documents in or around March 2022, after both of the Vessels had been sold.[53]

122 As against this, Da Hui submits that the Judge erred in his decision and reasoning on this issue. Da Hui's detailed submissions on this point can be summarised as follows:

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53 DWS at paras 51(b)–51(c).

(a) Da Hui's equitable right to the remedy of subrogation, based on "secondary liability", arose by operation of law on 14 October 2020, this being the effective date of BofA's application of the sale proceeds from the *Sea Equatorial* in partial satisfaction of An Rong's share of the debt under the Loan Agreement.[54]

(b) This equitable security interest survived BofA's mortgage enforcement action from 23 August 2021.[55] There is authority for subrogation-based security interests being recognised even where a mortgagee has taken action to foreclose the mortgaged property – specifically, in *Gedye v Matson* (1858) 25 Beav 310, where the Master of the Rolls remarked that a surety who had paid off part of the mortgage was "entitled to stand in the place of the mortgagee", and that "[i]f the [mortgagee] were to foreclose the representatives of the mortgagor alone, he would not obtain a good title, for the surety might afterwards come and redeem".[56]

(c) From 14 October 2020 until the sale of the Vessels on 30 December 2021 and 10 February 2022, An Rong retained its equity of redemption in respect of the Vessels, which it could not in good conscience keep Da Hui out of.[57] Even after the sale of the Vessels, An Rong retained a residual interest in any surplus sale proceeds after prior statutory preferred and secured creditors were satisfied, which would render it unconscionable to deny Da Hui subrogation.[58]

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54 CWS at paras 101–136.

55 CWS at paras 137–139.

56 CWS at paras 140–144.

57 CWS at para 139.

58 CWS at paras 171–172.

(d) BofA's security interests as mortgagee of the Vessels survived the merger of its claims in ADM 92 and ADM 94 into the judgments it obtained on those admiralty actions in October 2021. These security interests also survived the judicial sale of the Vessels, because its rights *in rem* in the Vessels were transferred to the *sale proceeds* held in court, and remained subsisting and exigible against those sale proceeds until BofA's secured debts were fully discharged in October 2023. Da Hui could have been subrogated to BofA's security interests in those residual sale proceeds.[59]

(e) Da Hui could also have been subrogated to BofA's security interests *as general assignee* of the "earnings" of the Vessels under the deeds of assignment that were executed in connection with the Loan Agreement, on the basis that "earnings" can be interpreted as including the sale proceeds of the Vessels.[60]

123 For present purposes, it is not necessary for me to express a view on the merits of Da Hui's arguments on the correctness of the Judge's analysis. This is because, based on the Judge's reasoning in *Da Hui (HC)* and later *Da Shun*, the crucial point at which BofA's security was realised to discharge the debt under the Loan Agreement, and thus extinguished and spent, was the *completion of the sale* of the Vessels and BofA's receipt of *payment out of the sale proceeds* (see [120] above). Da Hui engaged SLB under the Retainer on or around 1 December 2021 (see [14] above); the Vessels were sold on or around 30 December 2021 and 10 February 2022 respectively (see [15] above); and BofA's claims arising out of the Loan Agreement were fully satisfied by

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59 CWS at paras 145–157.

60 CWS at paras 158–168.

payment out from the sale proceeds of the Vessels in October 2023 (see [24] above). It bears emphasis that SLB's alleged breaches, as pleaded by Da Hui, include SLB's failure to take the appropriate procedural steps *in a prompt and timely manner* – after being put on notice of Da Hui's potential claims against An Rong by 13 January 2022 – to commence admiralty actions *in rem* against the Vessels or their sale proceeds, and to preserve Da Hui's position in the interim (see [44]–[46] above). Even on the Judge's analysis, not all of the events which were held to extinguish BofA's security interest had occurred by the time SLB was allegedly put on notice of Da Hui's potential claims. In particular, at that time, the *Ocean Goby* had not yet been sold, and BofA's claims had not yet been fully satisfied from the sale proceeds. That being the case, I would not be prepared to find that this difficulty regarding the absence of a proprietary interest for subrogation would have arisen in the same way even if SLB had acted promptly.

124 I therefore would not have been persuaded that it was plain and obvious that Da Hui's Subrogation Claim had no real or substantial chance of success because of the Judge's finding that there was no proprietary interest left to which Da Hui could have been subrogated. That finding was made at a point in time when the relevant series of events that were held by the Judge to have extinguished BofA's security interest in the Vessels *had already occurred*. But for SLB's alleged breaches, however, those events would not necessarily have unfolded in the way that they did, and that finding would not necessarily have followed. This therefore would not provide a basis for striking out the Third Claim.

Policy reasons for refusing subrogation

125 For similar reasons, I do not think SLB's reliance on the policy reasons for refusing subrogation takes it very far. In *Da Hui (HC)*, the Judge held that another reason to disallow the Subrogation Claim was that "the state of affairs Da Hui sought to bring about could not have been achieved without unfairly prejudicing the other *in rem* creditors in ADM 92 and ADM 94" (see *Da Hui (HC)* at [67]). These policy considerations had two aspects:

(a) First, Da Hui was seeking to achieve a *legally implausible* outcome because, upon full repayment of BofA's outstanding debt from the sale proceeds of the Vessels, BofA "fell out of the pool of *in rem* claimants and hence ceased to have any priority to which Da Hui could succeed". If Da Hui's claim against An Rong had been accorded the priority it sought, "the net result would have been an *ex post* enlargement of the amount secured by the mortgages over the [Vessels] (*ie*, it would amount to the value of BofA's mortgage debt *plus* the value of Da Hui's claim in contribution)", and *BofA itself* "could not have possibly asserted such an enlarged right in ADM 92 and ADM 94" (see *Da Hui (HC)* at [65]).

(b) Second, it was *not fair* to allow Da Hui the advantages of subrogation in the circumstances, because it was "plain as day that Da Hui was attempting (very late in the day) to steal a march on other lower-ranking *in rem* claimants who were looking to recover their judgment debts" from the residual sale proceeds of the Vessels, such as PetroChina and SocGen. If Da Hui were given the priority accorded to mortgagees in the payment out of the sale proceeds from the vessels, that would have allowed it to "leapfrog over PetroChina and SocGen's lower-ranking claims as statutory lien claimants", and the fair distribution of an insolvent debtor's assets to its creditors was "a matter of high public policy" (see *Da Hui (HC)* at [64] and [66]).

126 However, if SLB had taken the appropriate procedural steps to assert the Subrogation Claim in an admiralty action *in rem* in a prompt and timely manner, these policy considerations – which both rested on *when* Da Hui sought to be subrogated to BofA's security interest and the state of affairs that prevailed at that time – may not have weighed against allowing subrogation in the same way or with the same force. This is especially so because An Rong entered into compulsory liquidation only on or around 4 July 2022 (see [16] above), several months after Da Hui pleads that SLB was put on notice of Da Hui's potential claims against An Rong (*ie*, on or before 13 January 2022). But for SLB's alleged breaches, the Subrogation Claim might have been brought at a time before BofA's debt had been fully repaid from the sale proceeds of the Vessels *and* before An Rong's liquidation.

127 Nevertheless, given my decision at [116] above that Da Hui would not have satisfied the threshold requirement of establishing a recognised unjust factor, neither my analysis of the proprietary interest issue nor my analysis of the policy considerations assists Da Hui. While the timing at which Da Hui's Subrogation Claim might have been brought (but for SLB's alleged breaches) may have affected the analysis of these latter two issues, it would have made no difference to the analysis of whether any unjust factor arose *at the time of the facts and circumstances giving rise to the Subrogation Claim*.

The equity of exoneration claim

128 I deal next with Da Hui's submission that it also had an arguable claim to a proprietary equitable charge over the Vessels based on the equity of exoneration. Da Hui argues that this equity of exoneration arose by operation of

law upon the mortgage of the *Sea Equatorial* in 2018, and entitled Da Hui to see to it that the burden of satisfying Tranches B and C of the Loan Agreement should fall primarily on the Vessels mortgaged by An Rong; that this equity of exoneration is given effect by the creation, by operation of law, of an equitable charge over the Vessels in Da Hui's favour, for the purposes of appropriating those assets towards satisfying Tranches B and C first; that this claim would have engaged s 3(1)(*c*) of the HCAJA (read with s 3(4)(*c*) of the HCAJA); and that this would have given Da Hui a real and substantial chance of obtaining an admiralty judgment *in rem* entitling it to be paid out of the Balance Sale Proceeds in priority to PetroChina and/or SocGen.[61]

129 Da Hui acknowledges that this claim has not been pleaded in its SOC, and was raised for the first time in its written submissions on SUM 1463. Nevertheless, Da Hui submits that I should consider the merits of this prospective claim in deciding this striking out application, and if satisfied that it raises a serious issue to be tried, grant Da Hui permission to amend its SOC to introduce this claim as an alternative basis – in addition to subrogation – on which Da Hui could have obtained relief entitling it to be paid out of the Balance Sale Proceeds in priority to PetroChina and/or SocGen.[62] During the hearing, counsel for Da Hui clarified that it was not only seeking such permission to amend as an alternative to striking out; rather, even if I was minded to dismiss the striking out application, Da Hui would still wish to seek permission to amend its SOC in this way.

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61 CWS at paras 176 and 181–201.

62 CWS at paras 178–179.

130 I decline to grant Da Hui permission to amend its SOC to plead this new claim based on the equity of exoneration in SUM 1463, and I decline to consider this new claim substantively, for two reasons.

131 First, the proposed amendments would introduce an entirely new substantive basis for Da Hui's claims in the Suit. As presently pleaded (as the Third Claim), Da Hui's case is that it lost a real and substantial chance of being paid out of the Balance Sale Proceeds in priority to PetroChina and/or SocGen *based on the Subrogation Claim*, by reason of being subrogated to *BofA's* security interests. The proposed amendments would additionally plead that Da Hui had a real and substantial chance of being paid in priority to PetroChina and/or SocGen based on a proprietary equitable charge over the Vessels that *Da Hui* would have been able to assert in its own right, arising from the equity of exoneration. This would effectively add a *new claim*. While that would not necessarily prevent the proposed amendments from being allowed in an application to amend the SOC, I do not think it would be procedurally appropriate for them to be considered and allowed in the present striking out application. If Da Hui wished to pursue this claim, it ought to have taken out a separate application to amend its SOC, which SLB would have had a full opportunity to respond to in an affidavit and written submissions.

132 Second, and more fundamentally, the proposed amendments do not assist Da Hui in resisting this striking out application. Order 9 r 16(1) of the ROC 2021 allows the court to order that any pleading be amended on the grounds on which it might alternatively be struck out, and the court should consider if the deficiency or defect in the pleadings (based on which the striking out application is made) could be cured by allowing an amendment instead of taking the drastic course of striking out (see *Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit and another appeal*

[2000] 1 SLR(R) 53 at [12]). In this case, however, the proposed amendments would *not* cure the problems with Da Hui's Third Claim. In essence, what Da Hui is seeking to argue is that the submissions it *now* makes regarding the equity of exoneration would have given it a real and substantial chance of being paid out of the Balance Sale Proceeds in priority to PetroChina and/or SocGen, in the earlier proceedings before the High Court and the Court of Appeal. But no claim based on the equity of exoneration was advanced in those earlier proceedings, and it is not Da Hui's presently pleaded case that SLB breached its obligations by failing to advance such a substantive claim or argument before the High Court or the Court of Appeal as an alternative basis on which Da Hui could have secured priority over PetroChina or SocGen (see [42] above).

133 At the hearing before me, counsel for Da Hui submitted that it is possible that the court (in particular, the Court of Appeal) might have considered the equity of exoneration on its own motion and invited the parties to address this new substantive issue in the earlier proceedings. But this is entirely speculative. Da Hui's pleaded case, even on the broader and fairer characterisation that I have set out at [44] above, is that *SLB's alleged breaches* caused it to suffer the various heads of loss. The new arguments that Da Hui now seeks to make regarding the equity of exoneration do not assist it in establishing the requisite causal link between *those* alleged breaches and the loss of the chance that forms the subject of its Third Claim.

134 I therefore say no more about the equity of exoneration.

Conclusion on Da Hui's First, Second and Third Claims

135 Drawing all of these threads together, the result of the analysis above is that it is *not* plain and obvious that Da Hui had no real or substantial chance of obtaining a judgment *in rem* based on its Contribution Claim that would have

entitled it to seek payment out of the Balance Sale Proceeds, but for SLB's alleged breaches. Whether Da Hui had only a *real or substantial chance* of receiving this payment (so as to support the Second Claim) or *would* have received this payment on a balance of probabilities (so as to support the First Claim) is a matter for determination at trial, as part of the assessment of the quantum of damage that SLB should be held liable for. For present purposes, I am not persuaded that the First and Second Claims should be struck out.

136 However, in my view, Da Hui did *not* have a real or substantial chance of being paid out of the Balance Sale Proceeds in priority to PetroChina and/or SocGen based on its Subrogation Claim. Consequently, SLB's alleged breaches – even if proved – cannot be said to have caused it to *lose* any such chance. I therefore strike out para 58 of Da Hui's SOC, which pleads the Third Claim, on the ground that it is plainly or obviously unsustainable. I do not strike out the other paragraphs of Da Hui's SOC which plead how the Subrogation Claim was in fact advanced by SLB (on Da Hui's behalf) in the earlier proceedings, as well as the Judge's and the Court of Appeal's treatment of the Subrogation Claim, as those facts provide relevant background to the rest of Da Hui's claims.

Whether Da Hui's Fourth and Fifth Claims should be struck out

137 I now consider whether Da Hui's Fourth and Fifth Claims are plainly or obviously unsustainable. In essence, these claims seek the costs and expenses incurred by Da Hui in: (a) pursuing the procedural strategy that centred around OA 418 and which culminated in CA 62 (the Fourth Claim); and (b) mitigating the effects of SLB's alleged breaches by filing further actions and applications after the dismissal of CA 62 (the Fifth Claim).

138 SLB did not set out its arguments for striking out the Fourth and Fifth Claims in its supporting affidavit. In its written and oral submissions, however,

SLB contends that Da Hui has failed to establish causation in respect of these claims. SLB argues that:

(a) at the time it was advising Da Hui, the Contribution and Subrogation Claims "involved novel issues of law which were far from settled in Singapore", but it is now clear that these costs and expenses *would have been incurred in any event*, because Da Hui's Contribution and Subrogation Claims would have failed even if they had been brought in an admiralty action *in rem*;[63]

(b) it is insufficient for Da Hui to plead that SLB did not procure its desired *result*, without stating *how* the steps or process adopted by SLB were deficient; and

(c) some or all of the specific heads of costs and expenses pleaded in the Fifth Claim were not attributable to SLB, which was *no longer acting for Da Hui* by the time these costs were incurred.

139 For the reasons explained at [55] above, I give SLB's arguments on the Fourth and Fifth Claims little weight. Even engaging with these arguments on their merits, however, I am unable to accept them.

140 On the assumption that SLB did breach the Retainer and its duty of care as Da Hui alleges (which is not challenged by SLB for the purposes of this striking out application), I see no reason why Da Hui's claims that those breaches caused it to incur wasted costs in pursuing a procedural strategy that did not and *could not* achieve its desired outcomes (*ie*, the Fourth Claim), and

63 DWS at para 57.

in mitigating the effects of those breaches (*ie*, the Fifth Claim), should be regarded as plainly or obviously unsustainable.

141 If indeed SLB breached its duties by taking an approach that was fundamentally procedurally defective, and Da Hui wasted substantial costs and expenses in pursuing this course of action, Da Hui's claim for compensation for those losses cannot be said to be legally or factually unsustainable. For the reasons explained earlier, I do not agree with SLB that Da Hui's *Contribution Claim* would have failed in any event. More fundamentally, I do not think it assists SLB to argue that Da Hui's Contribution and Subrogation Claims were always doomed to fail on their merits, because Da Hui's case is that these costs and expenses were wasted precisely because they were incurred by SLB's pursuit of proceedings that were incapable of achieving Da Hui's objectives of asserting its claim to the Balance Sale Proceeds. I also do not agree with the suggestion that Da Hui has merely pleaded that SLB did not procure its desired result, without stating *how* the steps or process adopted by SLB were deficient. As explained at [32(a)] and [44] above, Da Hui's SOC clearly pleads the various breaches allegedly committed by SLB.

142 SLB's submission that the Contribution and Subrogation Claims involved novel and unsettled issues of law at the time it was advising Da Hui[64] does not assist it in challenging causation either. While I accept that it was unclear whether Da Hui *would in fact have* been able to invoke the High Court's admiralty jurisdiction in respect of the Contribution Claim (and this remains unclear because, as matters transpired, there was never any substantive determination of this issue), and the legal principles applicable to the proprietary interest and policy considerations engaged by Da Hui's Subrogation Claim may

[64] DWS at para 57.

have been unclear before the Judge's decision in *Da Hui (HC)*, the need to identify a recognised unjust factor to support a claim for a remedy based on unjust enrichment is well established in Singapore law, and that is the basis on which I have found that Da Hui had no real or substantial chance of succeeding on the Subrogation Claim in the earlier proceedings.

143 As for SLB's argument regarding the Fifth Claim, I do not think this provides any basis for holding that the Fifth Claim is plainly or obviously unsustainable at this juncture. Da Hui's pleaded case is that the costs that form the subject of the Fifth Claim were incurred as a result of the reasonable steps that it took to *mitigate* the effects of SLB's breaches.[65] This assertion does not depend on *SLB* having been Da Hui's counsel at the time these steps were taken and these costs were incurred.

144 I therefore decline to strike out the Fourth and Fifth Claims. For the avoidance of doubt, I say nothing about whether each and every head of wasted costs and expenses claimed by Da Hui under the Fourth and Fifth Claims ultimately ought to be recoverable – this will depend on, among other things, findings made at trial on the specific heads of costs and expenses that would have been incurred even if SLB had taken the correct procedural steps in a prompt and timely manner; whether and to what extent the steps taken by Da Hui after the dismissal of CA 62 were indeed reasonable mitigation of SLB's alleged breaches; and the effect of any independent advice Da Hui received from its subsequent counsel who replaced SLB. For present purposes, it suffices for me to conclude that I do not think the Fourth and Fifth Claims as framed are plainly or obviously unsustainable based on the grounds put forward by SLB, and I accordingly decline to strike them out.

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65 SOC at paras 37 and 60.

Nominal damages for breach of contract

145 Before moving on from SLB's striking out application, I consider whether, even if Da Hui is unable to establish the requisite causal link between SLB's alleged breaches and the losses that form the subject of any or all of the First to Fifth Claims, its contractual claim for breach of the Retainer would still enable it to obtain *nominal damages for breach of contract*, and therefore should not be struck out on that ground. In this regard, Da Hui submits that causation of substantial loss goes only to the *measure of damages* for breach of contract, whereas it accepts that causation of damage goes towards establishing *liability* for the purposes of its distinct claim in the tort of negligence.[66] SLB, on the other hand, submits that the prospect of Da Hui obtaining merely *nominal* damages would offer no reason to refuse to strike out its claims.

146 Given that I have declined to strike out the First, Second, Fourth and Fifth Claims for the reasons explained earlier, this question does not directly arise. Nevertheless, it is in my view useful to clarify the position.

147 A distinction must be drawn here between the *cause of action* on which Da Hui relies and the *relief or remedy* that Da Hui seeks. As explained by the Court of Appeal in *Multistar Holdings Ltd v Geocon Piling & Engineering Pte Ltd* [2016] 2 SLR 1 ("*Multistar*"), a cause of action is "the essential factual material that supports a claim", as opposed to "the relief or remedy sought by the claimant" (see *Multistar* at [34]–[35]). The First to Fifth Claims, as described at [32(c)] above, are statements of the *relief or remedies* sought by Da Hui – namely, the damages for the loss of the value of the payment Da Hui would have received from the Balance Sale Proceeds or of the chance of

66 CWS at para 218.

receiving that payment; for the loss of the chance to be paid out of the Balance Sale Proceeds in priority to PetroChina and/or SocGen; and for the wasted costs and expenses Da Hui incurred. The *causes of action* on which Da Hui relies are breach of contract (for SLB's alleged breach of the Retainer) and the tort of negligence (for SLB's alleged breach of its duty of care to Da Hui).

148 As is well established, breaches of contract are actionable even without proof of damage; but if the claimant fails to prove either the fact of damage or the quantum of its loss resulting from the breach, only *nominal* (as opposed to substantial) damages may be awarded: see *Youprint Productions Pte Ltd v Mak Sook Ling* [2023] 3 SLR 1130 ("*Youprint*") at [5]. Thus, even if any or all of Da Hui's First to Fifth Claims are struck out on the ground that those losses were not caused by SLB's alleged breaches of the Retainer, this does not render Da Hui's claim against SLB for *breach of contract* legally or factually unsustainable. If it is shown that SLB breached an express or implied term of the Retainer, Da Hui would be able to recover nominal damages for breach of contract. This would be distinct from the substantial damages sought in the First to Fifth Claims.

149 Counsel for SLB referred me to para 21/3/4 of *Singapore Civil Procedure 2026* (Cavinder Bull SC gen ed) (Sweet & Maxwell, 2026), which states that a claimant in an action for breach of contract who recovers only nominal damages is not to be regarded as a successful claimant. But that observation was made in the context of explaining the meaning of a "successful party" for the purposes of ordering costs under O 21 r 3(2) of the ROC 2021. As the decision in *Youprint* itself makes clear, where a claimant fails to prove loss or damage in a claim for breach of contract, the claim should be allowed with an award of nominal damages, instead of being dismissed outright: see *Youprint* at [4]. It would therefore be incorrect to strike out Da Hui's contractual

claim for breach of the Retainer on the basis that it would only result in the award of nominal damages.

150 To be clear, this does not mean that the *Third Claim*, which seeks *substantial* damages, should not be struck out merely because nominal damages for breach of contract may still be available. The point is only that Da Hui's broader contractual cause of action for breach of the Retainer would not be struck out merely because causation of one particular head of substantial loss is not proved.

Whether SLB should be granted an extension of time to file its Defence

151 The foregoing analysis deals with SLB's application to strike out Da Hui's action against it in the Suit. As I have allowed that application only in part, I now consider SLB's application for an extension of time to file its Defence.

152 It is well established that, in considering whether to grant an extension of time under O 3 r 4(1) of the ROC 2021, the court will consider the length of the delay, the reason for the delay, the merits of what the requesting party is seeking the extension of time to do, and the question of prejudice: see *Aathar Ah Kong Andrew v OUE Lippo Healthcare Ltd* [2021] SGCA 48 at [24]–[25]. I will leave the third of these considerations to one side as it would be premature to assess the merits of SLB's as-yet-unfiled Defence.

153 First, the length of the delay in this case is, in my view, a neutral factor. SLB's Defence was originally due on 13 March 2026, but SLB was granted extensions of time – either by consent or (in part) by the RCC AR – until 13 May 2026 (see [33] above). SUM 1463, which contained SLB's application for a further extension of time, was filed on that day.

154 Second, the reasons offered by SLB for requiring more time to file its Defence are not particularly persuasive. SLB says that it required time: (a) to pursue the striking out application, and that it "would not have been efficient or sensible" for it to prepare a substantive Defence in parallel as this "would have led to unnecessary costs and duplication of work" if the striking out application had been allowed in full; and (b) to consider the merits of an out-of-court resolution of the parties' dispute.[67] But these are all matters well within SLB's control. As Da Hui submits, SLB appears to have made a "unilateral strategic decision" to "deprioritise compliance with its procedural obligations", and to instead prioritise its pursuit of a striking out application that it was under no deadline or obligation to file, notwithstanding that it had already been granted two extensions of time for the express purpose of preparing its Defence.[68]

155 Turning to the question of prejudice, Da Hui submits that the extension of time sought by SLB could defer the filing of the Defence by many months, during which the conduct of the entire proceedings would be held back, and this would be prejudicial as Da Hui's liquidator has a duty to realise value for its creditors with all practicable speed.[69] However, while I accept that Da Hui may suffer some prejudice as a result of SLB's delayed filing of its Defence, I do not think any such prejudice would be substantial enough to weigh against granting any extension of time.

156 In addition to these considerations, SLB's conduct in relation to the filing of its Defence left something to be desired.

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67 SLB's Supporting Affidavit at para 28.

68 CWS at paras 239–240.

69 CWS at para 243.

(a) First, the present extension of time application essentially seeks a second bite of the cherry, in circumstances where SLB's third extension of time request has already been substantially refused by the RCC AR, and SLB has not appealed against that decision.[70] Counsel for SLB sought to explain that an appeal against the RCC AR's decision would not have been appropriate because the basis on which that earlier request was made was to allow the parties an opportunity to explore an amicable resolution of the matter,[71] rather than to allow any intended or pending striking out application to be determined. That, however, simply raises the question of why SLB's prospective striking out application was not also brought to the RCC AR's attention when its third extension of time request was made on 9 May 2026 – four days before SUM 1463 was filed on 13 May 2026.

(b) Second, given that the extension of time application is distinct from the striking out application, it ought to have been filed in a separate summons, for which SLB should have obtained the court's prior permission under O 9 r 9(7) of the ROC 2021.[72] Counsel for SLB acknowledged this at the hearing, but cited the exigencies of time that SLB faced on the deadline for filing its Defence.

157 Based on this conduct by SLB, Da Hui submitted that the present extension of time application was an abuse of process.[73] While I would not go so far as to describe SLB's conduct as an abuse of process, I put on record that these aspects of SLB's conduct were unsatisfactory.

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70 CWS at paras 225–231 and 234–235.

71 Other Hearing Related Request filed by SLB on 9 May 2026.

72 CWS at paras 233 and 236.

73 CWS at para 237.

158 Having said that, I return to the general power to grant extensions of time in O 3 r 4(1) and the Ideals set out in O 3 r 1(2) of the ROC 2021, particularly that of "fair and practical results suited to the needs of the parties". While there are considerations weighing against the further extension of time in this case, the most significant consideration, in my view, is that no practical or useful purpose would be served by not allowing a further extension of time at this juncture, and this may instead produce unsatisfactory outcomes. Refusing the extension of time would mean that SLB would be out of time to file its Defence and Da Hui would appear to be entitled to apply for judgment to be entered in default of defence, but it is clear from SLB's involvement in the Suit to date that it wishes to substantively contest the claims in the SOC by filing a Defence. Meanwhile, making no order on the extension of time prayer in SUM 1463, and directing SLB to instead seek permission from the RCC AR to file a separate summons for an extension of time to file its Defence, would result in yet more time, costs, and judicial resources being expended to deal with this issue. Given that both parties have had an opportunity to adduce any evidence they might wish to rely on in respect of the extension of time prayer in their affidavits filed in SUM 1463, and have made their respective submissions on whether or not the extension should be granted together with their arguments on striking out, it would be sensible for me to put this issue to rest.

159 I do so by granting SLB an extension of time to file its Defence until seven days after either: (a) if an appeal is filed against my decision on SLB's striking out application, the date on which that appeal is determined, withdrawn or otherwise disposed of (not including any outstanding issue of costs); or (b) if no appeal is filed, the date on which the time for filing any appeal against my decision expires. In my view, the wording of the order sought by SLB – for an extension of time until 21 days "after the final disposal of the present application, including any appeal(s)" – is not sufficiently precise. Having said

that, I accept that it would be sensible in this case for the deadline for SLB to file its Defence to be extended until after the striking out application has been disposed of in either of the two ways outlined above, so that its Defence can respond to the claims that remain standing after this process. This would avoid the need for SLB to take out an application to amend the Defence in view of any further changes to the scope of Da Hui's pleaded SOC that might arise from an appeal against my decision. However, on account of the fact that SLB has now had several months to consider its position on the Suit since its Defence was originally due to be filed (on 13 March 2026), I extend the time for the filing of the Defence only until *seven* days after either of the two events identified at the start of this paragraph, instead of 21 days as prayed for by SLB. This, in my judgment, strikes a fair balance between the interests of both parties.

Conclusion

160 In summary, I allow SLB's striking out application only in part, and strike out para 58 of Da Hui's SOC on the ground that the Third Claim is obviously unsustainable. Prayer 1 of SUM 1463 is thus allowed only to the extent that para 58 of the SOC is struck out, and is otherwise dismissed. Prayer 2 is also allowed only in part – I grant SLB an extension of time to file its Defence, but only until seven days after either (a) if an appeal is filed against my decision on SLB's striking out application, the date on which that appeal is determined, withdrawn or otherwise disposed of (not including any outstanding issue of costs); or (b) if no appeal is filed, the date on which the time for filing any appeal against my decision expires.

161 The parties will have two weeks after the date of this decision (*ie*, until 17 August 2026) to attempt to reach an agreement on the costs of and occasioned by SUM 1463. If the parties are unable to reach an agreement, counsel are to

write in jointly by 18 August 2026 to update the court and to seek directions on the filing of short written submissions on costs.

162 For the moment, it remains for me to thank both parties' counsel – in particular, Mr Joseph Lee and Mr Benjamin Ow who made oral arguments on behalf of SLB, and Mr Suang Wijaya who made oral arguments on behalf of Da Hui – for their submissions. While not every line of argument pursued was ultimately determinative, the range of issues raised did assist with the overall determination of SUM 1463. I acknowledge both counsel's efforts to advance their respective clients' cases, and their candour in accepting (where appropriate) the limits on how far their arguments could take them. This was helpful and commendable.

Wee Yen Jean
Assistant Registrar

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