

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

**[2026] SGHCR 41**

Originating Claim No 827 of 2023 (Summons No 2382 of 2026)

Between

Brocade Investment Pte Ltd

*... Claimant*

And

- (1) Nishiki Holdings Pte Ltd
- (2) Nishiki Real Estate Pte Ltd
- (3) Nishiki International  
Investments Pte Ltd
- (4) Sankaty European Investments  
Sarl

*... Defendants*

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**GROUND OF DECISION**

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[Civil Procedure — Parties — Joinder — Adding and removing of parties]  
[Civil Procedure — Parties — Joinder — Setting aside of addition order]

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**Brocade Investment Pte Ltd**  
**v**  
**Nishiki Holdings Pte Ltd and others**

**[2026] SGHCR 41**

General Division of the High Court — Originating Claim No 827 of 2023  
(Summons No 2382 of 2026)  
AR Chong Ee Hsiun  
31 August, 14 September 2026

5 October 2026

**AR Chong Ee Hsiun:**

**Introduction**

1 HC/SUM 2382/2026 (“SUM 2382”) required consideration of when a court could conscript an unwilling foreigner into proceedings it would rather observe from a safe distance. This summons concerned an application by a foreign-incorporated defendant to set aside the order joining it as a defendant to the main action, and the order granting permission to serve it with cause papers abroad. This defendant did not ask to be brought into this litigation. It had, by its account, already drawn a line under its involvement in the underlying dispute by entering into a settlement agreement with the other defendants who were being sued in the main action. Yet it found itself added as a defendant – without having been heard – on the basis that its presence might be useful to the claimant in proving its case against the other defendants.

2 In rendering judgment, I had considered two interesting issues concerning adding and removing parties under O 9 r 10(1) of the Rules of Court 2021. Firstly, I considered the interaction between the non-discretionary and discretionary elements of the joinder/addition of parties analysis where O 9 r 10(1) was utilised to add parties on grounds similar to those available under O 15 r 6(2)(b) of the Rules of Court (2014 Rev Ed) (the “Rules of Court 2014”). Secondly, I considered whether, and to what extent, the added party’s desire to be added to proceedings or opposition towards addition mattered in relation to an application to set aside an addition/joinder order.

### **Background**

3 SUM 2382 in HC/OC 827/2023 (“OC 827”) was an application by the fourth defendant in OC 827 (the “Fourth Defendant”) to set aside:

(a) paragraph (a) of the Order of Court dated 24 March 2026 (HC/ORC 1914/2026) granting the claimant in OC 827 (the “Claimant”) liberty to add the Fourth Defendant, Sankaty European Investments Sarl, as a defendant in OC 827;

(b) paragraph (b) of HC/ORC 1914/2026 granting the Claimant leave to amend its originating claim accordingly to effect said joinder;

(c) paragraph (2) of the Order of Court dated 27 March 2026 (HC/ORC 1953/2026) granting leave to the Claimant to effect service of the cause papers for OC 827 on the Fourth Defendant abroad; and

(d) paragraph (1) of HC/ORC 1953/2026 granting leave to the Claimant to extend the validity of the originating claim in OC 827.<sup>1</sup>

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<sup>1</sup> Summons for Setting Aside Service of an Originating Process (HC/SUM 2382/2026).

4 The Claimant, Brocade Investment Pte Ltd, was a company incorporated in Singapore.<sup>2</sup> The first to third defendants in OC 827 were Singapore-incorporated companies respectively named Nishiki Holdings Pte Ltd, Nishiki Real Estate Pte Ltd and Nishiki International Investments Pte Ltd (collectively, the “Nishiki Entities”).<sup>3</sup> The Fourth Defendant was a company incorporated in Luxembourg.<sup>4</sup>

5 Sometime in 2016, the Claimant, the Fourth Defendant and the Nishiki Entities entered into a series of financing agreements relating to the purchase of nine Osaka medical properties (the “Transaction”).<sup>5</sup> Disputes thereafter arose between the parties.

6 On 18 October 2019, the Fourth Defendant appointed receivers over some of the Nishiki Entities’ assets (see *Nishiki Holdings Pte Ltd and others v Sankaty European Investments Sarl and others* [2021] SGHC 286 at [19]), and on 23 January 2020, the Nishiki Entities commenced HC/S 84/2020 (“Suit 84”) against the Fourth Defendant and the receivers appointed by the Fourth Defendant.<sup>6</sup> On 20 December 2021, the General Division of the High Court delivered judgment in Suit 84, and, on 22 December 2021 and 18 January 2022, the Fourth Defendant and the Nishiki Entities filed appeals against parts of the

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<sup>2</sup> Statement of Claim (Amendment No. 1) dated 9 April 2026 (“SOC Am 1”) at para 1.

<sup>3</sup> 1st, 2nd, and 3rd Defendants’ Defence & Counterclaim (Amendment No 3) dated 16 June 2026 (“1D-3D DACC Am 3”) at paras 2, 3(a), 4(a).

<sup>4</sup> 4th Defendant’s Defence (Jurisdiction) dated 4 June 2026 (“4D Defence”) at para 4.

<sup>5</sup> Affidavit of Scott Garfield dated 30 July 2026 (“Garfield-2026 07 30”) at paras 5-7; Affidavit of Arihiro Kanda dated 14 August 2026 (“Arihiro-2026 08 14”) at para 17; Claimant’s Written Submissions dated 25 August 2026 (“CWS”) at paras 9-10 and footnotes 11-23.

<sup>6</sup> Writ of Summons and Statement of Claim filed on 23 January 2020 in HC/S 84/2020.

judgment in Suit 84.<sup>7</sup> These appeals were withdrawn after the parties attended mediation and arrived at a settlement, with the terms and conditions of the settlement set out in a settlement agreement dated 10 May 2022 (the “Settlement Agreement”).<sup>8</sup>

7 On 29 November 2023, the Claimant commenced OC 827 against the Nishiki Entities.<sup>9</sup> In very broad terms, the Claimant pleaded that it was entitled to certain moneys payable by the Nishiki Entities to the Claimant, and prayed, *inter alia*, for various declarations to be made against the Nishiki Entities, for accounting of moneys, and for the Nishiki Entities to pay to the Claimant all sums found to be due from the Nishiki Entities to the Claimant on the taking of the account.<sup>10</sup> The Nishiki Entities filed their initial defence and counterclaim on 2 February 2024. According to the Claimant, at this stage of proceedings, the Nishiki Entities’ defence was that certain agreements, which undergirded the Claimant’s claimed entitlement to be paid by the Nishiki Entities, were invalid.<sup>11</sup> The Claimant took the position that by November 2025, the Nishiki Entities had introduced an alternative defence that made the construction of a loan agreement dated 28 June 2016 (the “Loan Agreement”) determinative of the Claimant’s entitlement to be paid by the Nishiki Entities.<sup>12</sup> The parties to this Loan Agreement were the Nishiki Entities and the Fourth Defendant.<sup>13</sup> Hence, on 2 March 2026, the Claimant took out HC/SUM 662/2026 (“SUM 662”) seeking,

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<sup>7</sup> Garfield-2026 07 30 at paras 10-11.

<sup>8</sup> Garfield-2026 07 30 at para 12 and Tab 7.

<sup>9</sup> Originating Claim filed on 29 November 2023 in HC/OC 827/2023.

<sup>10</sup> SOC Am 1 at pp 55-57.

<sup>11</sup> CWS at para 88.

<sup>12</sup> CWS at para 88.

<sup>13</sup> Garfield-2026 07 30 at para 6 and Tab 4.

*inter alia*, the addition of the Fourth Defendant as a defendant in OC 827 and the making of consequential amendments to the originating claim.<sup>14</sup> On 24 March 2026, an assistant registrar granted these prayers.<sup>15</sup> In his oral judgment delivered on 24 March 2026, this assistant registrar stated that he was satisfied that the Fourth Defendant possessed a legal interest in the subject matter of OC 827 (*viz*, the validity, effect and construction of the Loan Agreement).<sup>16</sup> The assistant registrar noted that there was an overlap between the issues involving the Claimant and the Nishiki Entities, and the issues as between the Nishiki Entities and the Fourth Defendant. The assistant registrar held that the joinder application was not brought with undue delay, nor was there any prejudice to the Nishiki Entities caused by the adding of the Fourth Defendant to OC 827.<sup>17</sup> The assistant registrar concluded as such because, in his view, the application to add the Fourth Defendant had been occasioned by the Nishiki Entities' own then-recent amendment to their pleadings which put questions of the Loan Agreement's validity, effect and construction in issue.<sup>18</sup> Crucially, I note that this assistant registrar hearing SUM 662 did not have the benefit of hearing from the Fourth Defendant before making his decision, because the only parties to SUM 662 were the Claimant and the Nishiki Entities.

8 As the Fourth Defendant was a Luxembourg-incorporated company with a Luxembourg address, the Claimant filed HC/SUM 934/2026 (a summons for service of documents out of Singapore, with a related prayer to extend the validity of the originating claim in OC 827 to facilitate service out) on 26 March

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<sup>14</sup> HC/SUM 662/2026.

<sup>15</sup> HC/ORC 1914/2026.

<sup>16</sup> Oral Judgment for HC/SUM 662/2026 delivered on 24 March 2026.

<sup>17</sup> Oral Judgment for HC/SUM 662/2026 delivered on 24 March 2026.

<sup>18</sup> Oral Judgment for HC/SUM 662/2026 delivered on 24 March 2026.

2026. Permission to serve the cause papers out of Singapore on the Fourth Defendant was granted on 27 March 2026, along with permission to extend the validity of the originating claim in OC 827 for four months.<sup>19</sup> On 30 April 2026, the cause papers in OC 827 were served on the Fourth Defendant in Luxembourg.<sup>20</sup> Thereafter, on 4 June 2026, the Fourth Defendant filed a defence challenging the jurisdiction of the Singapore courts.<sup>21</sup> On 31 July 2026, the Fourth Defendant filed SUM 2382 seeking, *inter alia*, to set aside the order granting the Claimant permission to add the Fourth Defendant as a defendant in OC 827.

9 I heard parties on SUM 2382 on 31 August 2026 and delivered my judgment on 14 September 2026.

## **Parties' cases**

### ***The Fourth Defendant's case***

10 The central thrust of the Fourth Defendant's case for SUM 2382 was that it was not "just and convenient" under O 9 r 10 of the Rules of Court 2021 to join the Fourth Defendant to OC 827.<sup>22</sup>

11 The Fourth Defendant relied on the Settlement Agreement between it, on the one hand, and, on the other hand, the Nishiki Entities, to argue that there had been a full and final settlement, release and discharge of claims and liabilities between the Fourth Defendant and the Nishiki Entities which were

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<sup>19</sup> HC/ORC 1953/2026.

<sup>20</sup> Garfield-2026 07 30 at para 17; Arihiro-2026 08 14 at para 7.

<sup>21</sup> Garfield-2026 07 30 at para 18; Arihiro-2026 08 14 at para 8.

<sup>22</sup> 4th Defendant's Written Submissions dated 25 August 2026 ("4DWS") at para 7.

relevant to OC 827, such that there was no subsisting right, obligation or liability of the Fourth Defendant which could be affected by a determination in OC 827.<sup>23</sup> Moreover, the Fourth Defendant pointed out that the Claimant was not seeking substantive relief against the Fourth Defendant in OC 827, nor had the Nishiki Entities brought any claim against the Fourth Defendant, nor did the Fourth Defendant take any position on the merits of the other parties' arguments in OC 827.<sup>24</sup> Fundamentally, the Fourth Defendant took the position that there was no present question or issue to be decided by the court between the Fourth Defendant and any party to OC 827.<sup>25</sup>

12 The Fourth Defendant also argued that no order in OC 827 required its presence to be effective or enforceable.<sup>26</sup> While its presence in OC 827 might be helpful for the Claimant in terms of the evidence that the Fourth Defendant could provide, the Fourth Defendant argued that the Claimant's need for evidence did not satisfy the test for joinder, and evidence could be gotten through procedural mechanisms available against non-parties.<sup>27</sup> The Fourth Defendant submitted that the Claimant's reference in its submissions to the Fourth Defendant's historical conduct (*ie*, its past actions in its capacity as lender under the Loan Agreement), understanding (*ie*, its interpretation or appreciation of the Loan Agreement's terms) and alleged elections (*ie*, choices or decisions that the Fourth Defendant was said to have made under the Loan Agreement, such as whether it exercised or waived certain rights or options available to it as lender) was insufficient to establish a live question between the

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<sup>23</sup> 4DWS at paras 4-5, 34-36, 42-43, 53.

<sup>24</sup> 4DWS at paras 5, 14, 28(b), 44.

<sup>25</sup> 4DWS at paras 28(a), 45.

<sup>26</sup> 4DWS at para 28(b), 39, 46, 60-63.

<sup>27</sup> 4DWS at paras 28(c), 40, 57, 64, 69, 71-72.

Fourth Defendant and any existing party to OC 827 that was just and convenient to determine in the action.<sup>28</sup>

13 The Fourth Defendant submitted that the balance of justice pointed against maintaining it as a defendant as joinder of the Fourth Defendant had no procedural utility, joinder was disproportionately prejudicial to the Fourth Defendant as a Luxembourg entity that had already settled its disputes with the Nishiki Entities, there were appropriate alternative evidential procedures available for the Claimant to get the evidence it needed without joining the Fourth Defendant, and this court now had the benefit of reading the Settlement Agreement which was not before the court which granted the joinder order.<sup>29</sup>

14 The Fourth Defendant further submitted that if the order for joinder was set aside, the jurisdictional basis for the order to serve cause papers abroad on the Fourth Defendant would also fall away, and so that order ought to be set aside too.<sup>30</sup>

### ***Claimant's case***

15 The Claimant argued that SUM 2382 should be dismissed with costs.<sup>31</sup>

16 The Claimant took the position that the Fourth Defendant's rights against, or liabilities to, parties in OC 827 in respect of the subject matter of the action would be directly affected by orders made in the action.<sup>32</sup> The Claimant

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<sup>28</sup> 4DWS at paras 37, 52.

<sup>29</sup> 4DWS at para 73.

<sup>30</sup> 4DWS at paras 28(d), 75-82.

<sup>31</sup> CWS at para 2.

<sup>32</sup> CWS at para 8.

submitted that the Fourth Defendant's joinder to OC 827 would bind the Fourth Defendant to the court's findings, that joinder reduced the risk of inconsistent findings, that joinder ensured that the Fourth Defendant had an opportunity to be heard as its rights might be affected, and that joinder promoted efficiency by closing off later challenges and reducing wasteful duplicative proceedings.<sup>33</sup> According to the Claimant, the Fourth Defendant had a legal contractual interest in the Loan Agreement through which the Fourth Defendant provided financing to the Nishiki Entities.<sup>34</sup> The Claimant claimed that its legal entitlements arose under certain contractual instruments which incorporated definitions, triggers and payment mechanics from the Loan Agreement.<sup>35</sup> The Claimant submitted that joining the Fourth Defendant to OC 827 ensured that the court was not asked to adjudicate upon a contract in circumstances where a contracting party whose conduct was in issue was absent and unbound by the result.<sup>36</sup> The Claimant submitted that the Fourth Defendant's actions at material points in the history of the parties' dealings were relevant to inquiries relating to preclusion and/or estoppel, which made the Fourth Defendant's conduct and intentions at certain material times relevant to OC 827.<sup>37</sup> The Claimant insisted that it needed the Fourth Defendant to participate in OC 827 so that its account could be received by the court and tested.<sup>38</sup> Ultimately, the Claimant contended that the financial dealings between the Fourth Defendant, the Claimant and the Nishiki Entities related to the operation of the Loan Agreement to which the Fourth Defendant was a party, the legal effect of acts that the Fourth Defendant

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<sup>33</sup> CWS at paras 8, 66, 68, 72, 81.

<sup>34</sup> CWS at para 9.

<sup>35</sup> CWS at paras 10, 11.

<sup>36</sup> CWS at para 13.

<sup>37</sup> CWS at para 17.

<sup>38</sup> CWS at paras 18-19.

performed, and the characterisation of conduct that only the Fourth Defendant could speak to.<sup>39</sup>

17 The Claimant contended that, based on the pleadings in OC 827, the Nishiki Entities had limited first-hand knowledge of matters relating to the Loan Agreement, which matters they had put in issue *via* their defence.<sup>40</sup> The Claimant hence argued that it required the Fourth Defendant's participation because it had the relevant knowledge as a counterparty to the Loan Agreement.<sup>41</sup> The Claimant submitted that addressing the Nishiki Entities' defence required findings on the Fourth Defendant's contract, elections and conduct, which made its joinder to OC 827 proper.<sup>42</sup>

18 The Claimant pointed also to the existence of a project agreement dated 28 June 2016 (the "Project Agreement") entered into by the Fourth Defendant, the Nishiki Entities and the Claimant.<sup>43</sup> The Claimant asserted that the Project Agreement was related to the Loan Agreement and provided an independent contractual basis for the Fourth Defendant's connection to OC 827.<sup>44</sup> The Claimant acknowledged that the Fourth Defendant and the Nishiki Entities entered into the Settlement Agreement which achieved the effect of settling certain claims between the Fourth Defendant and the Nishiki Entities.<sup>45</sup> However, the Claimant took the position that the Settlement Agreement effected

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<sup>39</sup> CWS at para 21.

<sup>40</sup> CWS at paras 22, 24, 43, 80.

<sup>41</sup> CWS at para 23.

<sup>42</sup> CWS at paras 27, 41.

<sup>43</sup> CWS at para 28.

<sup>44</sup> CWS at paras 28-33.

<sup>45</sup> CWS at para 34.

only a release of bilateral claims between the Nishiki Entities and the Fourth Defendant, and did not waive the Fourth Defendant’s legal interest in the Loan Agreement.<sup>46</sup> More specifically, the Settlement Agreement did not erase the Fourth Defendant’s historical elections, payments, correspondence and conduct on which the construction of the Loan Agreement depended.<sup>47</sup> Moreover, the Claimant argued that the Settlement Agreement related to issues that did not fully encompass the questions raised by the Loan Agreement, and that the Settlement Agreement as exhibited in the Fourth Defendant’s supporting affidavit contained redacted portions, which compromised the court’s ability to appreciate the full terms and context of the Settlement Agreement.<sup>48</sup>

19 The Claimant submitted that the joinder order in HC/ORC 1914/2026 was made in a reasoned fashion after the court heard arguments *inter partes* as between the Claimant and the Nishiki Entities, and the Fourth Defendant could not identify either a material deficiency in the evidence before the court that made the joinder order, an error in the reasoning on which the joinder order rested, or a change in circumstances that displaced the court’s reasoning.<sup>49</sup>

20 The Claimant also argued that any prejudice against the Fourth Defendant from joinder sounded only in costs, inconvenience and other case-management matters, and could be compensated by appropriate orders and directions, in contrast to the irreparable prejudice which would be occasioned by removing the Fourth Defendant and litigating issues fully without giving the

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<sup>46</sup> CWS at paras 37-38, 45.

<sup>47</sup> CWS at para 37.

<sup>48</sup> CWS at paras 39, 46-49.

<sup>49</sup> CWS at paras 51-65.

Fourth Defendant an opportunity to be heard, resulting in a judgment that did not bind the Fourth Defendant.<sup>50</sup>

### **Issues to be determined**

21 The primary issue to be determined in this matter was whether the Fourth Defendant's joinder as a defendant in OC 827 was just and convenient. The decision on this primary issue would inform the court's decision on a secondary issue, which was whether the order granting permission to the Claimant to serve the cause papers in OC 827 out of Singapore on the Fourth Defendant could stand.

### **The law**

#### ***The general legal framework***

22 The Claimant's application to add the Fourth Defendant to OC 827 was brought pursuant to O 9 r 10(1) of the Rules of Court 2021. This provision provided as follows:

#### **Adding and removing of parties (O. 9, r. 10)**

**10.**—(1) The Court may add or remove one or more claimants or defendants, give permission for a defendant to issue a third party notice in accordance with Order 10, or give directions for the originating process to be served on any person who may have an interest in the action.

23 The wording of O 9 r 10(1) of the Rules of Court 2021 differed significantly from the language found in the joinder provisions in the Rules of Court 2014. However, the old law remained relevant as it had been held that the applicable test under the old law applied to some aspects of addition of parties

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<sup>50</sup> CWS at paras 81-86.

under O 9 r 10(1) of the Rules of Court 2021: *DFD v DFE* [2024] 6 SLR 455 (“*DFD*”) at [25] and [30]. In the present case, the relevant provision of the Rules of Court 2014 was O 15 r 6(2)(b) of the Rules of Court 2014. This provision provided as follows:

**Misjoinder and nonjoinder of parties (O. 15, r. 6)**

**6.— ...**

(2) Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either of its own motion or on application —

...

(b) order any of the following persons to be added as a party, namely:

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon;

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

24 The court in *DFD* at [30] held that O 9 r 10(1) of the Rules of Court 2021 contained a power that allowed a court to add a person as a party on similar grounds as those found in O 15 r 6(2)(b) of the Rules of Court 2014. Of course, the scope of O 15 r 6(2)(b) of the Rules of Court 2014 did not exhaust the scope of O 9 r 10(1) of the Rules of Court 2021, but the Claimant had relied on grounds similar to those found in O 15 r 6(2)(b)(ii) of the Rules of Court 2014 to join the Fourth Defendant and so my analysis focused on such grounds. However, I noted at this juncture that a court, in applying O 9 r 10 of the Rules of Court

2021, ought not to be too wedded to the old law under the Rules of Court 2014. This was because O 9 r 10 of the Rules of Court 2021 was drafted in much wider terms as compared to the joinder provisions in the Rules of Court 2014. Indeed, the contributors to *Singapore Rules of Court: A Practice Guide* (Chua Lee Ming ed-in-chief, Paul Quan gen ed) (Academy Publishing, 2nd Ed, 2026) (*“Singapore Rules of Court: A Practice Guide”*) have noted that:

While rule 10 is unlikely to preclude the situations requiring the addition and removal of parties that are contemplated by the 2014 Rules, its non-prescriptive nature affords flexibility to the court to determine the procedure to do this so as to achieve justice in each case. As such, *while the relevant provisions governing the addition and removal of parties in the 2014 Rules might have provided guidance as a starting point, they should not unduly shackle the wide discretion that rule 10 is meant to afford to the court.* [emphasis added]

Applying this admonition, I have considered the old law under the Rules of Court 2014 as a starting point and as providing valuable guidance, but I was conscious that I should not get lost in the weeds or the technicalities of the old law. Moreover, it had been observed in *DFD* at [31] that there had been a change in terminology between the Rules of Court 2021 and the Rules of Court 2014. Of particular relevance to the present matter was the point that the terms “joinder” and “misjoinder” were no longer found in the main provisions of the Rules of Court 2021, and the simpler language of “add[ing]” and “remov[ing]” parties was used instead in O 9 r 10(1) of the Rules of Court 2021. Relatedly, the Rules of Court 2021 made no express provision for an “intervener” in an ordinary civil matter, although it did provide for the possibility of intervention in appeals in O 18 r 5 and O 19 r 5, and continued to make express provision for the role of an intervener in admiralty actions (O 33 r 17). Be that as it may, given that this decision referred frequently to concepts and principles found in the pre-Rules of Court 2021 law, the terms “joinder” and “intervener” would be

used, and they should be read to refer to concepts similar to the “adding” of parties under O 9 r 10 of the Rules of Court 2021.

25 According to *DFD* at [25] and [30], a court applying O 9 r 10(1) of the Rules of Court 2021 in a manner similar to O 15 r 6(2)(b) of the Rules of Court 2014 should remain guided by the approach set out by the Court of Appeal in *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA* [2018] 1 SLR 894 (“*De La Sala*”). The court in *DFD* at [25] elegantly summarised this two-stage approach as follows:

(a) First, the power to join parties only exists “at any stage of the proceedings”, and not when the proceedings have concluded.

(b) Second, the court considers either the “necessity” limb (O 15 r 6(2)(b)(i)) or the “just and convenient” limb (O 15 r 6(2)(b)(ii)), and here the test is split into two further elements: a non-discretionary and a discretionary element.

(i) Under the “necessity” limb, the non-discretionary element is whether the action cannot be effectually and completely determined without the joinder ([*De La Sala*] at [203]).

(ii) Under the “just and convenient” limb, meanwhile, the non-discretionary element is whether there is a question or issue between the person seeking to be joined and one of the existing parties which relates to an *existing question or issue* between the *existing* parties, such that in the court’s opinion, joinder for the purpose of deciding that question or issue would be just and convenient ([*De La Sala*] at [204]).

(iii) After the non-discretionary element is satisfied under either limb, the court considers the discretionary element. This includes a number of potential considerations, including issues of limitation, *res judicata*, abuse of process, delay, procedural fairness, and other forms of prejudice to the parties ([*De La Sala*] at [205]–[210]).

26 There was no dispute between the parties that the first stage of the test was clearly satisfied in the present matter – the court had the power to join the

Fourth Defendant to OC 827 since proceedings were still afoot in this action. The dispute in the present summons related to the “just and convenient” limb of the joinder analysis, which limb the Claimant relied on to support its joinder application.<sup>51</sup> As noted above at [25], the analysis under this limb contained a non-discretionary and a discretionary element. The non-discretionary element required the existence of a “question or issue” between the party sought to be joined and any existing party to the cause or matter. This “question or issue” must relate to an existing question or issue between the existing parties to the cause or matter: *De La Sala* at [204]. The discretionary element was whether, in the opinion of the court, joinder for the purpose of deciding that question or issue would be just and convenient: *De La Sala* at [204]. At this discretionary stage of the analysis, the court would consider all the factors which were relevant to the balance of justice in a particular case: *De La Sala* at [204].

***The non-discretionary element***

27 The Claimant took pains to argue, repeatedly and from multiple angles, and in both their counsels’ written and oral submissions, that the Fourth Defendant had a legal interest in OC 827, which, in the Claimant’s view, supported the joinder of the Fourth Defendant to OC 827.<sup>52</sup> As flagged above at [11], the Fourth Defendant’s answer was that the Settlement Agreement effected a full and final settlement, release and discharge of claims and liabilities between the Fourth Defendant and the Nishiki Entities, such that there existed no present question or issue to be decided by the court between the Fourth Defendant and any party to OC 827.

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<sup>51</sup> CWS at para 5.

<sup>52</sup> CWS at paras Section IV and paras 9, 18, 20, 25, 26, 34, 36, 37, 45, 47, 59, 60, 62, 63, 65, 72, 103.

28 A preliminary issue that I thus had to consider was the contours of the definition of cognizable “legal interest” that could sustain a joinder application at the stage of considering the non-discretionary element under the “just and convenient” limb. The parties in this summons cited *DFD* at [26] in support of the proposition that a person must have a legal interest that was directly related to or connected to the proceedings to be joined.<sup>53</sup> The court in *DFD* at [26] referred in turn to the Court of Appeal’s decision in *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2022] 1 SLR 643 (“*Opus Tiger 1*”) at [28]. The Court of Appeal had stated as follows in *Opus Tiger 1* at [28]–[29]:

28 Where the court grants the complainant leave in a s 216A [of the Companies Act (Cap 50, 2006 Rev Ed)] application, it facilitates the initiation of proceedings against the intended defendant, so that it is now engaged in litigation that it otherwise would not have been. In these circumstances, the interest of an intended defendant who is not also an insider of the company in the s 216A application cannot be characterised as anything but a mere commercial interest in its outcome. That, however, will not suffice for the purposes of O 15 r 6(2)(b), which *requires that a party seeking to be joined must at least have some legal interest that is directly related or connected to the subject matter of the action between the existing parties* (see *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 15/6/9).

29 For the foregoing reasons, we agree with the Judge that an intended defendant who is not also an insider of the company *cannot satisfy the non-discretionary requirements for joinder* under both the “necessity” and “just and convenient” limbs of O 15 r 6(2)(b). In the circumstances, there is no need for us to consider the discretionary requirements of O 15 r 6(2)(b).

[emphasis added]

29 In *Opus Tiger 1*, the appellant was a party to contracts with the first respondent companies (“the OT Companies”), and, in turn, the OT Companies were the subsidiaries of Opus Offshore Ltd, in which the second respondent

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<sup>53</sup> CWS at para 5.1; 4DWS at para 24.

(“Reignwood”) was a 70% shareholder and creditor (*Opus Tiger 1* at [1]). Reignwood filed leave applications under s 216A(2) of the Companies Act (Cap 50, 2006 Rev Ed) (the “Companies Act”) to commence derivative arbitral proceedings in the names of the OT Companies against the appellant in respect of its alleged default under the contracts (*Opus Tiger 1* at [3]). The appellant applied to be joined under O 15 r 6(2)(b) of the Rules of Court 2014 to the leave applications, arguing that it ought to be joined on the basis that it was the intended defendant of the derivative arbitral proceedings (*Opus Tiger 1* at [4]). A judge sitting in the General Division of the High Court dismissed the joinder applications and the appellant appealed. The Court of Appeal dismissed the appeal. Amongst other holdings, the Court of Appeal held that the appellant, who was merely an intended defendant of the arbitral proceedings and not also an insider of the company which was the subject of the leave applications under s 216A of the Companies Act, did not have “some legal interest that is directly related or connected to the subject matter of the action between the existing parties” which was necessary for the purposes of O 15 r 6(2)(b) of the Rules of Court 2014 (*Opus Tiger 1* at [28]–[29]). In setting out this holding, the Court of Appeal referred to *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 15/6/9. In giving context to the Court of Appeal’s holding, it is helpful to reproduce para 15/6/9 here:

**Interest of intervening party**—To entitle a person not a party to an action to intervene and to be joined as party, the rule requires that the would-be intervener should have some interest which is directly related or connected with the subject matter of the action, and therefore an alleged creditor who has obtained a *Mareva* injunction against a subsidiary company of the plaintiffs will not be allowed to intervene or to be joined as a party to an action between plaintiffs and defendants with which he is in no way concerned, and in which he has no interest, other than a financial interest in the outcome of that action, which might be liable to destroy the effectiveness of his injunction (*Sanders Lead Co. Inc. v. Entores Metal Brokers Ltd.* [1984] 1 W.L.R. 452; [1984] 1 All E.R. 857, CA (Eng)). “Clearly

what is contemplated is that, at the time when an order for joinder is made under this provision, the question or issue arising out of, or relating to, or connected with the relief of remedy claimed in the cause already arises between the party seeking to be joined and one or other of the existing parties ...” *per* Bridge L.J. in *Spelling Goldberg Productions Inc. v. B.P.C. Publishing Ltd.* [1981] R.P.C. 280, CA (Eng).

It seems that no order for costs incurred prior to the intervention of the third party under this rule can be made in favour of a successful intervening third party (*Tetra Moletric Ltd. v. Japan Imports Ltd.* [1976] R.P.C. 541 at 585, CA (Eng)).

30 In holding, at [28] of *Opus Tiger I*, that “a party seeking to be joined [under O 15 r 6(2)(b) of the Rules of Court 2014] must at least have some legal interest that is directly related or connected to the subject matter of the action between the existing parties” and not a “mere commercial interest in its outcome”, the Court of Appeal had in mind an application by a person not a party to an action to intervene and to be joined as party. The present case was different. The Fourth Defendant was added as a party against its wishes, and not because it wished to intervene in OC 827.

31 Be that as it may, I took the view that the Court of Appeal’s guidance in *Opus Tiger I* was still relevant in illuminating the approach to be taken in cases like the present one where a party was added against its wishes. In my view, it was unprofitable for a court, applying O 9 r 10(1) of the Rules of Court 2021, to get too bogged down in attempting to precisely delimit exhaustively the boundaries of a cognizable “legal interest” that could sustain a joinder application at the stage of considering the non-discretionary element under the “just and convenient” limb. Certainly, a court might join a party as a defendant even where no cause of action was asserted against that party: *Tan Yow Kon v Tan Swat Ping* [2006] 3 SLR(R) 881 (“*Tan Yow Kon*”) at [58]. On the other hand, a person’s “mere commercial interest” in the outcome of an action was insufficient to sustain joinder as a party (*Opus Tiger I* at [28]), and “it is not

sufficient for there to be some factual overlap between the main dispute and the question or issue involving the third party” (*De La Sala* at [204]). In between these two extremes, precedents provided useful case-by-case guidance of situations where a sufficient legal interest that could sustain a joinder application at the stage of considering the non-discretionary element under the “just and convenient” limb have been held to exist (see, for example, the non-exhaustive list of cases described at [136] of *GLAS SAS (London Branch) v European TopSoho Sàrl* [2025] 5 SLR 648 (“*GLAS SAS*”). However, where new situations emerge and the issue of whether there was a sufficient legal interest was finely balanced, it seemed to me that it would run counter to the broad language and non-prescriptive nature of O 9 r 10 of the Rules of Court 2021 for a court to allow the non-discretionary element of the *De La Sala* approach to limit the court’s discretion and cut short the analysis, before the court moved to consider the discretionary element. Indeed, I noted that a flexible approach could even be said to be consistent with the old authorities that considered the Rules of Court 2014 or its foreign analogues. As Kerr LJ noted in *Sanders Lead Co Inc v Entores Metal Brokers Ltd* [1984] 1 WLR 452 at 460E, when discussing the intervention context, it “may well be impossible, and would in any event be undesirable, to attempt to categorise the situations in which the interests of would-be interveners are sufficient to satisfy the requirements of the rule”. Again, in *GLAS SAS* at [138], the court considered a litany of pre-Rules of Court 2021 cases cited by the party sought to be joined and opined that “the cases cited were illustrative, but not exhaustive ... of the circumstances in which a court may order a joinder against a non-party to which [n]o cause of action has been asserted”. Again, in *Actis Excalibur Ltd v KS Distribution Pte Ltd* [2016] SGHCR 11 at [27], the court held that “the question of whether to allow the joining of a party under O 15 r 6(2)(b)(ii) of the [Rules

of Court 2014] is a matter for the court’s discretion, which is a relatively wide and broad one”.

32 The broader point here was that, given the relatively wide language of O 9 r 10(1) of the Rules of Court 2021, which language, on its face, granted the court an even wider discretion than O 15 r 6(2)(b) of the Rules of Court 2014, a court ought not to get lost in the weeds as to whether a cognizable “legal interest” that could sustain a joinder application at the stage of considering the non-discretionary element under the “just and convenient” limb existed. In other words, where there was some doubt as to whether a party sought to be joined to the proceedings had a sufficient legal interest, and this issue was finely balanced, a court should err in favour of holding that there was a sufficient legal interest, and then move to consider the discretionary element, which element allowed the court to consider a range of potential considerations and factors. I viewed this approach as consistent with the comment made by the editors of *Singapore Rules of Court: A Practice Guide* at para 09.028 where they remarked that “while the relevant provisions governing the addition and removal of parties in the 2014 Rules might have provided guidance as a starting point, they should not unduly shackle the wide discretion that rule 10 [of the Rules of Court 2021] is meant to afford to the court”.

### ***The discretionary element***

33 Turning to the discretionary element, as foreshadowed above at [25], a number of potential considerations were relevant, including issues of limitation, *res judicata*, abuse of process, delay, procedural fairness, and other forms of prejudice to the parties (*DFD* at [25], referring to *De La Sala* at [205]–[210]). In *Tan Yow Kon* at [44], the court also provided another list of indicative and non-exhaustive factors for consideration, namely:

(a) What are the respective interests of the party whose presence is sought and of the party who is resisting this and how do those interests stand to be affected by the order that the court is asked to make in relation to the subject matter of the action?

(b) Is it appropriate to have the party in question included in the action so as to ensure that interested parties have had the opportunity to be heard and the subject matter of the action can be disposed of without the delay and expense of multiple actions?

(c) How may other provisions of the Rules bear on the particular concerns of the parties?

34 In my view, context was highly relevant, and one key context-specific factor which informed the court’s analysis of the discretionary element ought to be whether the application for joinder was taken out by a party who sought to intervene in the proceedings, or whether joinder was sought against the wishes of the party sought to be joined. More specifically, a court’s analysis ought to differ between two types of cases: (a) a case where the person seeking to be added as a party to the case *applied voluntarily to be joined/added and wished to be joined/added as a party* (ie, the “Intervener Case(s)”); and (b) a case, like the present one, where it was sought to join/add a person who *did not consent to being joined/added as a party* (ie, the “Non-Intervener Case(s)”). In considering the Intervener Cases, it seemed to me that a key concern that the court, together with the *existing parties to the action*, would have was the efficient conduct of the present litigation and preventing needless clogs on the parties’ and the court’s time, attention and energy with interventions by superfluous parties (see *DFD* at [24] and *Singapore Rules of Court: A Practice Guide* at para 09.028). In contrast, in the Non-Intervener Cases, that interest of the applicant for joinder (who was not the party sought to be joined) in preserving its own time, attention and energy receded into the background (because, presumably, the applicant took the position that joining the fresh party was worth the burden incurred) while the impact on the time, attention, energy

and costs placed on the shoulders of the prospective party sought to be joined (and also the shoulders of the court, and any other party who opposed the joinder) became a relevant consideration.

35 Ultimately, a court, in considering the issue of joinder/addition of parties, needed to balance two competing imperatives. Firstly, as Sundaresh Menon JC (as he then was) noted in *Tan Yow Kon* at [36], “[t]he key point one should keep in mind is that these rules [concerning joinder of parties] are there to save rather than to destroy, to enable rather than to disable and to ensure that the right parties are before the court so as to minimise the delay, inconvenience and expense of multiple actions”. This first concern related to the need to ensure that all relevant issues and claims could be ventilated and dealt with in *this current action*, so as to forestall the need for *further other actions*. Secondly, there was a concern relating to preserving economy and efficiency in *this current action* by preventing the joinder of superfluous parties, who might clog the *current proceedings* with superfluous submissions, evidence, and satellite litigation, incurring unnecessary delay and costs (see, for example, *DFD* at [24] and *TWD and another v UQE* [2019] 3 SLR 662 at [58]).

36 There were additional observations worth making here in relation to the Non-Intervener Cases. Non-Intervener Cases were particularly delicate for three reasons.

37 Firstly, in Non-Intervener Cases, the court deciding on the initial application for a new party to be added may not have had the benefit of hearing from that party before joinder/addition was granted or refused. The court making the joinder/addition order might hence be deprived of the perspective of the very party whose status was in issue. There was no guarantee that the parties to the initial application for joinder/addition could or would adequately

represent the interests of the prospective party. Fortunately, O 3 r 2(8)(a) of the Rules of Court 2021 granted the court power to, “on its own accord or upon application, if it is in the interests of justice, revoke any judgment or order obtained or set aside anything which was done ... without notice to, or in the absence of, the party affected”. I considered that, in a proper case, a court hearing an application to set aside a joinder/addition order should not be reticent in making such an order when the full facts or a fuller perspective was placed before the court at the setting aside stage with the participation of all relevant parties.

38 Secondly, as flagged above at [31], a court might join a party as a defendant even where no cause of action was asserted against that party. Such a joinder/addition despite the absence of a cause of action might be unobjectionable if the new party wanted to be joined/added, but concerns arose where joinder/addition was done against the added party’s wishes. Such an involuntarily-added defendant would not be able to access the full complement of tools available to other ordinary defendants to extricate themselves from unmeritorious proceedings. Specifically, such a defendant could not logically seek an order in favour of itself under O 9 r 16(1)(a) of the Rules of Court 2021 for the claimant’s pleading to be struck out on the ground that it disclosed no reasonable cause of action.

39 Thirdly, in Non-Intervener Cases, the court would also have to guard against abuse, especially where the party sought to be joined was a foreign party. It would not be consistent with long-established limits to the Singapore courts’ jurisdiction to allow for the addition of parties/joinder mechanism to become a means through which foreign persons can be conscripted to become involuntary witnesses in Singapore proceedings. The general rule was that a Singapore court cannot compel a foreign witness to testify in Singapore proceedings (*Shen*

*Sophie v Xia Wei Ping and others* [2022] SGHC 206 at [108]; *Vanbo Investments Pte Ltd v ph AG and another* [2026] SGHC 65 at [71] and [76]). Mechanisms existed for a Singapore court to acquire jurisdiction over persons outside Singapore through service of an originating process on them “in the circumstances authorised by and in the manner prescribed by Rules of Court or Family Justice Rules” or where the defendant submitted to the jurisdiction of the Singapore courts (see s 16(1)(a) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed), read with O 8 r 1 of the Rules of Court 2021 and paragraph 63 of the Supreme Court Practice Directions 2021). As the court noted in *Maag, Daniel v Lalit Kumar Modi* [2025] 3 SLR 1093 (“*Lalit Kumar Modi*”) at [59], paragraph 63(2) of the Supreme Court Practice Directions 2021 supplemented O 8 r 1 of the Rules of Court 2021 by providing that for the purposes of establishing that a Singapore court was the appropriate court to hear the action, the claimant should show: (a) that there was a good arguable case that there was sufficient nexus to Singapore; (b) that Singapore was the *forum conveniens*; and (c) that there was a serious question to be tried on the merits of the claim. Paragraph 63(3) of the Supreme Court Practice Directions 2021 further provided a non-exhaustive list of factors that the claimant could refer to in order to establish that there was a sufficient nexus to Singapore (*Lalit Kumar Modi* at [59]). As the Fourth Defendant had rightly pointed out,<sup>54</sup> paragraph 63(3)(c) of the Supreme Court Practice Directions 2021 provided, as one such factor, that “the claim is brought against a person duly served in or outside Singapore, and a person outside Singapore is a *necessary or proper party* to the claim” [emphasis added]. Nowhere in the list of factors was it indicated that service on a person outside Singapore was appropriate just because it would be “just and convenient” to join that party to the action. Nowhere in the list of factors was it

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<sup>54</sup> 4DWS at paras 27 and 75.

indicated that service on a person outside Singapore was appropriate, or that such a person became a “necessary or proper party to the claim”, just because that person might have valuable testimony to offer to a Singapore court. In my opinion, a court ought to be cautious to avoid allowing the provision for joinder/addition of parties to a proceeding to be abused to circumvent the long-established rule that a Singapore court cannot compel a foreign witness to testify in Singapore proceedings.

### **Application to facts**

40 I turned to apply the two-stage approach set out in *De La Sala* (see [25] above) to the facts.

41 Firstly, as stated above at [26], the first stage of the *De La Sala* approach was clearly satisfied, and the court had the power to join the Fourth Defendant to OC 827 since proceedings were still afoot in this action. I thus moved to the second stage of the analysis, to consider the non-discretionary and discretionary elements under the “just and convenient” limb, which was the limb relied on by the Claimant in its joinder/addition application.<sup>55</sup>

42 In considering the non-discretionary element, the central inquiry was whether there was a question or issue between the Fourth Defendant and the Nishiki Entities and/or the Claimant, which related to an existing question or issue between the Nishiki Entities and the Claimant. A key consideration was whether the Fourth Defendant had a sufficient “legal interest” in OC 827 that could sustain a joinder application. In my view, the Fourth Defendant had a sufficient “legal interest” in OC 827. As noted above at [31], the fact that no

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<sup>55</sup> CWS at para 5.

cause of action was asserted against the Fourth Defendant did not automatically mean that it did not have a cognizable legal interest that could sustain joinder. The Fourth Defendant's status as a party to the Loan Agreement, which formed a plank of the Nishiki Entities' defence in OC 827, meant that it did not have a "mere commercial interest" in the outcome of OC 827. I agreed with the Claimant's argument that the Settlement Agreement (entered into between the Nishiki Entities and the Fourth Defendant) did not erase the Fourth Defendant's historical elections, payments, correspondence and conduct on which the construction of the Loan Agreement depended. To the extent that OC 827 might result in the court making factual findings on what transpired between the Nishiki Entities and the Fourth Defendant in the performance or non-performance of their obligations, or their assertion or non-assertion of their rights, under the Loan Agreement, I considered that the Fourth Defendant had a cognizable legal interest that could, at the non-discretionary stage of the *De La Sala* approach, sustain joinder. In other words, had this been an Intervener Case, I would have had no trouble holding that the Fourth Defendant had a legal interest in the court's decision and ought to be added to the action *at the Fourth Defendant's request* so that it could make submissions on issues relating to the Loan Agreement since the court's holding in OC 827 (which might relate to the Fourth Defendant's conduct or elections relating to the Loan Agreement) might result in the imposition of liabilities on the Fourth Defendant under the Loan Agreement (*eg*, a factual finding that the Fourth Defendant made a certain election, or carried out a certain act, might result in a finding of a breach of the Loan Agreement, or that it became entitled or disentitled to moneys under certain terms of the Loan Agreement).

43 I recognized that there was a Settlement Agreement which purportedly, on the Fourth Defendant's account, effected a full and final settlement, release

and discharge of claims and liabilities between the Fourth Defendant and the Nishiki Entities. However, the Settlement Agreement, which came in the wake of the Nishiki Entities’ and the Fourth Defendant’s settlement and discontinuance of the appeals against parts of the judgment in Suit 84, was not co-extensive with the issues and questions raised concerning the Loan Agreement. Clauses 5 and 7 of the Settlement Agreement provided:

5. This Settlement Agreement constitutes a full and final settlement *between the Parties* of all matters in relation to and/or arising out of the Parties’ respective Appeals and/or HC/S 84/2020 and/or the Transaction and *each Party hereby releases and forever discharges, all and/or any claims, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties, and legal fees, whether known or unknown, suspected or unsuspected, in law or equity, that the Parties ever had, now have or hereafter can, shall or may have against the other Party and/or its Affiliates (as defined below),* howsoever and whensoever arising out of or in relation to or in connection with the Loan Agreement and the Security Documents. For the avoidance of doubt, BCC confirms that the Sponsor Indemnity Agreement granted by Dr Masami Yabumoto (“Yabumoto”) dated 30 June 2016 shall terminate upon its receipt of the Settlement Sum, and BCC shall have no claims against Yabumoto whatsoever upon its receipt of the Settlement Sum.

...

7. For the purposes of this Settlement Agreement, “Affiliates” shall mean any company controlling, controlled by or under common control with a named party, where “control” shall mean ownership, directly or indirectly, of the shares of a company representing fifty percent (50%) or more of the voting rights in this company.

[emphasis added]

44 These clauses worked to release and discharge liabilities *inter se* as between the named parties to the Settlement Agreement and their affiliates. However, such an *inter se* release and discharge of liabilities did not operate to release and discharge the parties’ liabilities (whether sounding in contract, tort or otherwise) as against third parties, and thus did not exhaust the legal interest

of the Fourth Defendant in OC 827. As the Claimant rightly noted, clause 5 did not contain words waiving the Fourth Defendant's legal interest in the construction of the Loan Agreement in proceedings between other parties.<sup>56</sup> Furthermore, I noted the Claimant's correct observation that the Settlement Agreement as exhibited in the Fourth Defendant's supporting affidavit contained redacted portions, which compromised this court's ability to appreciate the full terms and context of the Settlement Agreement.

45 I viewed the present case as one where the issue of whether the Fourth Defendant had a sufficient legal interest to be, at the very least, finely balanced, such that I ought not to cut short the analysis at the non-discretionary element stage of the *De La Sala* approach, and I should instead err in favour of holding that there was a sufficient legal interest, and then move to consider the discretionary element.

46 Turning to the discretionary element, I considered that the balance of justice weighed against adding/joining the Fourth Defendant to OC 827.

47 This case was one where the Fourth Defendant did not apply to be added to the action, and where the Fourth Defendant had opposed its addition. As flagged above at [34], the impact on the time, attention, energy and costs placed on the shoulders of the Fourth Defendant, as the party sought to be joined, was a relevant consideration. Here, the Fourth Defendant had made very clear its wish to not be a party to the action. It had highlighted that it was a foreign company which had tried to settle its disputes relating to the Transaction to bring this chapter of its history to a close. Of course, most defendants would not wish to be sued, so resistance to being joined/added was usually not a weighty factor

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<sup>56</sup> CWS at para 45.

in the court's discretionary analysis (see *Tan Yow Kon* at [61]). What was unique in this case was that the Fourth Defendant's presence as a party to OC 827 was not essential to the provision of effective relief for the Claimant. The Fourth Defendant had emphatically, and, in my view, rightly, argued that the Claimant did not assert any cause of action against the Fourth Defendant. This was made crystal clear in the prevailing version of the Claimant's amended statement of claim dated 9 April 2026. Pages 55 to 57 set out the reliefs sought by the Claimant, and all of the reliefs were sought against the Nishiki Entities. No relief was prayed for as against the Fourth Defendant. Crucially, I observe that prayers (1) to (6) of the statement of claim prayed for various declarations to be made against the Nishiki Entities. There was, strikingly, no declaration sought against the Fourth Defendant.

48 This was very much unlike the case of *Tan Yow Kon* where the defendants who wanted to be removed from the action, but who were ordered by the court to remain, were persons against whom causes of action were asserted by the plaintiff (see *Tan Yow Kon* at [2], [7] and [8]). *Tan Yow Kon* involved a dispute between, on the one hand, the plaintiff, who was a partner in a partnership, and, on the other hand, the defendants, who were fellow partners in the partnership along with the partnership entity itself. Crucially, the court in *Tan Yow Kon* had declined to strike out the plaintiff's claim against the defendants as being unsustainable (*Tan Yow Kon* at [24]–[27]). This was also not one of those cases where a “claimant [was] permitted to add defendants for the purpose of ensuring that any reliefs that he [sought], if granted, [would] not be rendered ineffective and unenforceable because such nominal defendants [were] not bound by the findings and declarations of the court; adding such defendants to the claim on a nominal basis, even while no cause of action [was] asserted against them, ensure[d] that the claimant [did] not find himself with no

relief at the end of the day despite having a judgment in his favour”: *Prosetskii, Aleksandr Viktorovich v Smirnov, Igor* [2025] SGHCR 25 (“*Prosetskii*”) at [92]. The sorts of cases contemplated by the court in *Prosetskii* were those where, for instance, a nominal defendant had custody of property that was the subject of the dispute (and hence an order at the end of trial binding on that nominal defendant to transfer the property to the victor was just and convenient) or had some legal power to effectuate the relief that the court might eventually grant in the action (see *Prosetskii* at [93] and [104]; see also *GLAS SAS* at [139] and [171]). In sum, the absence of the Fourth Defendant as a party to OC 827 did not pose a risk that the Claimant’s reliefs, if granted, would not be effective and enforceable – the Claimant sought reliefs against the Nishiki Entities and there was no indication on the facts that the Fourth Defendant somehow needed to exercise a power or transfer some property in order to effectuate the reliefs against the Nishiki Entities, if such reliefs were granted.<sup>57</sup>

49 As to the Claimant’s submission that the Fourth Defendant’s joinder to OC 827 would bind the Fourth Defendant to the court’s findings, reduce the risk of inconsistent findings, close off later wasteful challenges and eliminate duplicative litigation, I did not view these considerations as persuasive. This was because the Claimant did not particularise what sorts of further satellite litigation or challenges might come about if the Fourth Defendant was not joined to OC 827. Without such particularisation, all that this court was left with was a general argument that was logical but certainly not universalizable or sustainable. Put differently, in applying the principle advanced by the Claimant, it would be logical for claimants coming before the court to attempt to add as many parties as possible, even persons with a remote relationship to the main

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<sup>57</sup> SOC Am 1 at pp 55–57.

dispute, so as to bind these persons to the court's findings and reduce the risk of satellite litigation. But this would not conduce to efficient litigation or be a sustainable litigation practice. It runs counter to the point raised above at [34] and [35] that the court should be vigilant against superfluity in litigation. Fundamentally, I was unable to see why the Claimant needed to bind *the Fourth Defendant* to the court's findings in order to avoid wasteful duplicative litigation. The Claimant's prayers were for reliefs against only the Nishiki Entities, and it was sufficient for the Nishiki Entities themselves to be bound by the court's decision in OC 827. *Even if* the Fourth Defendant were to try, after the conclusion of OC 827, to advance a different account of its historical elections, payments, correspondence and conduct in relation to the Loan Agreement, the Nishiki Entities, as parties bound by the findings made in OC 827, would be precluded under the umbrella doctrine of *res judicata* from relitigating or re-opening matters decided in OC 827 vis-à-vis the Claimant.

50 As to the point that joinder ensured that the Fourth Defendant had an opportunity to be heard as its rights might be affected, this argument rang hollow when the Fourth Defendant had made it amply clear that it had nothing to say in OC 827. An argument from the perspective of giving an affected party an opportunity to be heard was more persuasive when made in contexts where a party seeking to be added to the action itself argued that it ought to be given an opportunity to be heard and to make submissions in the action.

51 I saw force in the Claimant's argument that their rebuttal against the Nishiki Entities' defence could be bolstered by findings made at trial concerning the Fourth Defendant's contract, elections and conduct. But I ultimately agreed with the Fourth Defendant's submission that there were mechanisms and procedures, such as orders for production of documents and information against non-parties, to address parties' need for evidence to prove relevant facts (see,

eg, O 11 r 11 of the Rules of Court 2021). I noted the Claimant’s submission relating to,<sup>58</sup> and the evidence it had provided of,<sup>59</sup> the Fourth Defendant’s representative’s alleged refusal to cooperate to provide evidence in OC 827. I sympathised with the Claimant’s predicament, but I took the view that the ineffectiveness of evidence gathering procedures against non-parties (eg, because the non-party witness was abroad and non-compellable) could be addressed by the law of evidence (see, eg, ss 103(1) and 105 of the Evidence Act 1893 (2020 Rev Ed)) and, in particular, the burden of proof. As the Appellate Division of the High Court noted in *Tan Siew Hui v Lim Lai Soon* [2023] SGHC(A) 32 at [49], referring to *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 at [30] and [31], ss 103 and 105 of the Evidence Act (Cap 97, 1997 Rev Ed) (which were *in pari materia* with the equivalent sections in the currently-in-force Evidence Act 1893 (2020 Rev Ed)) placed the burden of proving a fact on the party who asserted the existence of any fact in issue or relevant fact. The starting point in determining where the burden of proof lay was the parties’ pleadings and the facts which they claimed to be true in their pleadings. The legal burden of proving a pleaded defence rested on the proponent of the defence, unless the defence was a bare denial of the claim. The key point here was that a court had weapons in its arsenal to respond effectively to the paucity of evidence – the court could find that a disputed fact was *not proved* by the party with the burden of proving that fact.

52 *Tan Yow Kon* at [44] taught that a court, in considering the non-exhaustive factors bearing on joinder, should consider how other provisions of the rules of court might bear on the concerns of the parties. The existence of

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<sup>58</sup> CWS at para 70.

<sup>59</sup> Arihiro-2026 08 14 at paras 72–74.

mechanisms in the Rules of Court 2021 for getting evidence from non-parties, and the existence of principles in the law of evidence to address the situation where such evidence could not be gotten, ought to inform the court's addition of parties/joinder analysis. It would not be principled for this court to sidestep the non-compellability of a foreign witness (see [39] above), whom one or more of the existing parties in an action asserted was a material witness, by adding that witness as a party to the proceedings. Such a move would undermine the stringent restrictions against the service out of Singapore of originating processes and be an exorbitant assertion of the Singapore court's jurisdiction over foreign persons. This militated against joining the Fourth Defendant to OC 827 just because it was just and convenient that it was present in Singapore so as to offer evidence of its elections and conduct relating to the Loan Agreement.

53 I was thus unable to agree with the Claimant that I should not disturb the order made in SUM 662. The order made in SUM 662 was indeed made in a reasoned fashion after the court heard arguments *inter partes* as between the Claimant and the Nishiki Entities. But therein laid the issue – the assistant registrar hearing SUM 662 did not have the benefit of hearing from the Fourth Defendant before making his decision, because the only parties to SUM 662 were the Claimant and the Nishiki Entities. The perspective of the Fourth Defendant, who did not apply to be added to the action, and who was now before me in this summons, made a significant difference. If the Fourth Defendant had said that it was unopposed, or supportive of being added to OC 827, my conclusion after weighing the discretionary factors and evaluating the balance of justice in considering the discretionary element in the *De La Sala* approach might have been different.

## **Conclusion**

54 I therefore set aside: (a) paragraph (a) of HC/ORC 1914/2026 granting the Claimant liberty to add the Fourth Defendant as a defendant in OC 827; and (b) paragraph (b) of HC/ORC 1914/2026 granting the Claimant leave to amend its originating claim accordingly to effect said joinder. As the Fourth Defendant ought not be joined to OC 827, the basis for granting the Claimant permission to serve the cause papers out of Singapore on the Fourth Defendant fell away, and I therefore also set aside: (a) paragraph (2) of HC/ORC 1953/2026 granting leave to the Claimant to effect service of the cause papers for OC 827 on the Fourth Defendant abroad; and (b) paragraph (1) of HC/ORC 1953/2026 granting leave to the Claimant to extend the validity of the originating claim in OC 827 for the purpose of facilitating service.

55 I heard parties on costs and awarded costs to be paid by the Claimant to the Fourth Defendant: (a) in the sum of \$12,000 (all-in) for SUM 2382; and (b) in the sum of \$5,000 (all-in) for costs thrown away in OC 827.

Chong Ee Hsiun  
Assistant Registrar

Leong Kah Wah, Chan Qin Pei and Mustafa Shafiq Shakir (Rajah &  
Tann Singapore LLP) for the claimant;  
Ahn Mi Mi, Genesa Tan Yun Ru and Wong Yin Hui (Focus Law  
Asia LLC) for the first to third defendants (watching brief);  
Lem Jit Min Andy and Poon Pui Yee (Harry Elias Partnership LLP)  
for the fourth defendant.