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

[2026] SGHCR 6

Originating Claim No 70 of 2025 (Summons No 2236 of 2025)

Between

Matthew Benjamin Cape

… *Claimant*

And

(1) John Charles Collis
(2) James Thomas Glyn
(3) Anthony Grant Huston
(4) Aarino Aarne Jesse Petteri
(5) Paul Richard Durrant
(6) Conduit Pte Ltd
(7) Conduit Asset Management Pte Ltd
(8) Tradeflow Capital Management Pte Ltd
(9) Tan Eng Soon

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Striking out]
[Insolvency Law — Winding up — Liquidator — Section 276(4) of the Companies Act (Cap 50, 2006 Rev Ed)]

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Cape, Matthew Benjamin
v
Collis, John Charles and others

[2026] SGHCR 6

General Division of the High Court — Originating Claim No 70 of 2025
(Summons No 2236 of 2025)
AR Perry Peh
23 September, 30 December 2025

5 March 2026

AR Perry Peh:

Introduction

1 Court-appointed liquidators play a central role in ensuring that the interests of all legitimate creditors of the company are protected to the fullest extent in the winding-up process (see *Korea Asset Management Corp v Daewoo Singapore Pte Ltd (in liquidation)* [2004] 1 SLR(R) 671 ("*Daewoo*") at [36]). They are officers of the court and are expected to discharge their duties with a measure of detachment and objectivity with respect to the competing interests in the liquidation (see *Amrae Benchuan Trading Pte Ltd (in liquidation) v Tan Te Teck Gregory* [2006] 4 SLR(R) 969 ("*Amrae*") at [10]–[11]). Given the unique standing of liquidators in the insolvency process, the legislation creates a scheme which closely polices their conduct and the performance of their duties

(see *Liquidator of W&P Piling Pte Ltd v Chew Yin What and others* [2004] 3 SLR(R) 164 ("*W&P Piling*") at [20]).

2 As part of this scheme, a liquidator may apply to court for an order for his release in any one of the following scenarios: (a) there is no further work to be done in the liquidation; (b) he has resigned; or (c) he has been removed from office (see s 147 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("the IRDA") and its predecessor provision in s 275 of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act")). The effect of an order for release is to discharge the liquidator from all liability in respect of his administration of the liquidation or in relation to his previous conduct as liquidator. This is stated in s 276(4) of the Companies Act as well as s 149(4) of the IRDA, which reads:

> An order of the Court releasing the liquidator discharges the liquidator from all liability in respect of any act done or default made by the liquidator in the administration of the affairs of the company or otherwise in relation to his or her conduct as liquidator, but any such order may be revoked on proof that the order was obtained by fraud or by suppression or concealment of any material fact.

3 Mr Tan Eng Soon ("Mr Tan"), who is the ninth defendant in HC/OC 70/2025 ("OC 70"), was formerly the liquidator of a company, NR Capital Pte Ltd ("NR Capital"). The claimant in OC 70, Mr Matthew Benjamin Cape ("Mr Cape"), is a shareholder and a former director of NR Capital. Mr Cape claims to have taken an assignment of NR Capital's various claims and causes of action that are the subject matter of OC 70. Mr Cape's claims against Mr Tan in OC 70 arise from his dissatisfaction with Mr Tan's conduct of the liquidation and are brought in his capacity as assignee.

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4 Mr Tan applied in HC/SUM 2236/2025 ("SUM 2236"), which was the matter before me, to strike out the claims brought by Mr Cape against him. Mr Tan argued that these claims are legally unsustainable and/or an abuse of process because he has already been discharged from all liability in respect of his former role as NR Capital's liquidator pursuant to s 276(4) of the Companies Act, as a result of a by-consent order of court which released him as NR Capital's liquidator. It is undisputed that the liquidation of NR Capital remains ongoing and no order has been made for the dissolution of NR Capital. One question raised in SUM 2236 is whether this prevented Mr Tan from taking advantage of s 276(4) and whether, as Mr Cape argued, the discharge from liability which s 276(4) affords to a liquidator is limited only to cases where the liquidation is complete and the company dissolved.

5 Having considered the submissions, I granted SUM 2236 and ordered that Mr Cape's claims against Mr Tan be struck out in their entirety. It follows from the ordinary meaning of s 276(4) of the Companies Act, which is also supported by its legislative purpose, that an order for release discharges the former liquidator of a company from "all liability in respect of any act done or default made by the liquidator in the administration of the affairs of the company or otherwise in relation to his or her conduct as liquidator", even if the liquidation remains ongoing and the company has not been dissolved. On this basis, and since it is not Mr Cape's pleaded case that the order releasing Mr Tan should be revoked, the effect of s 276(4) is to discharge Mr Tan from all liability in respect of the acts alleged in the claims brought against him. In any event, I find Mr Cape's claims to be legally unsustainable because the causes of action of which he had taken an assignment from NR Capital do not encompass the claims that are pursued against Mr Tan.

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6 Mr Cape has appealed against my decision.[1] These detailed grounds are intended to supersede the brief reasons which I provided to parties when I delivered my decision on 17 December 2025.

Background

7 As mentioned, Mr Cape is a shareholder of NR Capital, and he was also a director of NR Capital until 10 June 2019.[2] NR Capital was wound up pursuant to an order of court, HC/ORC 6340/2019 ("ORC 6340"), made on 20 September 2019. ORC 6340 was granted pursuant to a winding up application, HC/CWU 238/2019 ("CWU 238"), brought by the first defendant. ORC 6340 also appointed Mr Tan as NR Capital's liquidator.[3]

8 Mr Cape's claims in OC 70 arise out of the alleged wrongful diversion of NR Capital's assets and the role that the defendants played in the misappropriation. As against Mr Tan, Mr Cape's claims are based on Mr Tan's improper conduct of NR Capital's affairs as liquidator. Pursuant to a by-consent order of court entered on 4 April 2022, HC/ORC 1812/2022 ("ORC 1812"), Mr Tan was "released" as NR Capital's liquidator, and a new set of liquidators was appointed in his place.[4]

9 In his Statement of Claim ("SOC"), Mr Cape avers that he has standing to bring the claims in OC 70 as he had purchased and was assigned all of NR Capital's rights, title and interests to NR Capital's various causes of action and/or claims in OC 70, pursuant to an agreement in writing dated 13 August

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1 HC/RA 10/2026.

2 Statement of Claim ("SOC") at para 4.

3 1st affidavit of Tan Eng Soon ("TES-1") at paras 6–7 and p 228.

4 TES-1 at para 21.

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2024 that he had entered with NR Capital ("the Assignment Agreement").[5] In other words, the claims in OC 70 are brought, not in Mr Cape's personal capacity, but in his capacity as NR Capital's assignee.

Mr Cape's claims against the other defendants in OC 70

10 The first and second defendants, as well as Mr Cape, were the founding and principal shareholders of NR Capital.[6] Like Mr Cape, the first and second defendants were also directors of NR Capital.[7] Pursuant to an agreement dated January 2018 ("the IAA"), NR Capital was appointed as investment advisor to Emerging Asset Management Ltd ("EAML") (an investment management company) and pursuant to the IAA, it employed a proprietary method and system of trade financing in a sub-fund managed by the EAML known as the "Trade Flow Fund".[8] This method and system of trade financing, which NR Capital had developed, formed part of its intellectual property ("the IP").[9] According to Mr Cape, the IP and the IAA were the most valuable assets of NR Capital, and in particular, the IAA was NR Capital's "single source of income".[10]

11 According to Mr Cape, by early 2019, his relationship with the first and second defendants had broken down, and they made attempts to take over NR Capital's business and force him out of the company.[11] For present purposes, I

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5 SOC at para 9.

6 SOC at para 46.

7 SOC at para 10.

8 SOC at para 5.

9 SOC at paras 28(c) and 55.

10 SOC a para 58.

11 SOC at para 67.

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need not go into the details, and it suffices for me to note that Mr Cape's claims against the defendants in OC 70 (excluding Mr Tan) encompass two key aspects:

(a) the first and second defendants had breached various duties which they owed to NR Capital, including their fiduciary duties as directors and duties of fidelity as employees of NR Capital; and

(b) the first and second defendants had conspired with the third to eighth defendants to cause the role of investment advisor under the IAA to be transferred from NR Capital to the eighth defendant, Tradeflow Capital Management Pte Ltd ("TCM"), by causing EAML to terminate the IAA and enter into an agreement with TCM that is materially identical to the IAA.[12]

12 Mr Cape further avers that the winding up application in CWU 238, pursuant to which NR Capital was wound up (see [7] above), had been brought by the first defendant dishonestly and in an abuse of process to further an improper purpose, because there was in fact no genuine debt owing by NR Capital to the first defendant at the material time.[13] For context, CWU 238 was brought by the first defendant on the basis that a loan of $49,809.71 which he had provided to NR Capital remained unpaid, and that NR Capital was unable to repay its debts.[14]

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12 SOC at paras 29–30.

13 SOC at para 6.

14 TES-1 at para 7.

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Mr Cape's claims against Mr Tan

13 On 20 September 2019, NR Capital was wound up pursuant to ORC 6340 and Mr Tan was appointed its liquidator. According to Mr Tan, he performed the following in his role as NR Capital's liquidator:[15]

(a) On 2 October 2019, he wrote to all creditors of NR Capital (including Mr Cape) informing them that he had been appointed NR Capital's liquidator and invited them to submit their proofs of debt.

(b) He realised an asset of NR Capital known as "Tradeflow 90" through advertisement on *The Business Times* through sale to the highest bidder. It is undisputed that: (i) the highest bidder for Tradeflow 90 was the eighth defendant, TCM, which was submitted by the first defendant on behalf of TCM;[16] and (ii) "Tradeflow 90" is *the IP* which Mr Cape refers to in his claims (see [10] above).

(c) He addressed Mr Cape's queries regarding allegations which Mr Cape had raised about NR Capital's affairs. As a result of Mr Cape's allegations, he had convened a creditor's meeting and requested for funds to carry out investigations into these allegations, but none of the creditors (including Mr Cape) were willing to bear the costs of the investigations.

14 In OC 70, Cape avers that Mr Tan has breached duties which he owed as a liquidator to NR Capital. Mr Cape avers the following in support of his claims:[17]

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15 TES-1 at para 12.

16 TES-1 at pp 82–84.

17 SOC at paras 139–140.

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(a) Mr Tan had sold Tradeflow 90 (*ie*, the IP) to TCM at gross undervalue.[18] In a Statement of Affairs submitted by the first and second defendants on or around 26 September 2019, they had declared that NR Capital owned "unregistered intellectual property" with a book value of S$189,890.00 and an estimated realisable value of S$20,000,[19] and yet Mr Tan sold Tradeflow 90 to TCM at only $1,000. Mr Tan ought to have made inquiries, given that TCM was controlled by the first and second defendants, and they were purporting to purchase the IP at significant undervalue. In his affidavit filed in SUM 2236, Mr Cape stated that this shows that Mr Tan had simply rubber-stamped the transfer of the IP at undervalue in breach of his fiduciary duties to NR Capital, and that he had failed to act faithfully and fairly in administering the winding up of NR Capital.[20]

(b) Mr Tan failed to adequately investigate NR Capital's affairs and the wrongful diversion of NR Capital's business and assets by the first to seventh defendants to TCM (in particular, the diversion of the IAA to TCM).

(c) Mr Tan failed to inform Mr Cape (as well as two other former shareholders of NR Capital) of his appointment as NR Capital's liquidator, and instead only sent a letter to Mr Cape on 2 October 2019 to notify him of the same.

(d) Mr Tan failed to investigate why the debt on which the first defendant sought NR Capital's winding up in CWU 238 had ballooned

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18 SOC at para 140(e).

19 4th affidavit of Matthew Benjamin Cape ("MBC-4") at para 23.

20 MBC-4 at paras 26–27.

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from US$49,809.71 (as stated in the winding-up application) to S$386,982.51 (as stated in a proof of debt filed by the first defendant).

Events leading to Mr Tan's release as liquidator

15 According to Mr Tan, at a creditors' meeting on 22 January 2021, a majority of NR Capital's creditors consented to him commencing the necessary procedures to finalise NR Capital's liquidation. Initially, this included Mr Cape, but Mr Cape subsequently retracted his consent.[21] Pursuant to the majority consent, Mr Tan proceeded to take the necessary steps to finalise NR Capital's liquidation. On 4 August 2021, in accordance with r 149 of the Companies (Winding Up) Rules, Mr Tan gave notice to NR Capital's creditors and contributories of his intention to apply for his release as NR Capital's liquidator.[22]

16 On 25 August 2021, Mr Tan received from Mr Cape's solicitors a letter containing Mr Cape's objections to Mr Tan's release.[23] Mr Cape subsequently filed HC/SUM 3986/2021 ("SUM 3986"), which was an application for Mr Tan to be "removed, released and/or otherwise substituted" as NR Capital's liquidator, and for Mr Tan to be "replaced" by a new set of proposed liquidators.[24] In support of SUM 3986, Mr Cape made several complaints about Mr Tan's conduct as liquidator, including in particular that Mr Tan was uninterested to investigate into matters that he had raised despite concerns which he had expressed about possible breaches of duties by the first and second

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21 TES-1 at para 12(c).

22 TES-1 at p 152.

23 TES-1 at p 173.

24 TES-1 at p 175.

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defendants.[25] Mr Tan filed an affidavit in SUM 3986 contesting the allegations made against him.[26] However, the parties eventually entered a by-consent order for the release of Mr Tan and for a new set of liquidators to be appointed in his place, *viz*, ORC 1812.[27] I set out the material parts of ORC 1812 in full:[28]

> … **UPON THE COURT** recording herein at the request of both parties that it has made no findings in respect of the allegations against Tan Eng Soon deposed to in the said Affidavits of Matthew Benjamin Cape:
>
> It is ordered that:
>
> 1. By consent,
>
> > a. Tan Eng Soon […], be and is hereby ***released*** as liquidator of [NR Capital], with effect from 10.00am on 4 April 2022, ***pursuant to Section 275(i) of the Companies Act (Cap. 50)*** ('the Act').
>
> […]
>
> 2. Of the Court's own motion, and pursuant to s 264(f) of the Act and/or s 134(*e*) of the Insolvency, Restructuring and Dissolution Act 2018 and/or the inherent jurisdiction of the Court, it is ordered that […], be and are hereby appointed as the joint and several liquidators of [NR Capital], with effect from 10.00am on 4 April 2022.
>
> [emphasis added in bold italics]

The application in SUM 2236

17 In SUM 2236, Mr Tan seeks striking out on two key grounds:

(a) First, no claim can be brought against him in relation to work he had carried out as NR Capital's liquidator, because he has been discharged from all liability pursuant to s 276(4) of the Companies Act.

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25 TES-1 at Tab 12.

26 TES-1 at Tab 13.

27 TES-1 at paras 19–20.

28 TES-1 at p 228.

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(b) Secondly, Mr Cape has no standing to bring the claims in OC 70 against him. This is because the Assignment Agreement pursuant to which Mr Cape took an assignment of NR Capital's various causes of action (see [9] above) only extends to claims for "breach of directors' duties, breach of trust, dishonest assistance and/or knowing receipt and conspiracy to injure [NR Capital]", and the claims brought against him are not of the same character and do not fall within the ambit of the Assignment Agreement. In any event, any such assignment is invalid because the claims pursued against him are causes of action arising post-insolvency which are vested in a liquidator and can only be assigned after authorisation by either the court or the committee of inspection.

The applicable principles

18 I start by outlining the legal principles applicable to the two grounds on which Mr Tan seeks striking out of the claims brought against him.

Release of a liquidator

19 Section 276(4) of the Companies Act, which is central to the outcome of SUM 2236, must be read together with s 275 and the remaining subsections of s 276 of the Companies Act. Following the coming into force of the IRDA on 30 July 2020, ss 275 and 276 of the Companies Act are now contained in the IRDA as ss 147 and 149 respectively.

20 According to s 526(1)(*c*) of the IRDA, in relation to "any order for a winding up of a company made under s 216(2)(*f*) of the Companies Act 1967 before 30 July 2020", Part 8 of the IRDA (in which ss 147 and 149 are contained) does not apply and the Companies Act in force immediately before the coming into effect of the IRDA continues to apply. The release of Mr Tan

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is a matter arising in connection with ORC 6340, which is the order pursuant to which NR Capital was wound up, and that order comes within s 526(1)(*c*) of the IRDA. As such, for this issue, I will consider the provisions in the Companies Act, though my analysis would be equally applicable to the corresponding provisions in the IRDA.

21 Section 275 provides for the liquidator's right to apply for his release and/or the dissolution of the company. It reads:

> **275**. When the liquidator —
>
> (*a*) has realised all the property of the company or so much thereof as can in his opinion be realised, without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves and made a final return, if any, to the contributories; or
>
> (b) has resigned or has been removed from his office,
>
> he may apply to the Court —
>
> (i) for an order that he be released; or
>
> (ii) for an order that he be released and that the company be dissolved.

22 According to s 275 of the Companies Act, a liquidator may apply to the court for an order that he be released, or for an order that he be released and that the company be dissolved, in any of the following three scenarios:

(a) where s 275(*a*) of the Companies Act applies, that is, where the liquidator has realised all the property company or so much thereof as in his opinion can be realised, has distributed a final dividend to the creditors (if any), and has adjusted the rights of the contributories among themselves and made a final return to the contributories (if any);

(b) where the liquidator has resigned from his office; or

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(c) where the liquidator has been removed from his office.

23 Where the liquidator is appointed by the court, he may resign or on cause shown be removed by the court (see s 268(1) of the Companies Act and s 139(1) of the IRDA). As the High Court stated in *Yap Jeffrey Henry v Ho Mun-Tuke Don* [2006] 3 SLR(R) 427 (at [22]), the "cause" for removing a liquidator from his position can be made out in varying circumstances such that the court considers that there was cause to remove him; it is not limited to circumstances where the liquidator has acted wrongfully or ineptly, and the removal of the liquidator also does not necessarily mean that fault of any sort has been found with the liquidator. The single overarching question is whether the removal of the court-appointed liquidator is in the real and substantial interest of the liquidation (see *Tay Lak Khoon v Tan Wei Cheong (as judicial manager of USP Group Ltd) and others* [2025] 2 SLR 118 at [36]).

24 Section 276 of the Companies Act, on the other hand, is concerned with the effect of such orders for release and/or dissolution that are referred to in s 275(i) and s 275(ii). It reads:

> **276.**—(1) Where an order is made that the company be dissolved, the company shall from the date of the order be dissolved accordingly.
>
> (2) The Court —
>
> (*a)* may cause a report on the accounts of a liquidator, not being the Official Receiver, to be prepared by the Official Receiver or by a public accountant appointed by the Court;
>
> (*b)* on the liquidator complying with all the requirements of the Court, shall take into consideration the report and any objection which is urged by the Official Receiver, auditor or any creditor or contributory or other person interested against the release of the liquidator; and
>
> (*c)* shall either grant or withhold the release accordingly.

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> (3) Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks just charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.
>
> (4) An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
>
> (5) Where the liquidator has not previously resigned or been removed his release shall operate as a removal from office.
>
> (6) Where the Court has made —
>
> > (*a)* an order that the liquidator be released; or
> >
> > (*b)* an order that the liquidator be released and that the company be dissolved,
>
> a copy of the order and an office copy of the order shall, within 14 days after the making thereof, be lodged by the liquidator with the Registrar and with the Official Receiver, respectively, and a liquidator who makes default in complying with the requirements of this subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

25 Provisions similar to ss 275 and 276 of the Companies Act (as well as ss 147 and 149 of the IRDA) are found in the insolvency legislation of other jurisdictions: see s 480 and s 481 of the Australia Corporations Act 2001 ("the Australia Corporations Act") and ss 490 and 491 of the Malaysia Companies Act 2016 (Act 777) ("Malaysia Companies Act"). To the best my of knowledge, there does not appear to be any published Singapore case law considering ss 275 and 276 of the Companies Act and its successor provisions in the IRDA. Therefore, in these grounds, I will refer to Australia and Malaysia case law, where relevant and applicable.

26 In an application by a liquidator for release, the liquidator must prove strict compliance with all the prerequisites to a release (see generally, Re

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Australasian Barrister Chambers Pty Ltd [2020] NSWSC 304 ("*Barrister Chambers*") at [32]), such as those set out in r 149 of the Companies (Winding Up) Rules (in relation to an application for release under s 275 of the Companies Act) as well as s 148 of the IRDA and r 141 of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 ("IRDA (Corporate Insolvency) Rules") (in relation to an application for release under s 147 of the IRDA). In considering whether or not to grant the release sought, the court *may*, as a precautionary measure, cause a report on the accounts of the liquidator to be prepared, and on the liquidator complying with all the prerequisites to a release, take into consideration any such report of the liquidator's accounts as well as any objections raised against the liquidator's release (see ss 276(2)(*a*)–(*b*) of the Companies Act; see also Re *Bell Group NV (in liquidation)* [2023] WASC 151 ("*Bell Group*") at [20]; *Halsbury's Laws of Singapore* vol 13 (LexisNexis) at para 150.476). After considering the matters put before it, the court has a discretion whether or not to grant or withhold the release (see Re *Autistic Therapy Society of Queensland Ltd (in liquidation)* (1981) 5 ACLR 658 ("*Autistic Therapy Society*") at 664).

27 Where the liquidator's release is granted by the court, the effect of the order for release is provided for in s 276(4) of the Companies Act. The Australia courts, considering s 481(3) of the Australia Corporations Act (which is identical to s 276(4) of the Companies Act), have described an order for the release of a liquidator as "wip[ing] the slate clean", subject to the limited exceptions contained in the statute, namely, where the order for release had been *obtained* by fraud or by suppression or concealment of any material fact (see *In the matter of RR Impex Pty Ltd (in liquidation)* [2013] NSWSC 1778 ("*RR Impex*") at [3]). It has been held that the "suppression or concealment of any

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material fact" coming within the scope of the statutory exception is that which "has in it some element of fraud" (see *In re Harris* [1889] 2 QB 97 at 100).

28 What s 276(4) means is, after release, so far as the liquidator is concerned, he may pay no thought whatsoever to the previous course of his actions as liquidator, and any person with an interest in the liquidator's performance of his duties is also deprived completely of any redress whatsoever against the liquidator in respect of his previous conduct as liquidator (see *Re Wayland as liquidator of ABC Containerline NV (in liquidation)* [2005] NSWSC 1 ("*ABC Containerline*") at [23]). Therefore, an order for the release of a liquidator has also been described as conclusive evidence of due performance of duties of a liquidator, except where it is shown that the order was procured by fraud (see *Victor Saw Seng Kee v Wong Weng Foo & co and another and other appeals* [2025] MLJU 3886 at [46], considering s 491(4) of the Malaysia Companies Act, which is identical to s 276(4)).

Assignment of causes of action by a company in liquidation

29 In directions issued on 1 April 2022 to the parties, the learned Judge who recorded the consent order in ORC 1812 observed that it is an "open issue" whether the provisions of the IRDA or the Companies Act applied to the liquidation of NR Capital, and in particular, to the appointment of new liquidators who took Mr Tan's place pursuant to ORC 1812. Therefore, the court explained, para 2 of ORC 1812, which dealt with the new liquidators' appointment, referred to the relevant provisions from both the IRDA and the Companies Act (see [16] above).

30 Provisions in the IRDA pertaining to the assignment of causes of action by a company in liquidation, namely, ss 144(1)(*g*) and 144(2)(*b*), are contained

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in Part 8 of the IRDA. While s 526(1)(*c*) of the IRDA states that, in relation to "any order for a winding up of a company made under s 216(2)(*f*) of the Companies Act 1967 before 30 July 2020", Part 8 of the IRDA does not apply and the Companies Act 1967 in force immediately before the coming into effect of the IRDA continues to apply, it is unclear whether the appointment of NR Capital's new liquidators, and the exercise of powers by these new liquidators (including their entry into the Assignment Agreement), come within the ambit of "any order for a winding up", since ORC 6438 appointed Mr Tan and not these new liquidators as NR Capital's liquidators. Accordingly, in considering whether Mr Cape had validly taken an assignment of the causes of action that are pursued against Mr Tan in OC 70, I will consider the position under both the IRDA and the Companies Act in setting out the applicable principles.

31 Under both the IRDA and the Companies Act, a liquidator can assign or agree to assign the company's causes of action or the proceeds of these causes of action. This is because s 144(2)(*b*) of the IRDA and s 272(2)(*c*) of the Companies Act permits the liquidator of a company to "sell the immovable and moveable property and things in action of the company …". Such "property" includes the company's causes of action, as well as the proceeds from these causes of action (see *Lavrentiadis, Lavrentios v Dextra Partners Pte Ltd (in liquidation) and another matter* [2023] 5 SLR 1288 ("*Dextra Partners*") (at [13]; *Solvadis Commodity Chemicals Gmbh v Affert Resources Pte Ltd* [2018] 5 SLR 1337 ("*Solvadis*") at [23]]).

32 On the other hand, statutory causes of action which arise in the event of a liquidation – such as proceedings to avoid transactions at an undervalue – are vested in a liquidator and can only be pursued by a liquidator pursuant to a statutory power conferred upon him (see *Solvadis* at [33]). Under the Companies Act, a liquidator cannot assign these statutory causes of action (see

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Solvadis at [33]). However, s 144(1)(*g*) of the IRDA, which is a new provision of the IRDA and not previously found in the Companies Act, permits a liquidator to assign the proceeds of these statutory causes of action upon authorisation by either the court or the committee of inspection (see *Dextra Partners* at [16]).

The issues

33 As mentioned earlier, the two key grounds which Mr Tan relies on to strike out Mr Cape's claims against him are: (a) that he has been released by ORC 1812 and discharged from all liability in respect of these claims pursuant to s 276(4) of the Companies Act; and (b) in any event, Mr Cape has no standing to bring these claims as they do not come within the scope of the Assignment Agreement.

34 These grounds, if made good, would demonstrate that Mr Cape's claims are legally unsustainable, in that Mr Cape would not be entitled to the remedy sought even if he were to succeed in proving all the facts which he has pleaded in support of the claims. Where this is shown, it is a ground for striking out under O 9 r 16(1)(*c*) of the Rules of Court 2021 ("ROC 2021") (see *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 at [19]; *The Bunga Melati 5* [2012] 4 SLR 546 at [39(b)]).

35 Based on the parties' submissions, the following issues arose for determination in SUM 2236:

(a) Whether the claims in OC 70 against Mr Tan are capable of assignment to Mr Cape as a matter of law.

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(b) Whether the claims in OC 70 against Mr Tan are within the scope of the Assignment Agreement.

(c) If Mr Cape has validly taken an assignment of the claims in OC 70 against Mr Tan, whether ORC 1812 has discharged Mr Tan from all liability in respect of these claims, pursuant to s 276(4) of the Companies Act.

Whether the claims against Mr Tan are capable of assignment as a matter of law

36 The first issue arose from Mr Tan's submission that the claims pursued against him in OC 70 are in essence statutory claims for breaches of duties by a liquidator under s 240(1) of the IRDA or s 341(1) of the Companies Act. These claims are therefore vested in NR Capital's liquidators and pursuant to s 144(1)(*g*) of the IRDA, only the proceeds of these claims can be assigned, with authorisation by either the court or the committee of inspection.[29] However, what is assigned under the Assignment Agreement are the *claims* themselves, and no authorisation by the court or the committee of inspection has been obtained. Mr Cape disagreed with Mr Tan's characterisation of his claims – he submitted that these are common law claims for breaches of fiduciary duties, and the underlying causes of action are vested in the company and constitutes "property" which is assignable under s 144(2)(*b*) of the IRDA or s 272(2)(*c*) of the Companies Act.[30]

37 As a starting point, I do not think it is open to me to adopt Mr Tan's characterisation of the claims, *viz*, that these are statutory claims under s 240(1)

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29 Ninth defendant's written submissions at paras 66–72.

30 Claimant's aide memoire at paras 12–17.

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of the IRDA or s 341(1) of the Companies Act. This is because Mr Cape has not pleaded anywhere in his SOC that his claims against Mr Tan are statutory claims of this nature. I therefore proceed with Mr Cape's characterisation, *ie*, that his claims are common law claims for breaches of fiduciary duties by Mr Tan. On that basis, I do not think the assignment to Mr Cape under the Assignment Agreement is rendered ineffective merely because (a) the subject of the assignment are the *claims* themselves and not the proceeds of these claims and (b) the liquidators of NR Capital have not obtained authorisation by the court or the committee of inspection for the assignment, since these requirements are applicable to the assignment of statutory claims coming within s 144(1*)(g*) of the IRDA.

38 However, even if Mr Cape's claims were characterised as common law claims, this does not bring the assignment under the Assignment Agreement within the scope of s 144(2)(*b*) of the IRDA or s 272(2)(*c*) of the Companies Act. Causes of action (or their proceeds) which are assignable under these provisions by a liquidator are those which form part of the company's "property" (see [30] above). For causes of action (or their proceeds) to constitute the company's "property", at the very least, they must have accrued prior to the making of the winding up order. In this case, however, the claims against Mr Tan relate to his conduct of NR Capital's liquidation, and they arose from events which took place after the winding up order was made and so could only have accrued then.

39 However, it is not Mr Tan's submission that, if Mr Cape's claims were characterised as common law claims, then the assignment under the Assignment Agreement must fail because any such assignment would fall outside the scope of s 144(2)(*b*) of the IRDA or s 272(2)(*c*) of the Companies Act; Mr Tan's position was premised on Mr Cape's claims being characterised as statutory

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claims and so the assignment is invalid because no authorisation by the court or the committee of inspection has been obtained. Given the state of the submissions, I do not make a definitive finding on whether Mr Cape's claims against Mr Tan in OC 70 are capable of assignment as a matter of law, and in the remainder of these grounds, I assume for the sake of argument that the law permits the assignment of these claims.

Whether the claims against Mr Tan are within the scope of the Assignment Agreement

40 As the High Court noted in *Solvadis* ([31] above) (at [24]), where a liquidator exercises his power under s 272(2)(*c*) of the Companies Act (or s 144(2)(*b*) of the IRDA) to sell the company's property, the subject matter to be sold must be "sufficiently identifiable" so that the court can reasonably exercise its supervisory jurisdiction under s 272(3) of the Companies Act (or s 144(3) of the IRDA) over the liquidator's exercise of its statutory power of sale. Where causes of action are being sold, the liquidator must identify them with reference to matters such as the extant proceedings, the parties being claimed against, or the offending conduct in question (see *Solvadis* at [24]). On the facts of *Solvadis*, the court considered that the phrasing "[a]ny and all causes of action" was too wide as to sufficiently identify the ambit of the causes of action being sold, but a phrasing which identified the receivables owed to the company with reference to a defined list of third parties from whom such receivables were owed constituted sufficient identification (see *Solvadis* at [25]).

41 In his affidavit, Mr Cape exhibited a redacted version of the Assignment Agreement. The material parts of the Assignment Agreement are as follows:[31]

[31] MBC-4 at pp 49–50.

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> **WHEREAS**
>
> …
>
> (B) The Purchaser [Mr Cape] wishes to acquire the cause of action and claims of the Seller [NR Capital Pte Ltd (in liquidation)] against *inter alia* Mr Thomas Glyn James … and Mr John Charles Collis … for breach of directors' duties, breach of trust, dishonest assistance and/or knowing receipt and conspiracy to injure the Seller *arising out of the appointment of Tradeflow Capital Management Pte Ltd … as new investment advisor* ('Claims')
>
> …
>
> 2.2 Subject to clause 2.1 above and the terms and conditions of this Agreement, the Seller shall sell and assign to the Purchaser, and the Purchaser shall purchase and consent to the assignment from the Seller of all the Seller's right, title and interest in, to and under the Claims.
>
> [emphasis added]

42 Based on what Mr Cape has exhibited, cl 2.1 of the Assignment Agreement appears to provide for Mr Cape's payment obligations and does not affect the scope of the assignment, which falls to be determined solely by the definition of "Claims" in paragraph (B) of the preamble. Mr Cape submitted that this definition of "Claims" is sufficiently wide to encompass claims against Mr Tan because it refers to the IAA and the claims against Mr Tan are based on his failure to adequately investigate into the diversion of the IAA to the eighth defendant, TCM. The subject matter of the definition of "Claims" in the Assignment Agreement therefore establish a clear link to Mr Tan, even though he is not expressly named in paragraph (B) of the preamble as one of the parties against whom the identified causes of action are to be pursued. Mr Cape submitted that it is not necessary for the Assignment Agreement to expressly list every individual against whom the claims in question may be pursued. He highlighted that in *Solvadis*, the court had accepted language such as "against

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any and all parties (including but not limited to ...)" as sufficient identification.[32] Mr Cape further submitted that the use of the words "*inter alia*" in paragraph (B) of the preamble sufficiently identified Mr Tan as one of the parties against whom the assigned claims may be brought.

43 The scope of the definition of "Claims" is a matter of contractual interpretation. The Assignment Agreement defines the subject matter of "Claims" based on the *identified causes of action* which arise out of *the appointment of TCM (the eighth defendant) as new investment advisor*. It is clear from this definition, which is plain and unambiguous, that the claims against Mr Tan fall outside the scope of the Assignment Agreement, for two reasons. First, none of the causes of action *identified* in the definition encompass the claims which Mr Cape is pursuing against Mr Tan in OC 70. Secondly, in so far as the definition refers to the alleged diversion of the IAA and the appointment of TCM as EAML's investment advisor that had been perpetrated by the first and second defendants in breach of their duties to NR Capital in conspiracy with the third to eighth defendants (see [11] above), this has no connection whatsoever with Mr Tan, whose role was limited to carrying out the *liquidation* of NR Capital, and he would not have had any involvement in or connection with the appointment of TCM as EAML's investment advisor. It impermissibly stretches the contractual language to say that the "appointment of Tradeflow …" also encompass Mr Tan's alleged failure to investigate into the circumstances of TCM's appointment and the claims brought in respect of Mr Tan's conduct of duties as liquidator.

44 I do not agree with Mr Cape's submission that the words "*inter alia*" suffice to bring Mr Tan and any claims pursued against him within the scope of

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[32] Claimant's aide memoire at para 11.

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the Assignment Agreement. I accept that there is no requirement that an agreement purporting to assign a company's causes of action must list *each and every individual* against whom the claims are to be brought, because the relevant test is that of *sufficient identification* (see [40] above). However, the issue here is not with Mr Tan not being *identified* in the definition of "Claims", but that the subject matter of the "Claims" coming within that definition simply do not encompass the claims brought against him, for the reasons explained earlier (at [43]).

45 The claims against Mr Tan are brought by Mr Cape in his capacity as NR Capital's assignee. Given my conclusion that these claims do not come within the definition of "Claims" in the Assignment Agreement, in so far as these claims are concerned, there has been no valid assignment, and Mr Cape has no standing to pursue these claims. Therefore, since Mr Cape is not the proper claimant, the claims are legally unsustainable and must be struck out because Mr Cape would not succeed in obtaining any relief against Mr Tan even if all the pleaded facts supporting these claims were proven at trial.

46 As an alternative submission, Mr Cape argued that he is entitled to pursue the claims against Mr Tan in his *personal capacity* as a contributory and/or shareholder of NR Capital, and such claims come under the statutory cause of action available against a company's delinquent officers (including its former liquidator) under s 341(1) of the Companies Act or s 240(1) of the IRDA. Therefore, if the claims against Mr Tan were not within the scope of the Assignment Agreement, the court should, as an alternative to striking out, allow Mr Cape to amend his SOC to plead these claims as being brought in his personal capacity pursuant to those provisions.

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47 I reject Mr Cape's submission, for two reasons. First, Mr Cape has not even articulated what such amendments would be. Given that any claim brought in Mr Cape's personal capacity pursuant to s 341(1) of the Companies Act or s 240(1) of the IRDA would be different in character from the claims which Mr Cape has hitherto pursued against Mr Tan in his capacity as an assignee of NR Capital's causes of action, the need for such amendments to be properly articulated is obvious, especially where they are relied on by Mr Cape as a ground for resisting striking out. I should also highlight that the possibility of such an amendment was only raised in oral submissions. An aide memoire filed by the claimant on 19 September 2025 ahead of the hearing of SUM 2236 did refer to s 341(1) of the Companies Act and how the remedy in that provision is independently available to the claimant as a contributory and/or shareholder,[33] but there was no suggestion that Mr Cape would be seeking to amend the SOC to pursue such a separate claim in his personal capacity as a ground for resisting striking out. Secondly, where proceedings are to be brought against a former liquidator of a company under s 341(1) of the Companies Act or s 240(1) of the IRDA, prior permission of court must be obtained for such an action to be brought (see *Excalibur Group Pte Ltd v Goh Boon Kok* [2012] 2 SLR 999 at [14] and [28]), and it is common ground that no such permission has been obtained by Mr Cape.

Whether ORC 1812 has discharged Mr Tan from all liability in respect of the claims pursuant to s 276(4) of the Companies Act

48 Mr Cape had two key submissions for the third issue, which he argued should be answered in the negative. First, ORC 1812 did not grant Mr Tan a release pursuant to s 276(4) of the Companies Act, and it was in fact silent on

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[33] Claimant's aide memoire at para 18.

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whether the release that it provided for had taken place pursuant to that provision.[34] Secondly, s 276(4) only applies where the order releasing a liquidator is granted following the dissolution of a company. That is not the case here since NR Capital's liquidation remains ongoing, and Mr Tan should not be allowed to take advantage of s 276(4).[35]

49 In response, Mr Tan submitted that the statutory language of s 276(4) of the Companies Act is plain and clear, and ORC 1812 has discharged from him all liability in respect of the acts complained of in the claims, and further, Mr Cape has not pleaded any grounds for ORC 1812 to be revoked.[36] Mr Tan further submitted that it is significant that ORC 1812 is a by-consent order entered into following negotiations between the parties' solicitors which were initiated after Mr Cape brought the application in SUM 3986 for the removal of Mr Tan (see [16] above). Mr Cape therefore consented to the release of Mr Tan in ORC 1812 with full knowledge of its effect and consequences, and his claims in OC 70 are inconsistent with his previous position and constitute an abuse of process.[37]

50 There are two questions to be considered:

(a) Whether ORC 1812 is an "[a]n order of the Court releasing the liquidator" coming within s 276(4) of the Companies Act?

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34 Claimant's written submissions at para 32(iv).

35 Claimant's written submissions at paras 37–38.

36 Ninth defendant's written submissions at paras 38–39.

37 Ninth defendant's written submissions at paras 40–42.

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(b) If so, whether an order for release carries the effect stated in s 276(4) of the Companies Act, even if the underlying liquidation remains ongoing and the company has not been dissolved?

Whether ORC 1812 is an order coming within s 276(4) of the Companies Act

51 Mr Cape submitted that ORC 1812 is a consent order entered to effect a change in NR Capital's liquidators, and it is not an order made pursuant to an application for release brought by Mr Tan. Mr Tan has therefore not satisfied the statutory preconditions for a release and ORC 1812 is not an order coming within s 276(4) of the Companies Act.[38] I reject Mr Cape's submission. In my view, ORC 1812 is clearly "[a]n order of the Court releasing the liquidator" coming within s 276(4) of the Companies Act.

52 A consent order is granted pursuant to the court's inherent power to give effect to the parties' decision to settle their dispute (see *Singapore Civil Practice: Vol II* (LexisNexis, 2022) at para 35-54). ORC 1812 had arisen as a result of SUM 3986, which was the application brought by Mr Cape in CWU 238 for Mr Tan to be removed as NR Capital's liquidator. At the risk of stating the obvious, ORC 1812 reflects the terms on which Mr Cape and Mr Tan had settled SUM 3986.

53 The relevant part of ORC 1812 which Mr Tan relies on states that he has been "released as liquidator … pursuant to s 275(i) of the Companies Act" (see [24] above). Section 275(i) of the Companies Act provides that a liquidator may "*apply* to the Court — for an order that he be released" where any one of

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[38] Claimant's further written submissions at paras 7 and 9; Claimant's written submissions at para 32.

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the three scenarios in ss 275(*a*)–(*b*) applies (see [22] above). Therefore, pursuant to ORC 1812, the parties agreed for Mr Tan to be released as liquidator *as if* he had brought an application for his release under s 275(i) of the Companies Act. Where an order for release is granted pursuant to an application brought under s 275(i) of the Companies Act, its effect is as provided for in s 276(4) of the Companies Act. ORC 1812 is therefore "[a]n order of the Court releasing the liquidator" coming within s 276(4) of the Companies Act.

54 For completeness, I do not think there is any significance in the fact that Mr Tan had not yet made any application for his release under s 275(i) of the Companies Act. Based on the statutory language of s 276(4) of the Companies Act, "[a]n order of the Court releasing the liquidator" is not limited to an order for release made pursuant to an application brought by the liquidator under s 275 of the Companies Act. This suggests that, while the atypical scenario in which a liquidator may obtain a release under s 276(4) is to apply for a release, the circumstances in which the court may order a release are not limited only to those where the liquidator has made an application for release. I also note from Mr Tan's affidavit filed in SUM 2236 that he has already complied with all the necessary requirements for seeking a release, and all that remained was for him to formally file the application for release, until events were superseded by Mr Cape's application in SUM 3986.[39]

Whether an order for release carries the effect stated in s 276(4) of the Companies Act, even if the liquidation remains ongoing and the company has not been dissolved

55 This question raises an issue of the interpretation of s 276(4) of the Companies Act. Section 9A of the Interpretation Act 1965 mandates that the

[39] TES-1 at paras 13–14.

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court adopt a purposive approach when engaging in an exercise in statutory interpretation, *ie*, that the court should prefer an interpretation of a written law which advances its objects and purposes over one which does not (see *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 at [52]). The court's task when undertaking the purposive interpretation of a legislative provision involves three steps (see *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37]): (a) first, ascertain the possible interpretations of the provision, having regard not just to its text but also to the context of that provision within the written law as a whole; (b) secondly, ascertain the legislative purpose or object of the statute; and (c) thirdly, compare the possible interpretations of the text against the purposes of objects of the statute.

The ordinary meaning of s 276(4) of the Companies Act

56 In respect of the first step, the court engages in this exercise by determining the ordinary meaning of the words of the legislative provision (see *Tan Cheng Bock* at [38]). In my view, reading s 276(4) of the Companies Act in the context of ss 275 and 276 as a whole, its ordinary meaning is plain and unambiguous – an order for release discharges the former liquidator of a company from "all liability in respect of any act done or default made by the liquidator in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator", even if the liquidation remains ongoing and the company has not been dissolved. This is so for two reasons.

57 First, s 276(4) of the Companies Act states that "[a]n order of the Court releasing the liquidator *shall discharge him from all liability* …" [emphasis added]. The statute does not prescribe any limitation to the circumstances in which an order for release carries the effect stated in s 276(4). Parliament would

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have legislated for exceptions if it had intended that the effect of s 276(4) be excluded in certain circumstances (such as where the liquidation remains ongoing and the company has not been dissolved).

58 Secondly, if Mr Cape's submission were accepted and an order for release only carried the effect stated in s 276(4) where the company has been dissolved, that would be inconsistent with the statutory scheme of ss 275 and 276 of the Companies Act. Section 275 of the Companies Act envisions that a liquidator can apply for an order for release where the liquidation remains ongoing, for example, where the liquidator "has resigned or has been removed from his office". Section 275(i) of the Companies Act also makes clear that a liquidator can apply to the Court for *only* "an order that he be released", in contrast to s 275(ii) which states that a liquidator can apply to court for "an order that he be released and that the company be dissolved". This suggests that an order for release can be sought by a liquidator even if the company has not been dissolved and the liquidation remains ongoing. It is for this reason that I also reject Mr Cape's submission that the "statutory trigger" for the application of s 276(4) is the dissolution of the company.[40] This submission is not borne out by s 276(4) or the statutory scheme of ss 275–276 of the Companies Act as a whole; to the contrary, they show otherwise.

59 Mr Cape placed some emphasis on the fact that the first subsection in s 276 of the Companies Act (*ie*, s 276(1)) provides for the date from which an order made for the dissolution of the company takes effect, and he argued that this suggests that the effect of s 276(4) is limited only to cases where the company has been dissolved.[41] I disagree with Mr Cape. Sections 276(1) and

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40 Claimant's written submissions at para 44.

41 Claimant's further written submissions at para 13.

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276(4) are distinct provisions and there is nothing in the statutory language which suggests that the application of s 276(4) is contingent upon s 276(1). In fact, as I mentioned earlier (at [58]), the statutory scheme of ss 275–276 of the Companies Act contemplates that an order for release can be sought even if the company has not been dissolved.

60 In Mr Cape's submissions, he also highlighted that the equivalent of s 276(1) of the Companies Act is absent from the corresponding provision in the Australia Corporations Act (*ie*, s 481).[42] Therefore, since s 276(1) was deliberately included by the drafters of the Companies Act, it is suggestive of Parliament's intent that the subsequent subsections in s 276 (including s 276(4)) only apply where a company has been dissolved.[43] I disagree with Mr Cape's submission. If there was any significance in the inclusion of s 276(1) as Mr Cape submitted, then s 276(4) would have contained a reference to that subsection, but that is not the case. The ordinary meaning of s 276(4), which is rather clear and unambiguous, puts Mr Cape's speculative submission to rest without the need for further explanation.

The legislative purpose of s 276(4) of the Companies Act

61 As earlier mentioned in the introduction of these grounds (at [1]), the defining characteristic of the office of a court-appointed liquidator is his "mantle of objective neutrality" – he has a special responsibility to "retain a measure of detachment" and be "untarnished by any special interests", such as his own fee considerations and the identity of the creditor funding him, and he is expected to not take sides on behalf of the persons who claim to be creditors of the

42 Claimant's further written submissions at para 13.

43 Claimant's further written submissions at para 13.

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company and who can have different financial interests in the outcome of the liquidation, or give any appearance of the same (see *Daewoo* ([1] above) at [70]–[71]; *Amrae* ([1] above) at [10]). Court-appointed liquidators are officers of the court, and they enjoy a unique standing in the insolvency process as they are perceived as not only serving private interests but also as concurrently discharging a public function (see *W&P Piling* ([1] above) at [20]). Consistent with this, the Companies Act (and now the IRDA) creates a regime that closely polices and supervises the liquidator's conduct (see *W&P Piling* at [19]).

62 An application for release is brought where the liquidator seeks to vacate his office, whether is it because there is no further work to be done in the liquidation, he has resigned, or because he has been removed from the office by the court. Such an application is intended as the forum for the consideration of any claim that the liquidator has been derelict or deficient in the performance of his functions (see *RR Impex* ([27] above) at [3]; *ABC Containerline* ([28] above) at [28]). This is why a liquidator applying for an order for release must give notice of his intention to do so, to ensure that persons who might have a reason to complain of the liquidator's conduct (such as creditors) can have an opportunity to disclose the complaint to the court before the liquidator's release (see *Barrister Chambers* ([26] above) at [37]; see also r 149 of the Companies (Winding Up) Rules and r 141 of the IRDA (Corporate Insolvency) Rules). At the hearing of the application, if the relevant procedural requirements have been complied with, and where no creditors have objected to the release of the liquidator or raised any concern as to the performance of his duties, the court would ordinarily make an order releasing the liquidator, unless any reason emerges why it should not do so (see *RR Impex* at [3]). With the grant of release, the slate is "wiped clean" and the liquidator need not pay any further thought to his previous conduct, and any person with an interest in the performance of his

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duties is also deprived of any redress whatsoever in respect of his previous conduct (see [28] above).

63 Since the liquidator is an officer of the court, it is the court, and *not* the persons who had sought his appointment through the winding up application or any other persons interested in the liquidation, that he needs to be accountable to in respect of his conduct as liquidator. The effect of s 276(4) of the Companies Act is to assure a liquidator that, after he has accounted to the court for the performance of his duties and is granted a release by the court, no subsequent claim can be brought against him by persons financially interested in the liquidation and who are dissatisfied with how he had performed his duties. This assurance allows a liquidator to perform his duties with utmost independence and neutrality, and it supports a liquidator's discharge of his public function in the insolvency process.

64 The standards applicable to the conduct of a liquidator are not dependent on the course which the liquidation takes and so even if circumstances subsequently ensue which result in the liquidator vacating his office while the liquidation remains ongoing (as in this case), that does not retrospectively lower or alter the standards that are applicable to his previous conduct, and he is held to the same standards of conduct as a liquidator who vacates his office only after the liquidation is completed. If a liquidator who comes to vacate his office *before* the company is dissolved is expected to perform his duties no differently than a liquidator who remains in office until there is no further work to be done in the liquidation, then the protection offered by s 276(4) of the Companies Act should apply equally to the both of them with no distinction, so that s 276(4) can serve its intended purpose of supporting a liquidator in performing the responsibilities discharged by his office.

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65 Therefore, for s 276(4) of the Companies Act to serve its intended purpose, a former liquidator in whose favour an order for release has been made should be allowed to take advantage of the protection offered by that provision even if the liquidation remains ongoing and the company has not been dissolved. The legislative purpose of s 276(4) therefore supports my view above that s 276(4) should be read in its ordinary meaning (see [56] above).

66 Since an order for Mr Tan's release as liquidator has been made in ORC 1812, and given that the claims in against Mr Tan in OC 70 squarely relate to "any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator", Mr Tan is discharged from all liability in respect of the acts complained of in these claims pursuant to s 276(4) of the Companies Act. As I have mentioned earlier, it is not Mr Cape's pleaded case that ORC 1812 should be revoked and his SOC does not contain any pleading as to the circumstances in which ORC 1812 was obtained. Mr Cape's claims therefore cannot provide any ground for relief against Mr Tan even if all the pleaded facts in the SOC are all proven at trial. This is a further ground pursuant to which Mr Cape's claims against Mr Tan are to be struck out pursuant to O 9 r 16(1)(*c*) of the ROC 2021.

67 For completeness, I note that the Australia courts have held that, if an order for release is sought before the dissolution of a company, the court may in its discretion defer to grant it until after the company is deregistered (which is the equivalent of the "dissolution" of a company under the Australia Corporations Act) (see *In the matter of Adellos Pty Limited (in liquidation)* [2013] NSWSC 747 at [8]; *Bell Group* ([26] above) at [46]). This is because, if an order is made only for the release of a liquidator but not the deregistration of the company, it leaves intact the winding up that had been put in place by the winding-up order pursuant to which the liquidator had also been appointed and

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if the liquidator were released, he would disabled from carrying out those tasks that are necessary to complete the liquidation (see *ABC Containerline* ([28] above) at [37]). This suggests that, where liquidation remains ongoing and the company has not been dissolved, if the court is not satisfied that there is someone in place ready to take the office of the former liquidator to continue with and complete the business of the liquidation, that would weigh against the court granting an order for release. However, if the court grants an order for release despite the liquidation being incomplete, this would suggest that the court considered the ongoing state of the liquidation to *not* be an impediment to release, and an order for release granted in these circumstances should be viewed no differently from an order for release made on the dissolution of the company, and in both scenarios, the former liquidator should be allowed to take full advantage of s 276(4) of the Companies Act.

Other points raised in the parties' submissions

68 For completeness, I address two further points which the parties had raised in their submissions.

69 First, Mr Cape submitted that ORC 1812 had resulted in the "removal" of Mr Tan from office and he is therefore not entitled to the protection offered by s 276(4) of the Companies act.[44] According to Mr Cape, this follows because s 276(5) of the Companies Act provides that, in the case of a liquidator who has "not previously resigned or been removed", his *release* shall operate as a "removal" from office and in this case, prior to the grant of ORC 1812, there had been no application by Mr Tan for resignation and no court order for the removal of Mr Tan. I reject Mr Cape's submission. In my view, s 276(5) merely

[44] Claimant's written submissions at para 42.

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states, for the avoidance of doubt, that a liquidator who has not previously resigned and/or who has not been removed by the court, also ceases to occupy his office when he is released. There is nothing in s 276(5) which suggests that the release of a liquidator in circumstances coming within that provision should be viewed differently or that s 276(4) should be inapplicable in those circumstances.

70 Secondly, Mr Tan argued that it is significant that ORC 1812 had been entered by consent, and by pursuing OC 70, Mr Cape has acted in abuse of process.[45] To recap the procedural history, Mr Tan had given notice to NR Capital's creditors and contributories of his intention to apply for his release as NR Capital's liquidator, and Mr Cape was the only party who had raised objections to his release. Mr Cape subsequently brought SUM 3986 for Mr Tan's removal, but parties later entered ORC 1812 pursuant to which Mr Cape consented to Mr Tan's release *as if* an application had been brought by Mr Tan for his release under s 275(i) of the Companies Act (see [53] above). In my view, by consenting to Mr Tan's release, Mr Cape had effectively waived all the objections he had previously raised in SUM 3986 regarding Mr Tan's performance of his duties, as well as any other objection that he would otherwise have been entitled to raise in an application for release by Mr Tan under s 275(i) of the Companies Act, if one was brought. In other words, even though Mr Tan did not bring any application for release, Mr Cape was provided with an opportunity to articulate any complaints he had regarding Mr Tan's performance as liquidator, but he chose not to pursue those complaints. Thus, the fact that ORC 1812 was entered by consent strengthens the case for Mr Tan enjoying the protection which s 276(4) of the Companies Act provides to a

[45] Ninth defendant's written submissions at para 42.

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former liquidator. However, I would not go so far as to say that Mr Cape's claims against Mr Tan are an abuse of process. While Mr Cape's claims are without merit in light of the reasons above, I do not think that they are so devoid of foundation to warrant an inference that they were brought to vex and oppress Mr Tan through the process of litigation, and Mr Tan's affidavit in SUM 2236 also did not contain any material as to why such an inference should be drawn.

Conclusion

71 For the reasons above, I ordered that Mr Cape's claims against Mr Tan in OC 70 be struck out in their entirety on the ground that they are legally unsustainable because: (a) these claims do not come within the scope of the Assignment Agreement and Mr Cape has no standing to pursue these claims as NR Capital's assignee; and (b) ORC 1812 has discharged Mr Tan from all liability in respect of the acts complained of in these claims pursuant to s 276(4) of the Companies Act. I therefore allowed SUM 2843.

72 Turning to the issue of costs, there were two sets of costs to be determined: (a) the costs of SUM 2843; and (b) the costs of OC 70 which Mr Tan came to be entitled consequent upon the striking out of the claims against him. There is no dispute that Mr Tan is entitled to be paid both sets of costs. Mr Tan submitted, however, that these costs should be fixed on an indemnity basis because, given the reasons for which I have found Mr Cape's claims to be legally unsustainable, these claims are without basis and an abuse of process.

73 Indemnity costs are an exception and must be exceptionally justified (see *CCM Industrial Pte Ltd v Uniquetech Pte Ltd* [2009] 2 SLR(R) 20 at [32]). In *Airtrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] 5 SLR 103 (at [23]), the High Court identified the following broad categories of

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conduct which may justify an order of indemnity costs: (a) where the action is brought in bad faith, as a means of oppression or for other improper purposes; (b) where the action is speculative, hypothetical or clearly without basis; (c) where a party's conduct in the course of proceedings is dishonest, abusive or improper; and (d) where the action amounts to wasteful or duplicative litigation or is otherwise an abuse of process.

74 As I mentioned earlier (at [70]), by entering ORC 1812 and consenting to Mr Tan' release, Mr Cape had effectively waived all the objections he had previously raised in SUM 3986, as well as any other objection which he would otherwise have been entitled to raise in any application for release under s 275(i) of the Companies Act, regarding Mr Tan's performance of his duties as NR Capital's liquidator. It is somewhat puzzling that Mr Cape, who had the benefit of legal advice and representation, brought OC 70 against Mr Tan *after* entering ORC 1812. Nonetheless, I do not think an order for indemnity costs is warranted, for two reasons. First, while Mr Cape's claims are in my view without merit, I do not think they could be characterised as being completely without basis, because based on the parties' submissions, there does not appear to be any Singapore case law which directly contradicts the position which Mr Cape had taken regarding how s 276(4) of the Companies Act should be interpreted. Secondly, Mr Tan has not adduced any evidence in his affidavit for SUM 2236 to suggest that the claims brought by Mr Cape against him were used as a means of oppression or for an improper purpose. Thus, there is no evidence before me relating to Mr Cape's conduct in OC 70 which warrants an order for indemnity costs.

75 Having regard to the rounds of submissions, and the fact that the claimant had filed a further round of written submissions in the form of an *aide memoire* ahead of the hearing without any prior directions given (which I agree

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necessitated further work on the part of Mr Tan's counsel before the hearing), I fixed legal costs at $16,000 (at the higher end of the relevant costs range in Appendix G of the Supreme Court Practice Directions 2021 ("Appendix G")) and disbursements at $2,728.20 (based on the figure quoted by counsel which I considered reasonable). For the costs of OC 70 that Mr Tan is entitled to, the parties are in agreement that the matter remains at the pleadings stage. While the SOC is fairly lengthy, there are only a few paragraphs which dealt with Mr Tan, and the overlap between Mr Cape's pleaded case against Mr Tan and his pleaded case against the other defendants is fairly minimal since the former set of claims concern only Mr Tan's conduct as liquidator. As such, I fixed the legal costs of OC 70 at $5,000 (at the lowest end of the relevant costs range in Appendix G) and disbursements at $976 (based on the figure quoted by counsel which I considered reasonable).

Perry Peh
Assistant Registrar

V Kumar Sharma and Kuek Zihui (Eldan Law LLP) for the claimant;
Mark Cham and Charis Quek (Aquinas Law Alliance LLP) for the ninth defendant.

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