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

[2026] SGHC 125

Originating Claim No 174 of 2025 (Summons No 3211 of 2025)

Between

EC-Council Pte Ltd

… *Claimant*

And

WPP Singapore Pte Ltd

… *Defendant*

Counterclaim of Defendant

Between

WPP Singapore Pte Ltd

… *Claimant in Counterclaim*

And

EC-Council Pte Ltd

… *Defendant in Counterclaim*

JUDGMENT

[Civil Procedure — Discontinuance — With leave]

TABLE OF CONTENTS

EC-Council Pte Ltd
v
WPP Singapore Pte Ltd

[2026] SGHC 125

General Division of the High Court — Originating Claim No 174 of 2025
(Summons No 3211 of 2025)
Vinodh Coomaraswamy J
29 January, 6 April, 15, 22 May 2026

12 June 2026 Judgment reserved

Vinodh Coomaraswamy J:

Introduction

1 The claimant has brought an application ("the Application") under O 9 r 19 of the Rules of Court 2021 ("the Rules") for the summary determination of two questions ("the Claimant's Questions") on the construction of a particular clause of an agreement between the parties dated 30 April 2024 ("the Agreement").[1] The claimant now wishes to withdraw that application without a judicial determination. The defendant asks me to refuse the claimant permission to withdraw the Application, and to determine a different question on a different clause ("the Defendant's Question").

---

[1] Affidavit of Denise Yu dated 31 October 2025 ("DY Affidavit") at para 8 and Tab 1.

2 The narrow question before me is whether a litigant who has brought an application may abandon it against the wishes of its opponent, and, if so, on what terms. The answer turns on the following principle: a litigant who has initiated litigation but who now wishes to withdraw it ought to be allowed to withdraw it upon paying the costs thrown away, unless a withdrawal would amount to an abuse of process and the prejudice to the opposing party cannot be fairly met by the imposition of terms. The one exception is that permission to withdraw may be refused even in the absence of an abuse of process where there is a public interest in the subject matter of the litigation that transcends the parties' private interests.

3 I am satisfied that the present case comes within this principle. The claimant's application for permission to withdraw does not amount to an abuse of process. There is no public interest in the Application that transcends the parties' private interests. I therefore grant the claimant permission to withdraw the Application. I further decline the defendant's invitation to determine its own question, whether by refusing permission or by exercising my power under O 9 r 19 of the Rules to decide it of my own accord. My reasons follow.

The facts

The parties and the dispute

4 The claimant provides professional certification in the field of information security.[2] The defendant is a holding company that enters into

[2] Statement of Claim (Amendment No 1) dated 2 October 2025 ("SOC") at para 1; DY Affidavit at para 6.

agreements for the provision of strategic marketing and advertising services for and on behalf of related entities.[3]

5 Under the Agreement, the defendant and related entities undertook to provide strategic marketing and advertising services to the claimant.[4] Two clauses of the Agreement lie at the centre of the parties' dispute: cll 5 and 7. The claimant's case is that the defendant's failure to meet its commitments under cl 5 of the Agreement is a breach of contract sounding in damages at large.[5] The defendant's case is that: (a) a failure to meet those commitments is not a breach of contract at all; (b) any such failure merely triggers a downward adjustment of the defendant's fees under cl 7; and (c) even if the failure is a breach of the Agreement, cl 7 caps the claimant's loss.[6]

6 Nothing in this judgment should be taken as deciding any issue on the construction of cll 5 or 7. This judgment is concerned only with the procedural questions relating to the withdrawal of the Application.

The summary determination application

7 On 31 October 2025, the claimant took out the single application pending trial in this action under O 9 r 9 of the Rules ("the SAPT"). One of the prayers in the SAPT sought the summary determination of the Claimant's

---

3 Defence and Counterclaim (Amendment No 2) dated 7 April 2026 ("D&CC") at paras 13–14; DY Affidavit at para 7.

4 DY Affidavit at para 9 and p 45.

5 SOC at paras 37(a)–37(b).

6 D&CC at para 72(a); Defendant's Written Submissions dated 21 January 2026 at para 7; Defendant's Written Submissions dated 15 May 2026 ("DWS") at paras 6 and 24–25.

Questions under O 9 r 19 of the Rules.[7] Order 9 r 19 empowers the court, either on the application of a party or on its own accord, to decide a question of law or the construction of a document without a trial of the facts, whether or not the decision will dispose of the whole action. It is common ground that answering the Claimant's Questions and the Defendant's Question do no more than narrow the issues at trial and will not dispose of the entire action.[8]

8 The Claimant's Questions relate to the proper construction of cl 7 of the Agreement, namely whether cl 7 applies to a failure to meet the commitments in cl 5, and whether it shuts out or caps the damages that flow from that failure.[9]

9 In its affidavit in reply to the Application, the defendant proposed that the court should decide the Defendant's Question before even considering the Claimant's Questions.[10] The Defendant's Question relates to the proper construction of cl 5 of the Agreement, namely whether a failure to meet its commitments amounts to a breach of the Agreement at all.[11] The defendant's position is that the Defendant's Question is logically anterior to the Claimant's Questions, and that determining the Defendant's Question first could cause the Claimant's Questions to fall away or at least narrow the issues.[12]

---

7 DWS at para 15; Claimant's Written Submissions dated 15 May 2026 ("CWS") at para 2.

8 Claimant's Written Submissions dated 21 January 2026 at para 24; Defendant's Written Submissions dated 21 January 2026 at para 46.

9 DY Affidavit at para 16.

10 Affidavit of Jonathan Eber Mills dated 28 November 2025 ("JEM Affidavit") at para 6.

11 JEM Affidavit at para 8.

12 DWS at paras 16–18; JEM Affidavit at paras 8–9.

10 The Application came on for hearing before me on 29 January 2026. There was sufficient time on that day for the claimant to conclude its oral submissions on the Application. In the course of those submissions, the claimant accepted that it had "no issues" if I were to decide the Defendant's Question in addition to the Claimant's Questions.[13] But there was insufficient time that day to hear the defendant's oral submissions. The Application was therefore adjourned part-heard for the defendant to make its submissions before I made my decision.

The amendment and the intended withdrawal

11 Before the adjourned hearing of the Application could take place, the defendant applied to amend its defence and counterclaim. The amendments took what had been pleaded in general terms in the defence and counterclaim and made it specific and express. The defendant explained that the amendments arose from observations I had made at the hearing on 29 January 2026 and did no more than clarify the case it had already pleaded.[14] I heard that application on 6 April 2026 and allowed it. My reasons, in brief, were: (a) the amendments operated to limit the defendant's case rather than to expand it; (b) the amendments did not confuse the issues or create any avenue for prejudice to the claimant; and (c) any impact of the amendments could be met by an award of costs to the claimant.[15]

---

13 Transcript, 29 January 2026, Defendant's Bundle of Documents dated 15 May 2026 ("DBOD") Tab 2, at p 27 line 26 to p 28 line 8; DBOD Tab 2, at p 28 lines 12–21; DWS at para 9.

14 Defendant's Written Submissions dated 2 April 2026 at paras 8–9 and 16; Transcript, 6 April 2026, DBOD Tab 3, at p 3 lines 6–9.

15 Transcript, 6 April 2026, DBOD Tab 3, at p 35.

12 Following the defendant's amendments to its defence and counterclaim, the claimant made consequential amendments to its reply.[16] Those amendments run to more than three pages. They plead, among other things, matters going to the claimant's decision to enter into the Agreement and communications between the parties before and after it was made. It is on these amendments, and on the extrinsic material they introduce, that the claimant founds its contention that both the Claimant's Questions and the Defendant's Question are no longer suitable for summary determination.

13 At a case conference on 27 April 2026, the claimant indicated that it would seek permission to withdraw the Application.[17] Its reason was that the amendments had shifted the terrain of the dispute such that it was no longer appropriate to decide the Claimant's Questions and the Defendant's Question without a trial on the facts.[18] The defendant objected to the claimant's intention to withdraw the Application by letter of 30 April 2026.[19] But the defendant did not ask me to refuse the claimant permission to withdraw the Application and to determine the *Claimant's* Questions. Instead, it asked me to refuse permission and to determine the Defendant's Question. The claimant replied by letter of 5 May 2026 objecting to the defendant's position.[20]

14 The oral application for permission to withdraw was fixed for hearing on 25 May 2026. By letter dated 22 May 2026, I informed the parties that I

---

16 Reply and Defence to Counterclaim (Amendment No 2) dated 21 April 2026, DBOD Tab 1, at pp 46–49.

17 CWS at para 3.

18 CWS at para 3.

19 Ascendant Legal LLC's letter to the Court dated 30 April 2026, DBOD Tab 4.

20 Rajah & Tann Singapore LLP's letter to the Court dated 5 May 2026, DBOD Tab 5.

would exercise my power under s 17B of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) to determine the Application without an oral hearing, unless either party objected. Neither party had any objections.[21]

The issues

15 The parties' positions raise three issues for my determination. The first is whether the claimant should be granted permission to withdraw the Application, which I decide at [74] to [93]. The second is whether, if permission is granted, I should nonetheless determine the Defendant's Question on my own accord under O 9 r 19(1), which I decide at [94] to [97]. The third is the costs of the application, which I address at [99].

The applicable principles

The power to permit withdrawal

16 The principle that governs an application of this kind may be stated as a general rule, subject to a qualification and an exception. The general rule is that a party who initiates litigation, or any discrete process within the litigation, will be permitted to withdraw the litigation or the process provided that it is prepared to pay to the opposing party the costs thrown away by the withdrawal. The qualification is that the court will nonetheless decline permission to withdraw if the withdrawal amounts to an abuse of process and the prejudice caused by the abuse cannot be fairly met by imposing terms on the withdrawal in addition to an adverse costs order. The exception, which stands altogether outside the bilateral dispute between the parties, is that the court may refuse permission to

---

[21] Rajah & Tann Singapore LLP's letter to the Court dated 22 May 2026; Ascendant Legal LLC's letter to the Court dated 22 May 2026.

withdraw where it has an interest in the subject matter of the litigation that goes beyond the interests of the parties.

17 I take the general rule, its qualification and its exception in turn, and outline the underlying policy that gives each limb its shape.

The general rule

18 The general rule holds good whether what is withdrawn is an originating process, an interlocutory application within an originating process or a single prayer within an interlocutory application. In each case, the initiating party has invoked the court's process seeking an order to effect a change in the substantive or procedural *status quo*, and in each case, it now wishes to withdraw the very process that it initiated without a judicial determination as to whether it is entitled to that change.

19 The justification for the general rule in favour of withdrawal subject to costs is that the court does not exist to compel an unwilling litigant to prosecute a claim, a summons or even a prayer in a summons that it no longer wishes to pursue. The majority of the authorities arise from cases dealing with the discontinuance of an action. Permission to discontinue will normally be given in that context because it is not desirable that a claimant should be compelled to litigate against its will: *Rohde & Liesenfeld Pte Ltd v Jorg Geselle* [1998] 3 SLR(R) 335 at [13], endorsing *Covell Matthews & Partners v French Wools Ltd* [1977] 1 WLR 876 ("*Covell Matthews*") at 879.

20 The same principle governs the withdrawal of a summons under O 16 r 6 of the Rules, as Goh Yihan J held in *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 ("*Victory*") at [34]. The learned judge held

at [31] that a court exercising its discretion under O 16 r 6 may have regard to the body of principles developed to govern the discontinuance of an action or a claim under O 16 r 3, the two powers serving the same end of promoting the efficient administration of justice. Parties should not initiate litigation capriciously, whether it is an originating or an interlocutory process. These provisions exist to deter capricious litigation and to avoid the waste of time, costs and judicial resources that they waste.

21 The same principle applies to an application to withdraw a single prayer for relief, at least so long as it appears within an omnibus application such as a SAPT under O 9 r 9 of the Rules and is capable of being the subject matter, by itself, of a standalone summons. In any event, to the extent that O 16 r 6 does not reach a standalone prayer in an omnibus application such as the Application, I accept the defendant's submission that the court's general power under O 3 r 2(2) to prevent an abuse of its process supplies the same discretion which is to be exercised on the same principles.[22]

The policy of the general rule

22 Three considerations of policy underpin the general rule.

23 The first consideration is the policy in favour of upholding party autonomy. Our system of civil procedure, despite recent innovations, continues to rest fundamentally on the adversarial model. Litigation in an adversarial system is the parties' own. A claimant has the liberty to choose when and how to commence litigation, and when and how to walk away from it. The court

---

22 DWS at paras 27–30.

decides the disputes that the parties choose to put before it. It does not conscript a party to litigate disputes, or aspects of its disputes, that it wishes to abandon.

24 The second consideration is the policy in favour of ensuring, as far as possible, rectitude in the court's decisions. Adversarial adjudication depends on each opposing position being advanced by a committed litigant who believes in that position and is motivated to succeed in persuading the court to adopt that position as correct. To compel an unwilling litigant to argue a position that it has already resolved to withdraw is to risk a judicial determination reached, on one side, on incomplete arguments that are only half-heartedly advanced. That is not conducive to achieving rectitude of decision.

25 The third consideration is the policy in favour of conserving judicial resources. Judicial resources are both a scarce and a finite resource. They are also a public resource. They are provided by the state for the public benefit of all litigants, not for the private benefit of the litigants in any particular dispute. Public resources are wasted if they are used to force one party to take a dispute to a judicial determination even after it has decided that it wishes to withdraw the dispute.

26 These policies are reinforced by the Ideals in O 3 r 1 of the Rules of Court 2021. I expand on this at [72]–[73] below.

The qualification

27 The qualification to the general rule rests on a different policy. It is the policy against allowing the process of the court to be turned into an instrument of unfairness.

28 The leading statement in this context is that of Lord Scarman in *Castanho v Brown & Root (UK) Ltd* [1981] AC 557 ("*Castanho*"). The House of Lords recognised the court's inherent power to prevent a party from using a withdrawal to obtain or retain a collateral advantage that it would be unjust for it to keep. Lord Scarman held (at 571) that even a notice of discontinuance served as of right, *ie,* without any need to seek the court's leave to discontinue, could be an abuse of the process of the court.

29 The test the House of Lords adopted for identifying such an abuse is to ask whether, had leave to discontinue been required, the court would have granted it unconditionally. If it would not, the attempt to discontinue without leave may be set aside and the party held to terms or, in the rare case, compelled to continue: *Castanho* at 572. A party who seeks to withdraw not merely to be free of the contest, but to deprive its opponent of an advantage that it has fairly secured through the litigation, or to escape a binding determination the opponent is about to obtain, passes from the exercise of autonomy into the abuse of process. It is that abuse, and not the withdrawal as such, that the qualification exists to prevent.

30 In the same vein, our courts have emphasised that our inherent power in this situation should be exercised only in special circumstances with the "essential touchstone being that of 'need'": *The "King Darwin"* [2019] 5 SLR 800 ("*The 'King Darwin'*") at [10]. Hoong JC (as he then was) helpfully provided illustrations gleaned from case law of the circumstances in which it would be just and equitable, and indeed necessary, for the court to exercise its inherent power to prevent a party from discontinuing proceeding: *The* "*King Darwin*" at [10]–[11]. The common thread in the illustrations is that they are all instances of abuse of process.

31 The qualification has two forms, but they are forms of the one idea. In the first, withdrawal would confer on the withdrawing party an unfair forensic advantage. In the second, withdrawal would deprive the opponent unfairly of a forensic advantage or subject it unfairly to a forensic disadvantage. In the former form, the touchstone is unfairness of a kind that makes the withdrawal an abuse, and not merely an inconvenience or an added expense. The court's concern in the second form is the advantage or disadvantage to the party opposing the withdrawal. As a result, the opponent will be protected even if the litigation has not unfairly conferred an accrued forensic advantage on the party that is seeking permission to withdraw and even if its conduct does not amount to an abuse of process.

32 *The "King Darwin"* establishes that prejudice that meets the second of the two forms of the qualification may ground the exercise of the court's inherent power even in the absence of any unfair forensic advantage to the litigant attempting to withdraw. In *The "King Darwin"*, the court kept an action alive, albeit on terms, as a vehicle for an intervener's claim, even though the litigation had conferred no forensic advantage on the plaintiff who was seeking to discontinue it. Instead, the forensic disadvantage, coupled with prejudice that could not be adequately compensated with costs, justified the court setting aside the notice of discontinuance.

33 Where the qualification points towards compelling a determination on the merits, rather than merely preserving the proceedings as a vehicle for the party opposing withdrawal, a further condition governs whether that course is appropriate. To compel a determination is safe only where the court can be satisfied that the applicant's change of heart will not impair the quality of the court's decision making. The condition is met in the paradigm case in which all

arguments were advanced and completed before the applicant formed an intention to withdraw. The court then has the full and wholehearted arguments advanced by committed litigants on both sides. The court need do no more than weigh what has been said and render its decision at only a marginal incremental increase in the judicial resources expended.

34 In that paradigm the court may also have a legitimate interest of its own in giving the decision rather than permitting withdrawal. A determination against the party seeking to withdraw signals that that party has been prevented from escaping adjudication and has been compelled to accept that it has lost on the merits. It also signals to the litigants before the court, and indeed to all litigants generally, that the court's resources are not to be spent in mounting a fundamentally flawed application only to abandon it at the threshold of defeat. But that interest is secondary. It cannot by itself justify compelling a party to litigate against its will. But once the opponent's abuse of process has opened the door, it is a proper factor in favour of proceeding to a determination.

35 There is a further refinement to be made. Although the general rule applies to all three classes of withdrawals, the consequence of a withdrawal is not the same in each of the classes. The difference matters when considering the qualifications to the general rule.

36 When a claimant discontinues an originating process altogether, it deprives the defendant of any prospect of a determination that vindicates the defendant and that binds the claimant to that vindication by a *res judicata*. The withdrawal of most interlocutory applications, however, deprives the opponent of nothing of that kind. Almost all interlocutory applications are procedural in nature. A ruling on them can yield no *res judicata*: *Transpac Capital Pte Ltd v*

Lam Soon (Thailand) Co Ltd [1999] 3 SLR(R) 454 at [26], citing *Joseph Lynch Land Co Ltd v Lynch* [1995] 1 NZLR 37 at 43. There is however a class of interlocutory applications that is capable of yielding a *res judicata*. Examples include an application for summary judgment, an application to strike out an entire pleading and enter judgment accordingly and an application under O 9 r 19.

37 Within this class, two asymmetrical questions arise. The first question is procedural, namely whether the substantive question that the applicant has raised on the merits is suitable for determination by a summary procedure rather than at trial. The second question is substantive and goes to the merits of the parties' dispute, namely whether the applicant has discharged the burden that it bears to secure a determination in its favour on the issues before the court.

38 Within this class of applications, an answer for the applicant entails success on both questions and founds a *res judicata*. But an answer for the respondent may not. The respondent may have succeeded only because the court found that a summary determination is inappropriate. That has no binding force on the merits. It merely sends the merits to trial for determination. It follows that the opponent of such an application can seldom argue that withdrawal would deprive it of an opportunity to vindicate itself with a binding determination. Withdrawal alters only the route to a binding determination, *ie*, whether it is summary or after trial, and not the opponent's access to the determination itself. I return to this difference when I apply the general rule to the facts.

The proviso: imposition of terms

39 Even where the qualification is engaged, it will be rare for the court to refuse permission outright. The three policies that underpin the general rule continue to operate, and they weigh against compelling an unwilling party to litigate even where its attempt to withdraw amounts to an abuse of process and its opponent would suffer some prejudice going beyond costs.

40 The court's usual response to prejudice of the relevant kind is therefore not refusal of permission to withdraw but the grant of permission on terms. The power to impose terms exists so that the competing interests in this area may be reconciled. Terms are not imposed to punish. They are tailored to prevent the prejudice that the party opposing withdrawal would otherwise suffer, while relieving the initiating party of the greater prejudice of being forced to contest a point that it wishes to withdraw.

41 It has sometimes been suggested that the court's power to impose terms is more limited where what is withdrawn is a summons. In *Victory* at [34], Goh Yihan J observed that O 16 r 6 of the Rules, unlike O 16 r 3(1), does not expressly provide that the court may impose conditions when granting permission to withdraw a summons. It could be argued that the court generally lacks that power under O 16 r 6.

42 That observation was not, with respect, intended to be definitive. The absence of express provision in O 16 r 6 of the Rules, even by contrast with O 16 r 3(1), does not mean that the court has no power to impose terms under O 16 r 6. Order 3 r 2(3) of the Rules provides expressly that in exercising any power, the court may impose any condition that is appropriate. Furthermore, where the Rules contain no express provision on a matter, O 3 r 2(2) empowers

the court to do whatever it considers necessary on the facts to ensure that justice is done or to prevent an abuse of its process, so long as that is not prohibited by law and is consistent with the Ideals.

43 Imposing terms to neutralise the prejudice that a withdrawal would cause is the very type of order that does justice and prevents abuse. The Ideals favour such a calibrated response over the blunt force of outright refusal. There is therefore a strong argument that the court may impose terms on the withdrawal of a summons, whether under O 3 r 2(3) or, the matter not being expressly provided for, under O 3 r 2(2).

44 The point does not arise for decision here and I express no concluded view on it. What matters is that, where the prejudice can be cured by terms, refusal will rarely be the appropriate course. Refusal is reserved for the rare case in which the prejudice is real and neither a term nor an order for costs will serve to cure it.

The exception

45 The general rule and the qualification, in both its forms, are concerned with fairness between the parties. The exception is concerned with something else.

46 There are cases in which there is a public interest in the subject matter of the parties' litigation that transcends the merely private interests of the parties. In these cases, the court may refuse to permit a withdrawal if doing so would advance that interest.

47 Our own Court of Appeal has recognised this in *QBE Insurance (Singapore) Pte Ltd v Relax Beach Co Ltd* [2023] 2 SLR 655 ("*QBE Insurance")*. In that case, it held (at [43]–[44]) that, where it is in the public interest for the apex court to ventilate its views on the merits of a legal point of general significance arising in an appeal, it may set out those views even after the appeal has been discontinued.

48 The paradigm case is a committal application. A litigant who has obtained a court order undoubtedly has a private interest in policing compliance with the order, especially if non-compliance has caused prejudice. But it is not only the litigant who has an interest in whether court orders are obeyed. There is a public interest in upholding the administration of justice by visiting punitive consequences on those who breach them. That is why a litigant's power to waive a contempt of court under s 4(4) of the Administration of Justice (Protection) Act 2016 (2020 Rev Ed) ("the AJPA") is not absolute: *Li Shengwu v Attorney-General* [2019] 1 SLR 1081 at [65]; *Tay Kar Oon v Tahir* [2017] 2 SLR 342 at [38]–[39]. It does not extend to a contempt under s 4(3) of the AJPA. Further, even where waiver is allowed, the court may disallow waiver under s 4(5) of the AJPA if: (a) the Attorney General has authorised investigations into the alleged contempt; (b) proceedings have been commenced in respect of the alleged contempt; (c) the alleged contempt interferes with or obstructs the administration of justice; and (d) the waiver is contrary to the public interest.

49 The exception is not confined to contempt and encompasses cases where it is alleged that the court's process has been abused. *In re Dalnyaya Step llc (No 2)* [2018] Bus LR 789 ("*Dalnyaya Step*") was an application to set aside on grounds of material non-disclosure an order obtained *ex parte* by a liquidator recognising the liquidation of a Russian company. In response, the liquidator

applied to terminate the recognition order. Both parties agreed in substance that the recognition order should no longer continue but were at odds on whether it should be set aside *ab initio* or terminated only prospectively (*Dalnyaya Step* at [73]).

50 Sir Geoffrey Vos observed that there was a public interest in determining whether the liquidator had breached his duty of full and frank disclosure when applying for recognition *ex parte* (*Dalnyaya Step* at [78]). This is particularly so given the "wholly exceptional" facts of the case, where the UK government had made clear its views about related aspects of the case and concerned serious allegations of wrongdoing which constituted allegations that the recognition order was a "concerted retaliatory campaign by the Russian state against" the applicants (*Dalnyaya Step* at [6], [81]). For this reason, Sir Geoffrey Vos stated in no uncertain terms that "[t]he court cannot willingly accept a situation in which one party can prevent it determining, where it is in the public interest to do so, whether its procedures have been flouted or abused": *Dalnyaya Step* (at [83]).

51 Citing *Dalnyaya Step* at [76]–[83], David Richards LJ affirmed in *Stati v Republic of Kazakhstan (No 2)* [2019] 1 WLR 897 ("*Stati (CA)*") at [64] the principle that "the court has the power to require the continuation of proceedings in order to determine whether its processes have been knowingly abused" as this is a "necessary incident of the court's control of its own proceedings".

52 The common thread is all these cases is a public interest that the court has an interest in advancing that goes beyond the parties' private interest. Outside that narrow class, the autonomy of the parties prevails.

The authorities

53 I now turn to consider the cases cited in the written submissions which illustrate the application and interplay between the general rule, qualification and the exception.

Castanho

54 *Castanho* shows the interplay between the general rule and the qualification in its simplest form.

55 The plaintiff was a seaman injured in the course of his employment. He sued his employers in England. In the English action, he secured an admission of liability and interim payments. He then served a notice of discontinuance at a stage in the action when he did not require leave to do so. His intention was to commence fresh proceedings on the same claim in Texas in the hope of securing a far greater award of damages from a Texas jury than he could have secured from an English judge. The employers applied to set the notice of discontinuance aside and to restrain any future proceedings in Texas.

56 The House of Lords held that a notice of discontinuance, even one served in compliance with the procedural rules, may nevertheless be an abuse of the process of the court: *Castanho* at 571. Lord Scarman asked whether, had leave to discontinue been required, the court would have granted it unconditionally. His answer was that it would have been inconceivable to allow a plaintiff who had obtained those advantages in the English courts to discontinue in order to improve his position abroad without being put on terms. Those terms could well include the repayment of the interim payments received and an undertaking not to issue a second writ in England: *Castanho* at 572.

57 The House of Lords held that the notice of discontinuance was an abuse and was rightly struck out. But it did not refuse the plaintiff leave to discontinue. It granted the leave on terms. The terms secured the return of the interim payments and protected the defendant against a fresh action in England: *Castanho* at 577. Notably, however, they left the plaintiff free to pursue his claim in Texas by discharging the injunction restraining the plaintiff from commencing or continuing proceedings for higher damages in Texas: *Castanho* at 577. Autonomy, the policy against abuse and the power to impose terms were in that way reconciled, and a judicial determination in the English courts was not forced on an unwilling party.

Victory

58 *Victory* is the only reported Singapore decision on O 16 r 6 of the Rules. It supplies the framework for the withdrawal of a summons. Goh Yihan J held that the principles developed for the discontinuance of an action under O 16 r 3 of the Rules may be applied by analogy to the withdrawal of a summons: *Victory* at [31]. The general rule is that, since no litigant should be compelled to proceed with a summons against its will, permission to withdraw a summons should generally be granted. But the court may depart from that rule where withdrawal would cause injustice to the opponent, as where the opponent already enjoys an advantage in the litigation by having objectively demonstrated that it has a clearly superior case: *Victory* at [34]–[35]. Such superiority may be inferred where the litigant's stated reasons for withdrawing mirror the opponent's reasons for resisting the summons: *Victory* at [35].

59 On the facts of *Victory*, the applicant sought permission to withdraw the application at the last moment, after the respondents had filed their submissions:

Victory at [29]. The grounds for withdrawal were the very grounds on which the respondents had opposed the summons. The applicant thereby conceded in substance that the application had had no merit: *Victory* at [39]. What made refusal the only adequate response was the nature of the advantage. It was real and already accrued, and it consisted in an imminent and favourable determination that no term could replicate. Goh J observed at [34] that the court has no express power to impose conditions when granting leave to withdraw a summons in order to address any prejudice to the party opposing withdrawal. For this reason, he felt that the injustice occasioned by permitting the withdrawal of a summons is more pronounced. I say more below about the existence of an implied power to this effect. Quite apart from the existence of this power, however, any term would be futile at addressing the particular prejudice that withdrawal in these circumstances may occasion. A term may preserve an accrued procedural advantage or protect against a future disadvantage, but it cannot reproduce the very ruling that the opponent was on the point of obtaining. It was for that reason, and not because the court lacked any power to impose terms, that Goh J refused permission to withdraw: *Victory* at [39].

"The King Darwin"

60 *The "King Darwin"* is a decision of Vincent Hoong JC (as he then was), sitting in this court's admiralty jurisdiction. The plaintiff had arrested the defendant's vessel and obtained security for its claim. It then served a notice of discontinuance.

61 The intervener, the insolvency administrator of the defendant, applied to set the notice of discontinuance aside. Hoong JC found that discontinuance

would deprive the intervener of accrued advantages it had secured within the action, namely its leave to intervene, its access to the affidavits and notes of evidence, and its ability to pursue its own claim within the vehicle of the existing proceedings without issuing a fresh originating process to be served out of the jurisdiction: *The "King Darwin"* at [27]. But the deprivation of the intervener's accrued advantage was not, of itself, a bar to discontinuance. Its advantages could ordinarily be preserved by terms: *The "King Darwin"* at [28].

62 What tipped the balance was a future disadvantage. If the action were to be discontinued, the intervener would have to begin again with a separate action for wrongful arrest, the test for which was uncertain. The costs and delay of the fresh action would fall on the innocent creditors of an insolvent defendant: *The "King Darwin"* at [30]–[32].

63 Even so, Hoong JC did not compel the plaintiff to litigate. He struck out the notice of discontinuance, gave the plaintiff liberty to withdraw the action on terms that barred a fresh action, and kept the action alive as a vehicle within which the intervener could pursue its claim regardless: *The "King Darwin"* at [33] and [36]. The future disadvantage was met not by compelling the plaintiff to litigate a claim it wished to abandon, but by preserving the proceedings for the party that needed them as a vehicle for its ancillary proceeding as intervener.

Stati (CA)

64 The defendant cites the decision of the English High Court in *Stati and others v Republic of Kazakhstan* [2018] 1 WLR 3225 ("*Stati (HC)*").[23] In that case, the claimants were award creditors. They invoked the court's jurisdiction

[23] DWS at paras 29 and 46.

to enforce an arbitral award. The Republic of Kazakhstan was the award debtor. It resisted enforcement on the grounds that the award had been procured by fraud. When the proceedings were well advanced, and after the State had been put to the expense of preparing to prove the fraud, the claimants filed a notice of discontinuance without leave, as they were entitled to do.

65 At first instance, Robin Knowles J set the notice of discontinuance aside. He held that the discretion is to be exercised by reference to what is fair to all the parties, and that the overriding objective, which includes allotting to each case an appropriate share of the court's resources, requires the court to weigh the effect of the parties' conduct beyond the case in hand: *Stati (HC)* at [45].

66 Robin Knowles J held that two distinct interests told against discontinuance. The first was the opponent's interest. The State had a legitimate interest in a determination on the merits. The proceedings were at an advanced stage and the dispute was being litigated across several jurisdictions. The value to the State of an English determination of the fraud could not be replicated by an order for costs: *Stati (HC)* at [48]–[50], [60] and [66].

67 The second interest was the public interest. The allegation was that enforcement would give effect to an award procured by fraud, which engaged the integrity of the court's process. Citing Sir Geoffrey Vos in *Cherkasov v Nogotkov* [2017] EWHC 3153 (Ch) at [83], the Robin Knowles J held that the court cannot accept that one party may prevent it from determining whether its own process has been abused where the public interest requires that it do so: *Stati (HC)* at [51].

68 On appeal, the English Court of Appeal reversed Robin Knowles J's decision. David Richards LJ (as he then was) held that the discretion to set aside a notice of discontinuance conferred by the English Civil Procedure Rules, namely r 38.4, is "expressed in general, unqualified terms" and is "not confined to cases of abuse of process or collateral tactical advantage" (*Stati (CA)* at [31]). He accepted that the overriding objective in r 1.1 of the English Civil Procedure Rules, which includes allotting to each case an appropriate share of the court's resources, requires the court to weigh the effect of the parties' conduct beyond the case in hand.

69 David Richards LJ rejected both grounds that Robin Knowles J had relied upon in setting aside the discontinuance. He held that the jurisdiction of the English court was invoked for the sole purpose of obtaining relief from the English court, in this case the enforcement of the award (*Stati (CA)* at [52]–[53]). Once the award creditor discontinued and undertook not to enforce the award in the jurisdiction, the substantive role of the English court, and the award debtor's legitimate purpose in defending the enforcement, ceased. Moreover, no cases were cited by counsel to support the proposition that the court can and has made unsolicited findings of fact for the alleged benefit of the courts of other countries (*Stati (CA)* at [57]). David Richards LJ did, however, leave open the possibility of exceptional circumstances and a "very strong case" justifying compelling a claimant to continue proceedings whose purpose has ceased: *Stati (CA)* at [54]. One such instance would be where it could be demonstrated that an English court's finding of fraud would give rise to an issue estoppel in the courts of other jurisdictions where enforcement proceedings are pending. No such demonstration was present (*Stati (CA)* at [55]).

70 David Richards LJ also rejected the submission that the continuation of the proceedings to a trial of the fraud allegations was in the public interest. *Stati (CA)* did not engage the public interest by, for example, raising an allegation of material non-disclosure on a without notice application for the enforcement order. Moreover, the seat court had already ruled that the allegations of fraud did not invalidate the award and that enforcement in the seat court was not a fraud on the seat court (*Stati (CA)* at [65]). It was therefore hard to conceive how there could be fraud on the English court (*Stati (CA)* at [65]).

71 The decision of the English Court of Appeal in *Stati (CA)* illustrates that the qualification and the exception to the general rule favouring discontinuance will rarely be engaged as they require the most exceptional of circumstances.

The Ideals

72 The general rule, the qualification and the exception are informed by the Ideals in O 3 r 1 of the Rules. The Ideals are fair access to justice, expeditious proceedings, cost-effective work proportionate to the nature and importance of the action and to the complexity and value of the claim, the efficient use of court resources and fair and practical results suited to the needs of the parties: O 3 r 1(2) of the Rules. The court must seek to achieve the Ideals in all its orders: O 3 r 1(3) of the Rules. The parties have a duty to assist it in doing so: O 3 r 1(4) of the Rules.

73 The Ideals reinforce, rather than displace, the general rule. The general rule permitting withdrawal serves the efficient use of court resources and expeditious proceedings, for it removes from the court's hearing list a contest that one party no longer wishes to have. The proviso for costs serves cost-effective and proportionate work, for it ensures that the party who causes wasted

costs bears them. The inquiry into future disadvantage serves the fair and practical result suited to the parties' needs, for it asks whether withdrawal would in truth advance the just disposal of the action or merely shift its burdens. The Ideals are a case-management compass, as the Court of Appeal recognised when it described the analogous deemed-discontinuance rule as a case-management rule in *Michael Vaz Lorrain v Singapore Rifle Association* [2020] 2 SLR 808 at [25]. They confirm that the question is always whether refusing withdrawal would serve the just and efficient disposal of the proceedings, not whether it would gratify one party's preference for a particular procedural route.

Application

74 I now apply the principles to the facts of this case. The claimant wishes to withdraw an application that it has brought. The general rule suggests that I should permit it to do so, subject only to paying the costs thrown away. The defendant must bring itself within one of the qualifications, or within the exception, if it is to keep the application alive against the claimant's will. In my judgment, it does neither.

The general rule applies

75 The claimant is the master of the SAPT. It commenced the application. It alone sought the relief, *ie*, the determination of the Claimant's Questions. It has decided, no doubt on advice, that it no longer wishes to have those questions decided summarily, and would rather have them tried. A party in that position is not to be compelled to press its own application to a conclusion it does not want: *Victory* at [34]; *Covell Matthews* at 879.

76 Unless the defendant can show that withdrawal would occasion an injustice of the defined kind, permission should follow.

No forensic advantage

77 The defendant has gained no forensic advantage of which withdrawal would unfairly deprive it. I say so for three reasons.

78 First, the advantage the defendant relies on is that it is being deprived of an opportunity to have the Defendant's Question determined summarily.[24] But that is not an advantage that it won through the claimant's decision to bring the Application. The Defendant's Question is not part of the Application. It is before me only because the defendant chose to raise it in its reply affidavit in the Application.[25] The defendant has chosen not to bring a cross-application of its own under O 9 r 19, as part of its SAPT, to raise the Defendant's Question squarely for my decision. The advantage that the defendant complains of being deprived of is, in truth, no more than the convenience of having its own question decided within the Application rather than in its own application. That is not an accrued advantage of the kind the second form of the qualification protects (see [30] above), as in *Victory* or *The "King Darwin"*. It is a forum, not a fruit.

79 Second, this is not a case in which the defendant has objectively demonstrated, on the material before me, a clearly superior case on the Application: *Victory* at [35].[26] The only hearing of the Application was the part-heard hearing of 29 January 2026. At that hearing, I heard the claimant's

---

24 DWS at paras 11, 41 and 43.

25 JEM Affidavit at paras 6–8.

26 *cf*, DWS at paras 10–11 and 40.

submission alone. The defendant's submissions were never reached. Although I did ask probing questions of the claimant, that was the usual judicial exercise of stress-testing the claimant's arguments and its limits. I have expressed no view, even provisionally, on the merits of either the Claimant's Questions or the Defendant's Question, or even on the antecedent procedural question of whether they are suitable for summary determination. There is nothing from which the superiority of the defendant's case can be objectively ascertained.

80 Even if superiority could be shown, refusing the claimant its withdrawal would secure the defendant nothing of the kind that the second form of the qualification protects (see [30] above). A determination of the Claimant's Questions would not dispose of the action. The remainder of the action must proceed to trial in any event, as I explain at [7] above. Compelling the claimant to proceed with the Application would not confer on the defendant an unqualified vindication with finality. The Defendant's Question, which is the question the defendant wishes determined, is not a prayer in the claimant's summons at all, as I have noted at [9] above. The defendant remains free to pursue that question by its own application under O 9 r 19 of the Rules. The withdrawal does not foreclose that course. There is, in short, no near-secured favourable determination of which the withdrawal would deprive the defendant.

81 Third, the claimant's stated reasons for withdrawing the Application do not mirror the defendant's reasons for resisting the Application. Therefore, the instances of forensic advantage identified in *Victory* at [35] are absent. In *Victory*, the applicant's grounds for withdrawal betrayed a recognition of impending defeat: *Victory* at [39]. Here the position is the reverse. The defendant has never resisted the Claimant's Questions on the ground that they were unsuitable for summary determination. Its position was simply that its own

Defendant's Question was the more suitable question to decide first.[27] The claimant's reason for withdrawing, by contrast, is that the recent amendments and its consequential reliance on extrinsic material have rendered the questions unsuitable for determination without a trial on the facts. Whatever the merits of that reason, it is not the mirror of any reason that the defendant advanced. The *Victory* inference does not arise.

82 The defendant submits that the weaknesses of the claimant's position were exposed at the part-heard hearing and that the claimant's true motive is to escape an adverse summary determination of the Defendant's Question.[28] I do not need to decide whether that is so. Even if a litigant withdraws an application partly to avoid the risk of an adverse preliminary ruling, that is not, without more, a reason to compel it to continue. The merits of a withdrawn application bear principally on costs, and not on the threshold question of permission: see *QBE Insurance* at [40]–[41].

83 This is not, moreover, the paradigm in which compelling a determination would be appropriate. In *Victory* the respondents had filed their submissions, and the matter was ripe for decision before the applicant sought to withdraw, so that a ruling could be given reliably and at little cost. Refusal served to mark a defeat rather than to permit an escape: *Victory* at [39].

84 Here the opposite is true. The hearing of 29 January 2026 was part-heard. The defendant's submissions have never been reached. The claimant contends, moreover, that the amendments and its consequential reliance on

---

27 Defendant's Written Submissions dated 21 January 2026 at paras 11(a) and 49; CWS at para 12.

28 DWS at paras 10–11 and 40; CWS at para 12.

extrinsic material have unsettled the basis on which the questions can be decided summarily. To compel a determination now would be to decide on an incomplete argument and a contested record, with the applicant no longer a motivated advocate for the relief. The conditions in which refusal is both safe and worthwhile are therefore absent.

85 A tactical motive crosses the line only where it works the unfair deprivation of an accrued advantage, or the imposition of a disadvantage, or trespasses on a public interest. For the reasons given, it does none of those things here.

No forensic disadvantage

86 Nor would withdrawal impose on the defendant an unfair future disadvantage that costs cannot cure. The defendant's complaint under this head is that, if the application is withdrawn, it will have to bring its own O 9 r 19 application, file fresh affidavits and submissions, attend further hearings, and that the substantial work already done on the Application will be wasted.[29]

87 I accept that the defendant has incurred real costs, and that the Application is well advanced. But the defendant's true complaint is that withdrawal removes the vehicle within which the Defendant's Question might have been decided, and leaves it to start afresh. But the vehicle here is not of the character whose loss defeated discontinuance in *The "King Darwin"*.

88 In *The* "*King Darwin*", what had to be preserved was a substantive action. The discontinuance of the action would mean that the intervener, the

[29] DWS at paras 42 and 44–45.

insolvency administrator of the defendant, would have to commence a fresh and procedurally uncertain suit, and serve the originating process out of the jurisdiction. The burden would fall on the innocent creditors of the insolvent defendant. Costs could not adequately compensate the intervener for the time and effort thrown away: *The "King Darwin"* at [30]–[32].

89 Here, what is lost is merely an interlocutory application, not an action. Its withdrawal compels no fresh substantive proceeding. The parties are solvent commercial entities. The Claimant's Questions and the Defendant's Question are not withdrawn from determination absolutely. They remain live for trial. The defendant may, if it is so advised, bring its own application under O 9 r 19, subject to the court's control of interlocutory applications under O 9 r 9. There are no jurisdictional or insolvency complications that made the prospect of re-commencing unfair in *The "King Darwin"*. The affidavits and submissions already prepared are not wasted. They are directed to the very issues that will be tried. They are substantially reusable, whether at trial or in any further application under O 9 r 19 of the Rules.

90 The position is therefore consistent with *Stati (CA)*. David Richards LJ held that, in considering the limited resources of the court, there was no interest that could justify the compelled continuance of proceedings (*Stati (CA)* at [59]). There are no exceptional circumstances here, such as an allegation of fraud or of a breach of the duty of full and frank disclosure, that could justify the compelled continuance of an interlocutory process to determine questions that will in any event be determined at trial. Whatever costs the defendant has wasted can be addressed by an order for costs.

91 The binding determination the defendant wants on the Claimant's Questions and the Defendant's Question, it will have at trial. If the defendant wishes a binding determination of the Defendant's Question sooner, and by a summary procedure, it must itself be the applicant. The claimant is therefore not using withdrawal to escape a final reckoning by a side door, in the sense deprecated by Chitty LJ in *Fox v Star Newspaper Co* [1898] 1 QB 636 at 639. Withdrawal merely postpones the binding determination of the parties' dispute to trial. It does not avoid it, and it takes nothing out of the defendant's reach.

No supervening public policy

92 Finally, this is not a case in which there is any public interest that transcends the private interests of the parties.

93 For these reasons, none of the qualifications to the rule, and not the exception, is engaged. I grant the claimant permission to withdraw the O 9 r 19 application in the SAPT.

The defendant's alternative: determination on the court's own accord

94 The defendant submits, in the alternative, that even if I permit withdrawal, I should determine the Defendant's Question on my own accord. It relies on my power to do so under O 9 r 19(1).[30] I decline to exercise that power.

95 The own-accord power is a case-management tool. It exists to serve the just and efficient disposal of the action, in keeping with the Ideals. It is not a vehicle by which one party, having failed to persuade its opponent to maintain an application, may achieve the same end through the court. To deploy the own-

[30] DWS at paras 13, 51 and 58(b).

accord power in circumstances where it is open to the defendant to bring its own O 9 r 19 application would amount in substance to keeping alive, against the claimant's will, the Application. Doing so would hollow out the principle that a party is not to be compelled to litigate against its will. The power must be exercised consistently with that principle, not in defiance of it.

96 There are, in any event, sound case-management reasons not to exercise the power here. The claimant contends that the Defendant's Question is no longer suitable for summary determination.[31] That is because determining it would now require the court to receive and rule upon disputed extrinsic evidence of subsequent conduct and of the parties' subjective intentions, the admissibility of which is contested under the principles in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029. Whether that contention is correct is itself a matter of dispute.[32] It would be an odd use of the own-accord power to embark, over the objection of the party who would be bound, on a contested preliminary inquiry into the admissibility and effect of disputed evidence, when the same issue will fall to be decided at a trial that is going to happen in any event. It would also be an odd use of that power to determine the question on a record that is incomplete and contested, and without the motivated argument on which a sound determination depends. The efficient course, and the one most consonant with the Ideals in O 3 r 1 of the Rules, is to allow the matter to be tried once, on a complete record, rather than litigated twice.

---

31 CWS at paras 10–13; Rajah & Tann Singapore LLP's letter to the Court dated 5 May 2026, DBOD Tab 5 at paras 5–6.

32 See DWS at paras 38(b) and 39.

97 I should not be taken to discourage a future application. Nothing in this judgment prevents the defendant from applying, under O 9 r 19 and subject to O 9 r 9, for the determination of the Defendant's Question, if it considers that course worthwhile. Nor does anything prevent the court, at a future case conference, from revisiting whether a preliminary determination of any question would assist. I hold only that I should not determine the Defendant's Question now, of my own accord, against the claimant's will and over a genuine dispute as to its suitability for summary determination.

Conclusion

98 For the reasons I have given, I have allowed the claimant's application for permission to withdraw the Application. The governing principle is that a party who has initiated a process may withdraw it upon paying the costs thrown away, unless the withdrawal would amount to an abuse of process or would cause prejudice to the party opposing withdrawal that no term can cure, or there is a public interest in the subject matter of the litigation that transcends the parties' private interests. The claimant's application is squarely within the general rule and outside the qualification and also outside the exception. I have therefore granted the claimant permission to withdraw the Application. I have declined to determine the defendant's question of my own accord. That case-management power is not a means of keeping an application alive against a party's will.

99 Unless the parties are able to agree the incidence and quantum of costs, I will hear the parties' submissions on costs, both principle and quantum, arising from the permission I have granted the claimant to withdraw the Application. The parties may make those submissions either in writing, to be filed and

exchanged within such time as parties may agree, or orally at the next case conference in this matter.

Vinodh Coomaraswamy
Judge of the High Court

Gregory Vijayendran, SC and Ng Shi Min Nicole
(Rajah & Tann Singapore LLP) for the claimant;
Chew Kei-Jin and Lam Yan-Ting, Tyne
(Ascendant Legal LLC) for the defendant.