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

[2026] SGHC 149

Originating Claim No 777 of 2024 (Registrar's Appeals Nos 100 and 101 of 2026)

Between

Ripple Markets APAC Pte Ltd

… *Claimant*

And

(1) I-Remit, Inc
(2) Ben Chua Tiu
(3) Bernadette Cindy Cue Tiu

… *Defendants*

JUDGMENT

[Civil Procedure — Summary judgment]
[Contract — Breach]
[Contract — Contractual terms]

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Ripple Markets APAC Pte Ltd
v
I-Remit, Inc and others

[2026] SGHC 149

General Division of the High Court — Originating Claim No 777 of 2024
(Registrar's Appeals Nos 100 and 101 of 2026)
Kristy Tan J
9 July 2026

16 July 2026 Judgment reserved.

Kristy Tan J:

Introduction

1 HC/RA 100/2026 ("RA 100") and HC/RA 101/2026 ("RA 101") are appeals against a learned Assistant Registrar's ("AR") decision in HC/SUM 3465/2025 ("SUM 3465") to grant summary judgment on certain of the claimant's claims in HC/OC 777/2024 ("OC 777").

Background

The parties

2 The claimant in OC 777 is Ripple Markets APAC Pte Ltd ("RMA"), a company incorporated in Singapore. RMA is the successor of Ripple Labs

Singapore Pte Ltd ("RLSG") (also a company incorporated in Singapore), with RLSG having been amalgamated with RMA on 1 October 2023.[1]

3 The first defendant is I-Remit, Inc ("IRI"), a company incorporated in the Philippines and engaged in the business of providing remittance services to overseas Filipinos transferring moneys to the Philippines.[2] The second defendant, Mr Ben Chua Tiu ("Mr Tiu"), is, *inter alia*, a stockholder and director of IRI.[3] The third defendant, Ms Bernadette Cindy Cue Tiu ("Ms Tiu"), was formerly IRI's Executive Vice President and Chief Financial Officer (until 30 October 2025) and a stockholder of IRI (until 26 December 2024).[4] Mr Tiu is Ms Tiu's father.[5]

The relevant transaction

4 RLSG and IRI entered into a "Master XRP Commitment to Sell Agreement" effective 16 May 2022 ("CTS Agreement") pursuant to which RLSG (referred to as the "Company" in the CTS Agreement) agreed to make available XRP (a digital asset) for purchase by IRI (referred to as the "Purchaser" in the CTS Agreement).[6]

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1 4th affidavit of Cheryl Wong filed on behalf of the claimant on 13 February 2026 ("4CW") at para 4.

2 4CW at para 6; 2nd affidavit of Bernadette Tiu filed on behalf of the defendants on 16 December 2025 ("2BT") at para 9.

3 2BT at para 12.

4 2BT at para 16.

5 2BT at para 12.

6 4CW at exh "CW-4" tab 2.

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5 It is undisputed that IRI purchased XRP from RLSG on four occasions between 6 and 12 November 2022, for which RLSG issued to IRI an invoice (INV004512) dated 14 November 2022 in the amount of US$16m ("Invoice") with payment due on 18 November 2022.[7]

6 On 22 November 2022, IRI informed RLSG that it could not make payment of the Invoice.[8] On 23 November 2022, RLSG's representative sent an e-mail to Ms Tiu asking her to confirm IRI's repayment plan in respect of the Invoice. Ms Tiu replied on the same date stating that she would "revert" and was "waiting for go signal" from, *inter alia*, Mr Tiu.[9] On 3 October 2023, with the Invoice still remaining unpaid, IRI sent a letter expressing "appreciation for Ripple's sustained patience" and offering to pay US$1m or more per month from December 2023 "until full payment of the $16,000,000.00 invoice".[10] However, no payment followed. On 29 July 2024, Ms Tiu sent an e-mail in which she "fully acknowledge[d] [IRI's] overdue obligations" but sought "a mutually satisfactory resolution".[11] Following demands made by RMA's solicitors, Allen & Gledhill LLP ("A&G"), on 11 September 2024,[12] Ms Tiu replied on IRI's behalf on 16 September 2024 "sincerely apologiz[ing] that [IRI] cannot comply with the payment on the deadline given" and offering a

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7 Statement of Claim dated 30 September 2024 ("SOC") at paras 15–17; Defence of the 1st Defendant dated 29 October 2025 ("D1's Defence") at paras 26 (s/n 76 of table therein) read with 29, 38 and 39; 4CW at exh "CW-4" tab 3; 2BT at paras 23 (s/n 76 of table therein) read with 26.

8 4CW at para 15.

9 4CW at para 16 and exh "CW-4" tab 4.

10 4CW at para 19(1) and exh "CW-4" tab 6.

11 4CW at para 19(2) and exh "CW-4" tab 7.

12 4CW at para 19(3) and exh "CW-4" tab 8.

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payment plan.[13] On 27 September 2024, Ms Tiu sent a further letter stating that "[t]he debt that [IRI] owe[d] to Ripple weigh[ed] heavily on [her]" and requesting "reconsideration of its terms".[14]

7 It is undisputed that, to date, the Invoice remains unpaid by IRI.

Commencement of OC 777

8 RMA commenced OC 777 on 30 September 2024, bringing claims against IRI for, *inter alia*:

(a) non-payment of the Invoice, seeking US$16m plus late payment charges payable under cl 2(c) of the CTS Agreement ("Late Payment Charge") to be assessed ("Invoice Claim");[15]

(b) breach of cl 4(c)(iii) of the CTS Agreement, seeking damages to be assessed ("Incurrence of Indebtedness Claim");[16] and

(c) breach of cl 3(e) of the CTS Agreement, seeking damages to be assessed ("Non-provision of Financial Information Claim").[17]

9 RMA also brought claims against Mr Tiu and Ms Tiu ("Tius") for:

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13 4CW at para 19(4) and exh "CW-4" tab 9.

14 4CW at para 19(5) and exh "CW-4" tab 10.

15 SOC at para 27 and prayer for relief (1).

16 SOC at paras 14 and 33(3) and prayer for relief (3).

17 SOC at paras 12 and 33(1) and prayer for relief (3).

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(a) inducement of IRI's breach of its obligation to make payment of the outstanding sum under the Invoice and Late Payment Charge;[18]

(b) unlawful means conspiracy with IRI for IRI to take the XRP that are the subject of the Invoice notwithstanding IRI had no reasonable prospect of paying for the same;[19] and

(c) misrepresentations regarding payment of the Invoice.[20]

SUM 3465 and the AR's decision

10 RMA filed SUM 3465 on 26 November 2025, applying for summary judgment on all its claims against IRI and the Tius.

11 On 22 April 2026, the AR:

(a) granted summary judgment on the Invoice Claim, Incurrence of Indebtedness Claim and Non-provision of Financial Information Claim against IRI;[21]

(b) ordered IRI to pay post-judgment interest on the sums due under the Invoice Claim (*ie*, US$16m and the Late Payment Charge) at the rate of 5.33% per annum from the date of his judgment;[22]

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18 SOC at para 41; see also Notes of Arguments of the hearing of HC/RA 100/2026 ("RA 100") and HC/RA 101/2026 ("RA 101") on 9 July 2026 ("RAs 100 & 101 NE") at p 2:15–22.

19 SOC at para 42; see also RAs 100 & 101 NE at p 2:15–22.

20 SOC at paras 43–46; see also RAs 100 & 101 NE at p 3:10–11.

21 Notes of Evidence of hearing of HC/SUM 3465/2025 ("SUM 3465") on 22 April 2026 ("SUM 3465 NE"): annexed Oral Judgment at para 27.

22 SUM 3465 NE: annexed Oral Judgment at para 27.

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(c) dismissed the application for summary judgment on the remaining claims against IRI;[23]

(d) dismissed the application for summary judgment on the claims against the Tius;[24]

(e) ordered costs of SUM 3465 fixed at S$15,000 (all in) and costs of the action fixed at S$15,000 (all in) to be paid by IRI to RMA;[25] and

(f) ordered costs of SUM 3465 fixed at S$12,000 (all in) to be paid by RMA to the Tius.[26]

RAs 100 and 101

12 RA 100 is IRI's appeal against those parts of the AR's decision set out at [11(a)], [11(b)] and [11(e)] above.

13 RA 101 is the Tius' appeal. The Tius initially appealed against that part of the AR's decision set out at [11(a)] above. However, at the hearing of RAs 100 and 101, the Tius' counsel sought and was granted permission to withdraw that part of their appeal in RA 101 against the AR's decision granting summary judgment on the Incurrence of Indebtedness Claim and Non-provision of Financial Information Claim.[27]

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23 SUM 3465 NE: annexed Oral Judgment at paras 12, 13–15, 18–19 and 28.

24 SUM 3465 NE: annexed Oral Judgment at paras 20–26 and 28.

25 SUM 3465 NE at p 2:26–28.

26 SUM 3465 NE at p 3:1–2.

27 *Ie*, paras 2(a)(iii) and 2(a)(iv) of RA 101; see RAs 100 & 101 NE at pp 2:15–3:32.

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Issues to be determined

14 At the outset, an issue arose as to whether the Tius had standing to bring RA 101, given that what they sought to appeal was the AR's decision granting summary judgment *against IRI* on the Invoice Claim. In brief, the Tius' justification for bringing RA 101 was that they had an interest in the outcome of an appeal against the AR's decision on the Invoice Claim because RMA's claims against them for inducement of breach of contract and conspiracy were founded on IRI's alleged breach of the CTS Agreement in failing to make payment of the Invoice (*ie*, the Invoice Claim).[28] RMA took the somewhat equivocal position that the Tius did not have standing to file RA 101 but nevertheless had a right to be heard in respect of IRI's appeal against the AR's decision on the Invoice Claim.[29] RMA did not cite any authority in support of, or press, its position on the Tius' standing. Given RMA's acceptance that the Tius' arguments on appeal can and should be considered in any event, it is more practical for me to first consider the parties' (*ie*, RMA and all three defendants') substantive arguments on whether summary judgment should have been granted, before turning to the issue of the Tius' standing to bring RA 101 and considering whether that affects the ultimate treatment of RA 101.

15 I will thus address in turn:

(a) the Invoice Claim;

(b) the Incurrence of Indebtedness Claim;

(c) the Non-provision of Financial Information Claim; and

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[28] 2nd and 3rd Defendants' Written Submissions for RA 101 dated 10 June 2026 ("RA 101 DWS") at para 3.

[29] RAs 100 & 101 NE at p 4:15–18.

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(d) the Tius' standing to bring RA 101.

The Invoice Claim

Whether RMA has shown a prima facie case for payment of the Invoice

16 I am satisfied that RMA has shown a *prima facie* case that payment of US$16m under the Invoice is outstanding and due and payable from IRI to RMA.

17 Clause 2(a) of the CTS Agreement provides for IRI to purchase XRP from RLSG by withdrawing XRP from a bailment account, with the withdrawn XRP converted to a fiat purchase price based on a mutually agreed market rate. Clause 2(b) provides for RLSG to invoice IRI for the purchase price and obliges IRI to make payment of the invoiced amount upon receipt of the invoice or by the due date stated in the invoice.

18 In the present case, it is undisputed that: (a) IRI withdrew, received and thus purchased the XRP that are the subject of the Invoice; (b) IRI received the Invoice on or around 14 November 2022;[30] (c) the purchase price for the aforesaid XRP was correctly stated in the Invoice; and (d) the entire US$16m due on the Invoice remains unpaid by IRI. IRI thus owed an obligation under cl 2(b) of the CTS Agreement to make payment of the sum of US$16m by the due date stipulated in the Invoice (*viz*, 18 November 2022[31]).

19 It is also undisputed that RLSG was amalgamated with RMA on 1 October 2023. The Accounting and Corporate Regulatory Authority issued a

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30 SOC at para 16; D1's Defence at para 39.

31 4CW at exh "CW-4" tab 3.

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Certificate of Confirmation of Amalgamation of the two companies to become RMA with effect from 1 October 2023.[32] Section 215G(*c*) of the Companies Act 1967 (2020 Rev Ed) ("CA") provides that on the date shown in the notice of amalgamation, "all the property, rights and privileges of each of the amalgamating companies are transferred to and vest in the amalgamated company". Pursuant to s 215G(*c*), RLSG's rights under the CTS Agreement, including the right to be paid on the Invoice (corresponding to IRI's obligation to make such payment under cl 2(b) of the CTS Agreement), thus became vested in RMA with effect from 1 October 2023 by operation of law. RMA thus has the right to be paid by IRI, and IRI has the obligation to pay to RMA, the outstanding sum of US$16m under the Invoice.

Whether IRI has shown a reasonable probability of a bona fide defence to RMA's claim for payment of the Invoice

The defence

20 In summary, IRI's defence was that:

(a) RLSG had to give notice to IRI of RLSG's amalgamation with RMA ("Amalgamation") pursuant to cl 9(d) of the CTS Agreement because (i) the Amalgamation was a "transfer" referred to in cl 9(d) and (ii) cl 9(d) requires notice to be given of a "transfer".[33]

(b) RLSG's e-mail to IRI's personnel dated 30 September 2023 ("30 Sep 2023 E-mail") notifying them of the Amalgamation was defective because it did not comply with the notice requirements in

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32 4CW at exh "CW-4" tab 1.

33 See, *eg*, 1st Defendant's Written Submissions for RA 100 dated 10 June 2026 ("RA 100 DWS") at para 11.

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cl 9(b) of the CTS Agreement in that the 30 Sep 2023 E-mail was sent to only one of three designated IRI addressees stated in that provision.[34]

(c) A&G's e-mail to IRI's personnel dated 11 September 2024 ("A&G's 11 Sep 2024 E-mail") did not give good notice of the Amalgamation as it was sent after the Amalgamation had taken place.[35]

(d) IRI's defence was not an afterthought: Ms Tiu's "admissions of liability" relied on by RMA were "never anything more than acknowledgments of [IRI's] debt to **RLSG**" [emphasis in original] as opposed to admissions by IRI that the debt was owed to RMA.[36]

21 The Tius took a similar position to that of IRI above.[37]

22 I will elaborate where necessary on the defendants' arguments at the relevant junctures.

The relevant contractual provisions

23 To situate the discussion, it is necessary to first set out the relevant provisions in the CTS Agreement.

24 Clause 4(c)(ii) of the CTS Agreement is a provision that specifically refers to "amalgamate", and which RMA relied on to argue that cl 9(d) (which

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34 See, *eg*, RA 100 DWS at paras 34 and 38.

35 See, *eg*, RA 100 DWS at para 42.

36 RA 100 DWS at paras 48–53.

37 RA 101 DWS at paras 12–39.

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in contrast does not refer to amalgamation) does not apply to amalgamations.[38] Clause 4(c)(ii) states:

> (c) Negative Covenants. So long as any Commitment remains or any sum remains unpaid under this Agreement or any Credit Extension, in whole or in part, Purchaser covenants and agrees that except with the prior written consent of the Company, which consent will not be unreasonably withheld, Purchaser shall [not] do the following:
>
> …
>
> (ii) Mergers or Acquisitions. (i) Merge, *amalgamate* or consolidate with any other Person, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets to any Person (whether now owned or hereafter acquired) (except to the extent that the surviving entity confirms that it continues to be bound by all of the obligations of its predecessors to Company, all as confirmed by such additional documentation as Company shall reasonably request), or (ii) acquire (or allow any Affiliate to acquire), all or substantially all of the capital stock, shares or property of another Person. Without limiting the foregoing, Purchaser shall notify Company in advance of Purchaser's entry into any binding contractual arrangement with any Person to attempt to facilitate a merger or acquisition of Purchaser or to acquire all or substantially all of its assets or to acquire (or allow any Affiliate to acquire), all or substantially all of the capital stock, shares or property of another Person.
>
> [emphasis added]

25 Clause 9(d) of the CTS Agreement, on which the defendants relied, states:

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[38] Respondent's (Claimant's) Written Submissions for RA 100 and RA 101 dated 10 June 2026 ("CWS") at para 27.

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> (d) Successors and Assigns. Purchaser may not assign any rights granted under this Agreement without the prior written consent of Company. The Company reserves the right to assign its rights without restriction to any affiliates or subsidiaries, provided that it shall provide Purchaser written notice of such assignment. Any attempted transfer or assignment in violation hereof shall be null and void. Subject to the foregoing, the provisions of this Agreement shall inure to the benefit of, and be binding upon, Company and its successors and assigns and be binding upon Purchaser and Purchaser's successors and permitted assigns, whether or not any such person has become a party to this Agreement or has agreed in writing to join herein and to be bound by the terms, conditions and restrictions hereof. In addition, this Agreement is not intended to confer any right or benefit on any third party.

26 Clause 9(b) of the CTS Agreement, the notice provision, states:

> (b) Notice. Any notices under this Agreement shall be sent by certified or registered mail, return receipt requested, to the Notices address and party set forth below; provided, however, each Party agrees and consents to receive electronically all communications, agreements, documents, notices and disclosures that the other Party provides in connection with this Agreement, including but not limited to the Terms of XRP Commitment, notices, Commitment receipts, and any other disclosures or statements Company may be required under Requirement of Law to make to Purchaser. Notice shall be effective upon receipt at the email addresses below:
>
> (i) If to Company: [email address to be provided] with a copy to credit@ripple.com
>
> (ii) If to Purchaser: bctiu@iremit-inc.com with a copy to lgcortez@iremit-inc.com and cgdelacruz@iremit-inc.com

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Analysis and decision

27 I find that the defendants have not established that there is a fair or reasonable probability that IRI has a real or *bona fide* defence to the Invoice Claim, for three main reasons:

(a) First, as a matter of contractual interpretation, the requirement of notice in cl 9(d) of the CTS Agreement does not apply to amalgamations (and thus does not apply to the Amalgamation).

(b) Second and in any event, even if (*arguendo* and contrary to [(a)] above) notice of the Amalgamation had to be given to IRI, cl 9(b) of the CTS Agreement was comported with. Clause 9(b) does not prescribe that electronic notice to IRI is valid *only* if provided in accordance with cl 9(b)(ii). IRI had actual notice of the Amalgamation by way of the 30 Sep 2023 E-mail.

(c) Third, Ms Tiu's acknowledgment of the debt in response to A&G's letter to IRI dated 11 September 2024 demanding payment of the Invoice on behalf of RMA further to the (expressly mentioned) Amalgamation ("A&G's 11 Sep 2024 LOD"), reinforces that IRI's present purported defence based on cll 9(d) and 9(b) of the CTS Agreement is a belated legal contrivance and not *bona fide*.

28 I elaborate.

(1) Clause 9(d) of the CTS Agreement did not require notice of the Amalgamation to be provided to IRI

29 The contextual approach to contractual interpretation begins with the words used in the specific provision in question, read (where relevant to do so)

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in context with the rest of the contract (*Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 at [38(c)], [38(d)] and [49]). In the present case, it was *not* IRI's case (pleaded or otherwise) that there was any extrinsic evidence which informed the interpretive exercise.

30 The Tius' counsel suggested that it was incorrect to approach the interpretation of cl 9(d) of the CTS Agreement by ascertaining the meaning of each of its constituent sentences.[39] I am unable to agree. A contractual clause cannot simply be treated as an amorphous whole. A clause is comprised of constituent sentences, and sense must be made of each sentence. I accept, however, that the meaning of each sentence must be ascertained in context (which may include having regard to other sentences within the clause or to other clauses within the contract).

31 I thus begin with the wording of the first and second sentences of cl 9(d) of the CTS Agreement. The first sentence of cl 9(d) refers *only* to the assignment of rights, stipulating that IRI may not assign its rights under the CTS Agreement without RLSG's prior written consent: "Purchaser may not assign any rights granted under this Agreement without the prior written consent of Company". The second sentence of cl 9(d) also refers *only* to the assignment of rights, stipulating that RLSG may assign its rights to affiliates or subsidiaries provided it gives IRI written notice of such assignment: "The Company reserves the right to assign its rights without restriction to any affiliates or subsidiaries, provided that it shall provide Purchaser written notice of such assignment".

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[39] RAs 100 & 101 NE at p 10:8–9.

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32 RMA's counsel submitted that the words "assign … rights" and "assignment" referred to the assignment of rights "as traditionally understood in the personal property law of assignment" where the benefits but not the burdens of a contract may be assigned.[40] The Tius' counsel submitted, for the first time at the hearing of RAs 100 and 101, that the reference to assignment in the first and second sentences of cl 9(d) of the CTS Agreement meant not just a voluntary transfer of rights between two parties but meant an *amalgamation* as well.[41]

33 I am unable to accept the Tius' counsel's submission. In my view, the first and second sentences of cl 9(d) of the CTS Agreement refer to the assignment of rights under the CTS Agreement (in the sense of a limited transaction for the transfer of contractual rights/benefits) but *not* to an amalgamation between entities.

(a) First, the first and second sentences of cl 9(d) of the CTS Agreement do *not* refer to any dealings in or treatment of liabilities or obligations. In an amalgamation, it is not only the rights but also the liabilities and obligations of the amalgamating company that would become those of the amalgamated company (see, *eg*, s 215G(*d*) of the CA). The absence of any reference to liabilities or obligations in the first and second sentences of cl 9(d) thus indicates that these sentences refer only to an assignment (in the sense of a limited transaction for the transfer of contractual rights/benefits) and not to an amalgamation.

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40 RAs 100 & 101 NE at p 14:13–15.

41 RAs 100 & 101 NE at pp 10:26–11:13.

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(b) Second, it has been held that "[a]bsent language to the contrary, an assignment does not include an amalgamation" (*Prime Restaurants of Canada Inc v Greey Realty Holdings Ltd* (4 February 2003, Ontario Superior Court of Justice) (Ont) at [43]). This was a point of principle that the Tius' counsel fairly accepted; the absence of reference to any form of the word "amalgamation" in the first and second sentences of cl 9(d) of the CTS Agreement thus militates against interpreting the words "assign" and "assignment" used therein to include amalgamation.[42]

(c) Third, cl 4(c)(ii) of the CTS Agreement – which contains the word "amalgamate" – shows that when the parties intended to refer to amalgamation, they used the specific terminology of amalgamation. The parties intended to place certain restrictions on IRI's pursuit of an amalgamation and decided to house those restrictions in cl 4(c)(ii). The Tius' counsel argued that the entirety of cl 4 pertained to IRI's obligations, and that restrictions on an amalgamation by RLSG could thus have been housed elsewhere (*viz*, in cl 9(d)) in the CTS Agreement.[43] I do not find this submission convincing. It is correct that cl 4 pertains to IRI's obligations. But the fact remains that restrictions on IRI's pursuit of an amalgamation are expressly spelt out using the word "amalgamate" (in cl 4(c)(ii)). If the parties had intended to impose any restrictions on RLSG's pursuit of an amalgamation, these would be expected to be spelt out with similar usage of the specific terminology of amalgamation. That this was not done indicates that the

42 RAs 100 & 101 NE at p 11:20–27.

43 RAs 100 & 101 NE at p 18:9–15.

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parties did *not* intend to impose any restrictions or requirements in respect of RLSG's pursuit of an amalgamation. It would be perverse to treat the absence of specific language anywhere in the CTS Agreement imposing restrictions on RLSG's pursuit of an amalgamation as cause for reading the (absent) language of amalgamation into the first and second sentences of cl 9(d).

(d) Fourth, I do not accept that the use of the word "transfer" in the third sentence of cl 9(d) of the CTS Agreement and/or the use of the word "successors" in the fourth sentence of cl 9(d) can somehow expand the words "assign" and "assignment" in the first and second sentences of cl 9(d) to include amalgamation when the latter terminology is patently absent from the first and second sentences of cl 9(d).

(e) In sum, the restrictions/requirements placed on the respective parties in the first and second sentences of cl 9(d) of the CTS Agreement apply only to an assignment (in the sense of a limited transaction for the transfer of contractual rights/benefits) and not to an amalgamation. It follows that the second sentence of cl 9(d) does not apply to the Amalgamation.

34 I turn to what to make of the third and fourth sentences of cl 9(d) of the CTS Agreement.

35 The third sentence of cl 9(d) of the CTS Agreement states: "Any attempted transfer or assignment in violation hereof shall be null and void". In my view, the plain meaning of this statement is that any "transfer" or "assignment" in violation of cl 9(d) (*ie*, "hereof") shall be null and void. However, it does *not* follow that the restrictions/requirements in the first and

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second sentences of cl 9(d) apply to amalgamations by virtue of the third sentence of cl 9(d).

> (a) First, the first and second sentences of cl 9(d) of the CTS Agreement refer and apply *only* to assignments and not to amalgamations (as explained at [33] above). It is academic whether an amalgamation might also be considered to entail a "transfer" of rights, or whether the word "transfer" in the third sentence of cl 9(d) might also encapsulate an amalgamation (although I think the better view is that it does not: see [(b)] below). The short point is that because the first and second sentences of cl 9(d) only apply to assignments, any "violation" of the restrictions/requirements therein (*per* the third sentence of cl 9(d)) can be engaged only by an assignment or a "transfer" in the nature of an assignment. Put another way, any other type of "transfer" cannot possibly be "in violation" of cl 9(d) because nothing in cl 9(d) contains restrictions/requirements pertaining to any corporate action apart from, or pertaining to any "transfer" that is not in the nature of, an assignment.
>
> (b) Second, in my view, the word "transfer" in the third sentence of cl 9(d) of the CTS Agreement does not refer to amalgamations, but rather, to transfers by way of assignment, as such an interpretation is more consonant with the theme of the first, second and third sentences of cl 9(d) which is focused on assignments.

36 The fourth sentence of cl 9(d) of the CTS Agreement states: "Subject to the foregoing, the provisions of this Agreement shall inure to the benefit of, and be binding upon, Company and its successors and assigns and be binding upon Purchaser and Purchaser's successors and permitted assigns, whether or not any such person has become a party to this Agreement or has agreed in writing to

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join herein and to be bound by the terms, conditions and restrictions hereof". In my view, the caveat "[s]ubject to the foregoing" means subject to the provisions of the first, second and third sentences of cl 9(d) *to the extent they are applicable*. As explained at [33] and [35] above, the restrictions/requirements contained in the first, second and third sentences of cl 9(d) apply only to assignments, and thus, pursuant to the fourth sentence of cl 9(d), it is only "assigns" who take the benefit of the provisions of the CTS Agreement subject to compliance with the first, second and third sentences of cl 9(d). "[S]uccessors" *otherwise* than through an assignment (which can include successors pursuant to an amalgamation) take the benefit of the provisions of the CTS Agreement without being subject to compliance with the first, second and third sentences of cl 9(d) which have no application to such "successors".

37 I add that courts in the United States have held that the term "successor" as applied to corporations does not ordinarily connote an assignee but is normally used to refer to corporations becoming invested with the rights and assuming the burdens of another corporation by amalgamation, consolidation or duly authorised legal succession (*Enchanted Estates Community Association, Inc v Timberlake Improvement District* 832 SW2d 800 at 802 (Tex App, 1992); *International Association of Machinists, Lodge No. 6 v Falstaff Brewing Corporation* 328 SW2d 778 at 781 (Tex App, 1997)). RMA, as RLSG's successor by operation of law pursuant to the Amalgamation, can thus avail of the fourth sentence of cl 9(d) of the CTS Agreement to take the benefit of the provisions of the CTS Agreement. At the risk of repetition, it does not follow, however, that the restrictions/requirements in the first, second and third sentences of cl 9(d) also apply to the Amalgamation. Further, even without reliance on the fourth sentence of cl 9(d), RMA would be entitled to take the

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benefit of any property, rights and privileges conferred by the provisions of the CTS Agreement on RLSG, pursuant to s 215G(*c*) of the CA (see [19] above).

38 The fifth and final sentence of cl 9(d) states: "In addition, this Agreement is not intended to confer any right or benefit on any third party". In my view, this provision is meant to ensure that third parties cannot seek to assert any right or benefit under the CTS Agreement pursuant to the Contracts (Rights of Third Parties) Act 2001 (2020 Rev Ed). The provision is not relevant for present purposes.

39 I therefore conclude that cl 9(d) of the CTS Agreement requires RLSG to give IRI written notice only of an assignment of the former's rights (to its affiliates or subsidiaries) and *not* notice of an amalgamation. There was no requirement for RLSG to give IRI notice of the Amalgamation.

40 I am cognisant that the AR held, in a blanket fashion, that "clause 9(d) applies to amalgamations and not only assignments"[44] (but went on to find that proper notice of the Amalgamation was given[45]). In reaching this conclusion, he placed weight on the words "transfer" and "successors" in the third and fourth sentences of cl 9(d) of the CTS Agreement respectively.[46] However, there was little textual analysis of the first and second sentences of cl 9(d); the contrast between the words used in the first and second sentences of cl 9(d) and in cl 4(c)(ii) was not addressed; and there was no distinguishment between the different spheres of application of the various sentences in cl 9(d).[47] I

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44 SUM 3465 NE: annexed Oral Judgment at para 2.

45 SUM 3465 NE: annexed Oral Judgment at para 7.

46 SUM 3465 NE: annexed Oral Judgment at paras 3–4.

47 SUM 3465 NE: annexed Oral Judgment at paras 3–4.

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respectfully disagree with the AR's broadbrush approach to the interpretation of cl 9(d). For the reasons already explained, I take the view that the restrictions/requirements in the first and second sentences of cl 9(d) do not apply to amalgamations.

(2) Valid notice of the Amalgamation was given to and received by IRI

41 In any event, even if (*arguendo*) notice of the Amalgamation had to be given to IRI, I find that valid notice of the Amalgamation was given by RLSG to IRI and that IRI had actual notice of the Amalgamation, by virtue of the 30 Sep 2023 E-mail. I explain.

42 I begin with the contractual interpretation of cl 9(b) of the CTS Agreement. Again, I note that IRI did not plead that any extrinsic evidence was to be considered in the interpretive exercise. The language of cl 9(b) is thus determinative. The proviso in the first sentence of cl 9(b) puts it beyond doubt that the parties may provide notice to each other electronically, which must mean including by way of e-mail: "… each Party agrees and consents to receive electronically all communications, agreements, documents, notices and disclosures that the other Party provides in connection with this Agreement …". The next sentence in cl 9(b) then states: "Notice shall be effective upon receipt at the email addresses below…". This means that notice sent to the stated e-mail addresses will be *deemed* effective, but it does not follow that *only* notices sent to the stated e-mail addresses will be considered effective. Critically, cl 9(b) does not state that notice will be effective "only" if sent in a particular manner or to particular addresses. In a situation where e-mail notice has been sent to IRI but not in accordance with cl 9(b)(ii), effective notice may not be deemed, but actual (and hence effective) notice may still be proved.

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43 While the Tius' counsel placed emphasis on *Capital Land Holdings Ltd v Secretary of State for the Environment* [1997] SC 109 ("*Capital Land Holdings*"), I find that this authority in fact coheres with my interpretation of cl 9(b) of the CTS Agreement. In *Capital Land Holdings*, cl 7 of the lease in question provided that: "… Any notice to the landlord (if an incorporated body) *shall* be sent to its registered office …" [emphasis added] (at 110). The court held that the provisions in cl 7 relating to the place of service were "stated in words which are plainly intended to be mandatory, even though there are other provisions in cl 7 which relate to what is deemed to be sufficient service and sufficient proof of service" (at 115). In contrast, in the present case, cl 9(b) of the CTS Agreement does *not* provide that electronic notice "shall be sent" in a particular manner. Rather, cl 9(b) provides that notice given in a particular manner "shall be effective", without ruling out what other ways of giving notice may be effective. This means that, as explained at [42] above, in a situation where e-mail notice was sent to IRI but not in accordance with cl 9(b)(ii), effective notice may not be deemed but actual (and hence effective) notice may still be proved.

44 This is precisely the situation at hand. It is undisputed that the 30 Sep 2023 E-mail contained notice of the Amalgamation and was sent by RLSG prior to the Amalgamation taking effect on 1 October 2023.[48] IRI also accepted that the 30 Sep 2023 E-mail was sent to lgcortez@iremit-inc.com.[49] This was the e-mail address of Ms Lanie Cortez ("Ms Cortez"),[50] who was the "Corporate Treasury Head, Corporate Treasury Department" of IRI *per* her e-mail signature

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48 4CW at exh "CW-4" tab 11.

49 2BT at para 34.

50 2BT at para 34.

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block.[51] According to Ms Tiu, it was usually Ms Cortez who provided RLSG with updates on the status of IRI's payment of funds.[52] Ms Cortez was also indicated in cl 9(b)(ii) of the CTS Agreement as an addressee to whom e-mail notices should be copied. All this indicates that Ms Cortez was an authorised and appropriate personnel of IRI to be receiving notices from RLSG, including in respect of the Amalgamation (which would have a bearing on IRI's payment obligations). Ms Tiu alleged that Ms Cortez "does not recall reading [the 30 Sep 2023 E-mail] and certainly did not inform [Ms Tiu] of its contents".[53] I am not prepared to accept that Ms Cortez did not read the 30 Sep 2023 E-mail at the relevant time: (a) first, IRI did not file an affidavit by Ms Cortez on her position and did not explain why it could not do so; and (b) further, Ms Tiu asserted only that Ms Cortez did not "recall" reading the 30 Sep 2023 E-mail and did not go so far as to say that Ms Cortez positively did not read the e-mail. In any event, it is irrelevant whether Ms Cortez bothered to read her e-mails and to update Ms Tiu. It is undisputed that Ms Cortez did in fact receive the 30 Sep 2023 E-mail, and as I have found, she was an appropriate IRI representative to receive notice of the Amalgamation. Accordingly, IRI did have actual notice of the Amalgamation. The validity and effectiveness of such notice is not denuded by the fact that the 30 Sep 2023 E-mail was not sent to all the IRI addressees stated in cl 9(b)(ii) because there is simply no stipulation in cl 9(b) that *only* notice sent *per* cl 9(b)(ii) will be valid and/or effective.

45 In view of the conclusion I have reached on this issue, it is unnecessary to address IRI's arguments on A&G's 11 Sep 2024 E-mail (see [20(c)] above).

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51 *Eg*, 2BT at p 583.

52 2BT at para 68(d).

53 2BT at para 34.

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46 I round up the discussion on cll 9(d) and 9(b) of the CTS Agreement by observing that the exercise of interpreting these provisions involves questions of law suitable for summary determination, and I have done so. No triable issues have arisen in the process.

(3) IRI's purported defence is a legal contrivance which lacks *bona fides*

47 Finally, I highlight that in A&G's 11 Sep 2024 E-mail and A&G's 11 Sep 2024 LOD, A&G had expressly stated that RLSG had been amalgamated with RMA on 1 October 2023, before proceeding to demand payment of the Invoice on behalf of RMA.[54] A similar e-mail and letter of demand was also sent by A&G (on RMA's behalf) to the Tius on 11 September 2024.[55] In response, Ms Tiu (on behalf of IRI) sent a reply to A&G dated 16 September 2024 stating: "We are grateful to Ripple's sustained patience in the past and we sincerely apologize that we cannot comply with the payment on the deadline given. But we do want to offer the following payment plan…".[56] On 26 September 2024, Ms Tiu wrote to "[A&G] & Ripple" stating, *inter alia*, that "[t]he debt that [IRI] owes to Ripple weighs heavily on me", and asking for "grace".[57]

48 IRI argued that the reference to "Ripple" did not mean RMA; Ms Tiu did not pay attention to A&G's reference to the Amalgamation; and it was unfair to expect Ms Tiu as a layperson to reserve IRI's position on its legal defence when responding to RMA's demand.[58]

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54 4CW at pp 103–108.

55 4CW at pp 94–102.

56 4CW at exh "CW-4" tab 9.

57 4CW at exh "CW-4" tab 10.

58 RA 100 DWS at paras 50–52.

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49 Given that A&G had repeatedly stated in and at the outset of its 11 September 2024 correspondence that it acted for RMA with which RLSG had amalgamated, I do not accept that IRI and/or Ms Tiu were unaware that *RMA* was demanding for payment of the Invoice. In my judgment, Ms Tiu's September 2024 correspondence shows that she and IRI accepted that payment of the Invoice was due to RMA. IRI and Ms Tiu had no thought at that time of using any purported notification obligation and/or purported lack of notification of the Amalgamation as an excuse for not making payment of the Invoice. With respect, that acknowledgment of the debt due to RMA was a proper and honourable course for IRI and the Tius to take. Juxtaposed against their contemporaneous conduct, their present and belated purported reliance on cll 9(d) and 9(b) of the CTS Agreement signals a bad faith attempt to evade payment of US$16m *altogether* (since RLSG no longer exists and they purport that RMA is not entitled to the sum) *after receiving the relevant XRP*, through the deployment of a legally contrived defence.

(4) Conclusion

50 I therefore uphold the AR's grant of judgment for the payment of US$16m (*per* the Invoice) by IRI to RMA.

51 For completeness, I note that RMA received the sum of US$199,990 from Ms Tiu on 27 September 2024.[59] The defendants did not argue that the AR's judgment for the sum of US$16m should be varied to take into account this payment. On RMA's part, it appeared to suggest that it may apply the payment towards, *inter alia*, its costs and expenses of enforcing the CTS Agreement pursuant to cl 8(g) of the CTS Agreement; in any event, RMA

[59] 4CW at para 20.

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undertook in its affidavit to give full credit for the sum of US$199,990 received on 27 September 2024.[60] I hence do not propose to disturb the AR's judgment on this count. However, I state unequivocally that the court expects RMA to abide by its undertaking to give IRI full credit for the sum of US$199,990.

The AR's order regarding the Late Payment Charge

52 The AR also gave judgment for the Late Payment Charge, to be assessed (see [11(a)] read with [8(a)] above). The Late Payment Charge was imposed by RMA pursuant to cl 2(c) of the CTS Agreement. The defendants did not assert, in their written submissions or at the hearing of RAs 100 and 101, that the AR erred in awarding judgment for the Late Payment Charge (much less why, if that was their assertion, the AR was wrong in doing so). I therefore uphold the AR's judgment for the Late Payment Charge.

The AR's order regarding post-judgment interest

53 The AR also gave judgment for post-judgment interest on the sum of US$16m and the Late Payment Charge (see [11(b)] above). The defendants did not assert, in their written submissions or at the hearing of RAs 100 and 101, that the AR erred in awarding such post-judgment interest (much less why, if that was their assertion, the AR was wrong in doing so). I therefore uphold the AR's award of post-judgment interest.

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60 4CW at para 20.

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The Incurrence of Indebtedness Claim

Whether RMA has shown a prima facie case

54 Under cl 4(c)(iii) of the CTS Agreement, IRI covenanted not to create, incur, assume or be liable for any "Indebtedness" other than "Permitted Indebtedness", without RLSG's prior written consent, while any sum remained unpaid by IRI under the CTS Agreement:

> (c) Negative Covenants. So long as any Commitment remains or any sum remains unpaid under this Agreement or any Credit Extension, in whole or in part, Purchaser covenants and agrees that except with the prior written consent of the Company, which consent will not be unreasonably withheld, Purchaser shall [not] do the following:
>
> …
>
> (iii) Indebtedness. Create, incur, assume, or be liable for any Indebtedness other than Permitted Indebtedness.

55 "Indebtedness" is defined in cl 10(w) of the CTS Agreement as follows:

> "Indebtedness" means (i) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (ii) obligations evidenced by notes, bonds, debentures or similar instruments, (iii) capital lease obligations, and (iv) Contingent Obligations for the Indebtedness of other Persons.

56 "Permitted Indebtedness" is defined in cl 10(qq) of the CTS Agreement as follows:

> "Permitted Indebtedness" means
>
> (i) Purchaser's Indebtedness to Company under this Agreement and the other Transaction Documents;
>
> (ii) Indebtedness existing on the Effective Date and disclosed on Appendix F hereto;

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> (iii) Subordinated Debt;
>
> (iv) unsecured Indebtedness to trade creditors incurred in the ordinary course of business; and
>
> (v) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (i) through (iv) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Purchaser.

57 RMA claimed that, in breach of cl 4(c)(iii) of the CTS Agreement, IRI incurred Indebtedness, without RMA's prior knowledge and/or consent, while the Invoice remained unpaid.[61] RMA relied on three pieces of evidence drawn from IRI's financial statements to show that IRI had incurred Indebtedness while the Invoice remained unpaid. The AR broadly agreed with RMA, without going into detail, that IRI's financial statements "showed that it had incurred indebtedness, subsequent to the Invoice becoming due and owing on 18 November 2022".[62] Having examined the three pieces of evidence on which RMA relied, I find that only the third piece of evidence *prima facie* bears out RMA's claim. I elaborate.

58 The first piece of evidence relied on by RMA was that IRI's audited financial statements for the financial year ended 31 December 2022 ("FS 2022") stated that IRI had loans payable of PHP 1.046bn as of 31 December 2021, which increased to PHP 1.083bn as of 31 December 2022.[63] I accept that this shows an increase in IRI's loans payable (which demonstrates incurrence of Indebtedness) *in the course of 2022*. However, it does not show

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61 4CW at para 39.

62 SUM 3465 NE: annexed Oral Judgment at para 17.

63 4CW at para 39(1) and exh "CW-4" tab 12, p 196: IRI's audited financial statements for the financial year ended 31 December 2022 ("FS 2022") at note 20.

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when in the course of 2022 the increase took place. This is relevant because the due date for payment of the Invoice was 18 November 2022. In other words, it is only from 19 November 2022 that the Invoice would be considered unpaid and IRI would be obliged under cl 4(c)(iii) of the CTS Agreement not to incur Indebtedness (other than Permitted Indebtedness). The first piece of evidence relied on by RMA thus does not establish a *prima facie* case that IRI incurred Indebtedness in breach of cl 4(c)(iii): the increase in IRI's loans payable in the course of 2022 could well have taken place prior to 19 November 2022 when no restrictions in this regard applied.

59 The second piece of evidence relied on by RMA was that the FS 2022 stated that IRI had unused credit facilities with various banks amounting to PHP 1,767,960,000 as of 31 December 2021, which decreased to PHP 1,648,960,000 as of 31 December 2022.[64] I accept that it is reasonable to infer from this that IRI had increased its utilisation of credit facilities (which constitutes incurrence of Indebtedness) *in the course of 2022*. However, there is no indication of *when* in the course of 2022 this occurred. For similar reasons to those at [58] above, the second piece of evidence relied on by RMA thus also does not establish a *prima facie* case that IRI incurred Indebtedness in breach of cl 4(c)(iii) of the CTS Agreement.

60 The third piece of evidence relied on by RMA was that IRI's audited financial statements for the financial year ended 31 December 2023 ("FS 2023") stated that IRI had unused credit facilities with various banks amounting to PHP 1,648,960,000 as of 31 December 2022, which decreased to

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64 4CW at para 39(1) and exh "CW-4" tab 12, p 196: FS 2022 at note 20.

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PHP 1,606,382,080 as of 31 December 2023.[65] I accept that it is reasonable to infer from this that IRI had increased its utilisation of credit facilities (which constitutes incurrence of Indebtedness) *in the course of 2023* (*ie*, during a period when IRI was obliged not incur Indebtedness as the Invoice remained unpaid). RMA has thus shown a *prima facie* case that IRI incurred Indebtedness in breach of cl 4(c)(iii) of the CTS Agreement.

61 Further yet, the foregoing inference is bolstered by the fact that, while Ms Tiu gave evidence that the decrease in unused credit facilities from 31 December 2021 to 31 December 2022 (see [59] above) was "also" caused by the reduction of IRI's credit lines by some banks,[66] she did *not* purport that this reason accounted in any way for the decrease in unused credit facilities *in the course of 2023* (which is the more relevant period). To the contrary, she attested generally that IRI drew down on its credit lines as part of its remittance business.[67] This supports the view that it was IRI's drawdowns on its credit lines/facilities (*ie*, the incurrence of Indebtedness) which manifested in the FS 2023 showing a decrease in IRI's unused credit facilities in the course of 2023 (see [60] above).

62 The fact that the FS 2023 also stated that IRI's loans payable of PHP 1.083bn as of 31 December 2022 had decreased to PHP 996m as of 31 December 2023[68] is neither here nor there: this might reflect that IRI's *net*

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65 4CW at para 39(2) and exh "CW-4" tab 13, p 332: IRI's audited financial statements for the financial year ended 31 December 2023 ("FS 2023") at note 20.

66 2BT at para 53.

67 2BT at para 52.

68 4CW at exh "CW-4" tab 13, pp 332 and 355: FS 2023 at notes 20 and 34.01; see RAs 100 & 101 NE at pp 6:25–26 and 7:7–9.

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bank liabilities had decreased in 2023, but the proscription in cl 4(c)(iii) of the CTS Agreement does not pertain to IRI's net liability position; rather, cl 4(c)(iii) restricts IRI's incurrence of *any* Indebtedness (other than Permitted Indebtedness) during the relevant period regardless of IRI's overall financial status. IRI's loans payable position in 2023 thus does not detract from the *prima facie* case shown by RMA that IRI incurred Indebtedness in breach of cl 4(c)(iii).

Whether IRI has shown a reasonable probability of a bona fide defence

63 IRI's defence was, in gist, that its drawdowns on its credit lines constituted "Permitted Indebtedness", being "unsecured Indebtedness to trade creditors incurred in the ordinary course of business" under cl 10(qq)(iv) of the CTS Agreement, since the use of credit facilities was central to IRI's remittance business.[69] In my view, IRI has not shown a fair or reasonable probability that this is a real or *bona fide* defence.

64 First, "trade creditors" are usually understood to mean unpaid suppliers of goods or services provided in the ordinary course of business (see, *eg*, *Stichting Shell Pensioenfonds v Krys* [2015] AC 616 at [10]). The Indebtedness owed to trade creditors would logically comprise the costs of those goods or services. In the present case, even if the extension of credit facilities by banks or financial institutions to IRI constituted services provided to IRI, the costs of such services would take the form of bank charges or finance costs. The bank loans and credit facility drawdowns themselves are *not* ordinarily costs of services, as IRI's counsel also accepted at the hearing of RAs 100 and 101.[70]

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69 2BT at para 52.

70 RAs 100 & 101 NE at p 7:15–26.

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This distinction is also recognised in IRI's financial statements. For example, in the FS 2023, as IRI's counsel himself pointed out, IRI's payables to suppliers (see note 18) and cost of services (including finance cost and bank charges) (see note 25) were classified separately from IRI's loans payable and utilisation of credit facilities with banks (see note 20).[71] In short, the latter would not constitute "Indebtedness to trade creditors" under cl 10(qq)(iv) of the CTS Agreement. That credit lines might be critical to IRI's business[72] does not change the foregoing analysis. As IRI's counsel accepted, credit lines are necessary for the businesses of many companies across different industries.[73] It would be absurd to regard all drawdowns on such credit lines as trade debts owed to trade creditors.

65 Second, to the extent that IRI was contending that its business model was such that "trade creditors" in cl 10(qq)(iv) of the CTS Agreement had to be interpreted to include IRI's bank creditors, IRI was essentially seeking to rely on extrinsic evidence (*ie*, its business model) as part of the context informing interpretation of the contractual provision. However, in order to do so, IRI must, *inter alia*, (a) show that the extrinsic evidence is relevant, was reasonably available to all the contracting parties and related to a clear or obvious context (*Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 ("*Sembcorp Marine*") at [34], citing *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [132(d)]), and (b) plead the extrinsic facts relied on, the circumstances in which those facts

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71 4CW at exh "CW-4" tab 13, pp 331, 332 and 340: FS 2023 at notes 18, 20 and 25; RAs 100 & 101 NE at pp 6:27–30 and 17:20–21.

72 2BT at paras 10–11 and 52; RAs 100 & 101 NE at p 17:17–18.

73 RAs 100 & 101 NE at pp 9:11–21 and 17:13–15.

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were known to the contracting parties, and the effect of those facts on IRI's contended construction (*Sembcorp Marine* at [73(a)]–[73(c)]). IRI has not satisfied these requirements. For example, IRI did not even contend that RLSG was aware of IRI's business model and purported extensive reliance on credit lines, much less that RLSG had such knowledge at the time the parties entered into the CTS Agreement. IRI's pleaded defence to the Incurrence of Indebtedness Claim was also merely a bare denial.[74] It would be perverse to regard these deficiencies in IRI's case theory and pleaded case as giving rise to triable issues.

Conclusion

66 I therefore uphold the AR's grant of judgment on the Incurrence of Indebtedness Claim.

The Non-provision of Financial Information Claim

Whether RMA has shown a prima facie case

67 Under cl 3(e) of the CTS Agreement, IRI undertook to provide financial statements and other information reasonably requested by RLSG:

> (e) Financial Statements and Information. During the term of this Agreement, Purchaser will provide financial statements and other information as reasonably requested in writing by Company. …

[74] D1's Defence at paras 37 and 51(d).

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68 By A&G's 11 Sep 2024 LOD, RMA requested, citing cl 3(e) of the CTS Agreement, that IRI provide copies of the following documents by 16 September 2024:[75]

(a) IRI's audited financial statements (or unaudited financial statements if audited financial statements were unavailable) for the calendar years 2022 to 2024; and

(b) IRI's monthly management accounts for between May 2022 and November 2023.

69 IRI did not furnish the requested documents. RMA thus claimed that IRI had breached cl 3(e) of the CTS Agreement.[76]

70 In my judgment, the determination of whether documents were "reasonably requested" by RMA under cl 3(e) of the CTS Agreement calls for (a) an inquiry into what, *subjectively*, RMA's *contemporaneous reasons* for requesting the documents in question were, followed by (b) an inquiry into whether, *objectively*, those reasons for the requested documents were *reasonable*. The fundamental difficulty for RMA in the present case is that its affidavit filed in support of its summary judgment application contained no reasons (contemporaneous or otherwise) for why RMA had requested the documents sought in A&G's 11 Sep 2024 LOD.[77] To be clear, I am not saying that RMA necessarily had to provide reasons to IRI when making its request. My point is a more basic and fundamental one – without *telling the court why* RMA had sought the requested documents, there is no basis for the court to form

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75 4CW at para 32(1) and exh "CW-4" tab 8, p 106.

76 4CW at para 32.

77 4CW at paras 31–35.

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a view as to whether the documents were "reasonably requested" (*per* cl 3(e)). In written and oral submissions, RMA purported to proffer some explanation: (a) the requested documents "relat[ed] to [IRI's] financial condition during the material period surrounding its failure to pay the sums owed under the Invoice"[78] and "RMA was looking to enforce its rights under the CTS Agreement";[79] and (b) the requested documents enabled RMA to "monitor [IRI's] compliance with the terms of the CTS Agreement" such as cl 4(c)(iii).[80] However, RMA's submissions are inadmissible evidence from the bar. It is also not possible to distinguish whether the rationale for RMA's request as expressed in RMA's submissions had contemporaneous roots or comprised *post hoc* justifications (which may have a bearing on the *bona fides* and reasonableness of the request). I therefore do not think that RMA has shown a *prima facie* case that its request for documents was reasonable.

71 Even if (*arguendo*) the two main reasons asserted in RMA's submissions fall to be considered, I still do not think RMA has shown that its requests were reasonable.

(a) First, for the purposes of ascertaining IRI's financial status to assess the viability of enforcing the US$16m debt against IRI:

(i) It sufficed for RMA to review IRI's financial statements for 2023. It was unnecessary for RMA to request for IRI's financial statements for 2022 and IRI's monthly management accounts.

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78 CWS at para 66.

79 CWS at para 70.

80 CWS at para 71; RAs 100 & 101 NE at p 16:17–23.

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(ii) As regards RMA's request for IRI's audited financial statements for 2023, just slightly over two weeks after the request was made on 11 September 2024, RMA was able to plead the contents of the FS 2023 in its Statement of Claim filed on 30 September 2024. It is clear that RMA had independently obtained a copy of the FS 2023. What is unclear is *when* RMA had obtained the FS 2023 (which apparently could be found online[81]). The point is not that the public availability of the document relieved IRI from meeting a reasonable request for the same. The point is that if RMA already had the FS 2023 in its possession at the time it made the request, that would cast a different complexion on the reasonableness of RMA persisting (one might ask, to what end) in requesting from IRI a document that RMA already had. RMA did not make the position clear in its affidavit filed in support of its summary judgment application.

(iii) RMA's request for IRI's audited financial statements for the calendar year 2024 could not possibly be reasonable when the request was made on 11 September 2024 before the calendar year 2024 had even concluded.

(iv) As for RMA's request for IRI's unaudited financial statements, even if that request was reasonable, there is no evidence (or even assertion) that IRI had unaudited financial statements. There is thus no *prima facie* foundation for a case of breach by IRI in not providing such documents.

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81 CWS at para 69.

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(b) Second, the purported reason that the documents were requested to "monitor [IRI's] compliance with the terms of the CTS Agreement" strikes me as inherently unbelievable (see *Mak-Levrion Kah Kay Natasha v R Shiamala* [2024] 4 SLR 616 at [18]) because RMA had already formulated its views as to IRI's breaches of the CTS Agreement (including cl 4(c)(iii)) by the time RMA commenced OC 777 on 30 September 2024, very shortly after RMA's request was made on 11 September 2024.

72 I am cognisant that the AR found that RMA's request was reasonable because the requested documents "were for a limited and defined period" and the request "was against the backdrop of [RMA's] concerns about [IRI's] financial position, given that the debt for $16m was owing since 2022".[82] For the reasons set out at [70]–[71] above, I respectfully disagree that there was basis for such a conclusion. I find instead that RMA has not shown a *prima facie* case that its request for documents was reasonable. Consequently, RMA has also not shown a *prima facie* case that IRI breached cl 3(e) of the CTS Agreement.

Whether IRI has shown a reasonable probability of a bona fide defence

73 It follows that IRI's defence does not arise for evaluation.

82 SUM 3465 NE: annexed Oral Judgment at para 11.

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Conclusion

74 I therefore set aside the AR's grant of judgment on the Non-provision of Financial Information Claim and dismiss RMA's application for summary judgment on this claim.

The Tius' standing to bring RA 101

75 As I have found that the AR's grant of judgment on the Invoice Claim should be upheld (see [16]–[52] above), it is unnecessary to resolve the issue of the Tius' standing to bring RA 101, since RA 101 falls to be dismissed in any event.

Conclusion

RA 100

76 In summary:

(a) The appeal in RA 100 against the AR's grant of judgment on the Invoice Claim and post-judgment interest on the sums due under the Invoice Claim is dismissed.

(b) The appeal in RA 100 against the AR's grant of judgment on the Incurrence of Indebtedness Claim is also dismissed.

(c) The appeal in RA 100 against the AR's grant of judgment on the Non-provision of Financial Information Claim is allowed. The AR's grant of judgment on this claim is set aside and RMA's application for summary judgment on this claim is dismissed.

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77 Having regard to the parties' submissions on costs[83] and the result in RA 100, I consider the following costs orders to be appropriate:

(a) IRI is to pay RMA the costs of RA 100 fixed at S$18,000 (all in). This takes into account that RMA succeeded on the principal and majority part of (but not entirely in) RA 100.

(b) The costs orders made by the AR in SUM 3465 as set out at [11(e)] above are set aside. In their place, IRI is to pay RMA (i) the costs of SUM 3465 fixed at S$13,000 (all in) and (ii) the costs of the action in respect of the Invoice Claim and Incurrence of Indebtedness Claim fixed at S$13,000 (all in). This takes into account that RMA's application for summary judgment on the Invoice Claim and Incurrence of Indebtedness Claim remains granted while RMA's application for summary judgment on the Non-provision of Financial Information Claim has now been dismissed.

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83 RAs 100 & 101 NE at p 19:10–32; CWS at para 81(1).

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RA 101

78 RA 101 is wholly dismissed. Having regard to the parties' submissions on costs,[84] I order the Tius to pay RMA the costs of RA 101 fixed at S$10,000 (all in).

- Sgd -
Kristy Tan
Judge of the High Court

Afzal Ali, Wong Pei Ting, Matthew Soo and Zhang Yizhen (Allen & Gledhill LLP) for the claimant in OC 777 / respondent in RAs 100 and 101;
Liew Yik Wee and Gan Jhia Huei (Rev Law LLC) for the first defendant in OC 777 / appellant in RA 100;
Joel Quek, Cindy Chua and Caleb Lim (WongPartnership LLP) for the second and third defendants in OC 777 / appellants in RA 101.

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[84] RAs 100 & 101 NE at p 20:4–10; CWS at para 81(2).

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