

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

[2026] SGHC 201

Originating Application No 96 of 2026 (Registrar's Appeal No 117 of 2026)

Between

- (1) The Roe Corporation
- (2) 267 Partners, LLC
- (3) Buhm Jung Roe

... Claimants

And

- (1) Berhero Pty Limited (trading
as Acuity Funding)

... Respondent

GROUND OF DECISION

[Civil Procedure — Production of documents]

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The Roe Corp and others
v
Berhero Pty Ltd (trading as Acuity Funding)

[2026] SGHC 201

General Division of the High Court — Originating Application No 96 of 2026
(Registrar's Appeal No 117 of 2026)

Chua Lee Ming J

6 July 2026

29 September 2026

Chua Lee Ming J:

Introduction

1 This was an appeal by the claimants, The Roe Corporation (“Roe Corporation”), 267 Partners, LLC (“267 Partners”) and Buhm Jung Roe (“Roe”), against the Assistant Registrar (“AR”)’s dismissal of their application against the respondent, Berhero Pty Limited (trading as Acuity Funding) (“Acuity”), for production of certain documents referred to in an affidavit filed on behalf of Acuity.

2 The appeal considered the differences between O 3 r 2(2), O 11 r 3 and O 11 r 4 of the Rules of Court 2021 (“ROC 2021”), whether the requirement of “possession or control” applies when a production order is sought in respect of

documents referred to in pleadings or affidavits, and what the term “control” means.

Background facts

3 Roe Corporation is an American company in the business of real estate development. It is owned by Roe and his three children. 267 Partners is an American company wholly owned by Roe. Acuity is an Australian company engaged in the business of finance and commercial brokerage. It arranges funding for commercial and residential development projects and other transactions.

4 The claimants signed a Loan Term Sheet and a Costs Agreement (together, “Agreement”) with Acuity under which:

(a) Acuity was appointed as an exclusive “facilitator” for the purposes of introducing, organising, arranging or obtaining loan funds to Roe Corporation of up to approximately US\$280m for the development of a luxury condominium project in New York, US; and

(b) the claimants agreed to pay Acuity a Fund Arrangement Fee of 4% on the loan amount. The Fund Arrangement Fee was payable in the event that the loan was conditionally approved, or a discussion paper or term sheet or loan proposal was issued in the terms of the Loan Term Sheet.

5 Subsequently, Acuity arranged, and a company called Global Wise Investment Pte Ltd (“Global Wise”) issued, a Conditional Letter of Offer for Mortgage Finance (“Conditional Offer”) for US\$280m in the terms of the Loan Term Sheet to the claimants. Discussions followed. Roe did not sign the

Conditional Offer, which then lapsed. Further discussions followed but the Conditional Offer remained unsigned by Roe. Acuity sought payment of its Fund Arrangement Fee, but payment was not made.

6 On 29 April 2024, Acuity commenced arbitration proceedings against the claimants (“Arbitration”). Acuity claimed payment of its Fund Arrangement Fee amounting to US\$11.2m and Late Payment Interest under the Agreement. Pursuant to the Agreement, the Arbitration was administered by the Singapore International Arbitration Centre (“SIAC”) and subject to the SIAC Rules. Mr Stuart Isaacs KC was appointed the sole arbitrator (“Tribunal”).

7 On 22 October 2025, the Tribunal issued its award (“Final Award”). The Tribunal ordered the claimants (who were the respondents in the Arbitration) to pay Acuity:

- (a) the Fund Arrangement Fee of US\$11.2m;
- (b) Late Payment Interest up to 18 July 2025 amounting to US\$5,608,997, and from 19 July 2025 to the date of the Final Award at 2% per month, calculated daily and compounded and capitalised at the end of each month;
- (c) legal costs and expenses in the sums of \$552,596.22 and US\$71,473;
- (d) costs of the Arbitration in the sum of \$196,677.86; and
- (e) simple interest at 5.33% per annum on all the above sums from the date of the Final Award until payment in full.

HC/OA 96/2026

8 On 22 January 2026, the claimants filed the present HC/OA 96/2026 (“OA 96”), seeking to set aside the Final Award on the following grounds:

(a) The making of the Final Award was induced or affected by fraud, within the meaning of s 24(a) of the International Arbitration Act 1994 (2020 Rev Ed) (“IAA”).

(b) Breaches of the rules of natural justice occurred in connection with the making of the Final Award by which the rights of the claimants have been prejudiced, within the meaning of s 24(b) of the IAA.

(c) The claimants were unable to present their case within the meaning of Article 34(2)(a)(ii) of the United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration (1985) (“Model Law”) read with s 3 of the IAA.

(d) Acuity and the claimants have not been treated with equality, within the meaning of Article 18 of the Model Law read with s 3 of the IAA.

9 With respect to the ground based on fraud, Roe asserted as follows in his affidavit filed on behalf of the claimants in support of OA 96:¹

63. ... the Final Award was induced or affected by fraud, under circumstances where:

63.1 new evidence of Acuity’s fraudulent loan brokering arrangements has since come to light showing that false evidence was given in the Arbitration which led the Tribunal to reach an erroneous conclusion that touched points material to the result of the Arbitration; and/or

¹ 1st Affidavit of Buhm Jung Roe dated 27 January 2026.

63.2 there was deliberate and inexcusable concealment on the part of Acuity, that deceived the Tribunal.

10 Roe went on to refer to online news articles concerning Acuity’s managing director, sole shareholder, sole director and company secretary, Mr Ranjit Prithviraj Thambyrajah (“Ranjit”). In summary, the news articles reported as follows:

(a) Ranjit had been detained in Vietnam, and the Vietnamese Ministry of Public Security had received criminal complaints against Ranjit from several individuals, including the chairman of a Vietnamese company, Nam Song Hau Trading Investing Petroleum Joint Stock Company (“NSH Petro”).

(b) Investigations revealed that Ranjit provided false information claiming that Acuity was capable of arranging hundreds of millions to billions of US dollars in financing for Vietnamese companies and that the deception was allegedly used to collect fees totalling US\$4.9m, constituting fraud under Article 174 of Vietnam’s Penal Code. Ranjit was alleged to have promised the loans despite lacking any lending capacity.

(c) Ranjit had promised to inject US\$650m into NSH Petro but the promised funding never materialised. The Vietnamese Ministry of Public Security had confirmed that the respondent’s alleged billion-dollar financing promises were fraudulent. The purported lender in the transaction involving NSH Petro was Global Wise.

11 Acuity filed an affidavit by Ranjit’s wife, Ms Janette Thambyrajah (“Janette”) to resist the claimants’ application to set aside the Final Award.² Janette denied the claimants’ assertion that the making of the Final Award was induced or affected by fraud and provided Acuity’s responses to the online news articles that Roe had referred to in his affidavit. At paragraph 86 of her affidavit, Janette stated the following:

86 The transactions [with NSH Petro and its related companies] are legitimate, valid, and binding and were entered into at arms’ length between commercial parties. The NSH Companies have not received financing due to their failure to meet the conditions for borrowing under the terms of the Conditional Letters of Offer for Mortgage Finance dated 19 February 2024. *It is also my husband’s position that it is no coincidence that NSH Petro and its related companies had filed criminal complaints against him after Acuity had filed SIAC Arbitration Nos. 461 to 463 of 2025 against them. This was a tactic to oppress and put pressure on him and to avoid paying the Fund Arrangement Fees.*

[emphasis added]

HC/SUM 1086/2026

12 The claimants filed HC/SUM 1086/2026 (“SUM 1086”) seeking an order that Acuity produce, among other documents, the criminal complaints referred to in paragraph 86 of Janette’s affidavit (“Criminal Complaints”). Acuity objected to the application for production of the Criminal Complaints on the ground that these documents were not in its possession or control. Acuity also stated that the Vietnamese Ministry of Public Security did not provide copies of the Criminal Complaints to Ranjit.³

² 1st Affidavit of Ms Janette Thambyrajah dated 13 March 2026.

³ 3rd Affidavit of Ms Janette Thambyrajah dated 14 April 2026 at p 223 (s/n 10).

13 On 30 April 2026, the AR dismissed the claimants’ application for production of the Criminal Complaints. Although the AR found Acuity’s assertion (that the Criminal Complaints were not in its possession or control) to be “convenient”, she declined to make the production order. The AR’s reasons were that, as the existence of the Criminal Complaints was not disputed:

- (a) the proceedings in OA 96 should not be protracted any longer for the production of the Criminal Complaints; and
- (b) the claimants could not fairly be said to not understand paragraph 86 of Janette’s affidavit without sight of the Criminal Complaints such as to not know whether and how to respond to the allegations in that paragraph.

The present appeal, HC/RA 117/2026 (“RA 117”), was against the AR’s decision dismissing the claimants’ application for production of the Criminal Complaints.

Issues in this appeal

14 The appeal gave rise to the following issues:

- (a) whether O 3 r 2(2) of the ROC 2021 was applicable;
- (b) what the court’s powers under O 11 rr 3 and 4 of the ROC 2021 are;
- (c) whether O 11 r 3(1) or r 4 applied to the claimants’ application;
- (d) who bore the burden of proof;
- (e) whether the Criminal Complaints were in Acuity’s control; and

- (f) whether the court's discretion should be exercised in favour of the claimants, if Acuity had control of the Criminal Complaints.

Whether O 3 r 2(2) was applicable

15 The claimants' application for an order requiring Acuity to produce the Criminal Complaints was made pursuant to O 3 rr 1 and 2(2) and, alternatively, O 11 r 4 of the ROC 2021. Order 3 r 1 sets out the Ideals and requires the court to achieve the Ideals and all parties to assist the court and to conduct their cases in a manner which will help to achieve the Ideals. Order 3 r 2(2) states as follows:

General powers of Court (O. 3, r. 2)

2. — ...

(2) Where there is no express provision in these Rules or any other written law on any matter, the Court may do whatever the Court considers necessary on the facts of the case before it to ensure that justice is done or to prevent an abuse of the process of the Court, so long as it is not prohibited by law and is consistent with the Ideals.

...

16 Before me, the claimants explained that they relied on O 3 r 2(2) as the basis for the court's power to order production and that O 3 r 1 provided guidance as to how the court should exercise its power under O 3 r 2(2).

17 Order 3 r 2(2) provides the court with a broad power to do what it considers necessary to ensure that justice is done where *there is no express provision in the ROC 2021 or any written law on the matter*. It follows that it is not necessary to rely on O 3 r 2(2) if there is express provision on the matter. In this case, as discussed later in these grounds, O 11 r 3 was an express provision that applied to the claimants' application for production of the Criminal Complaints. Therefore, it was not necessary to rely on O 3 r 2(2).

18 The claimants referred to my decision in *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 (“*Interactive*”). In that case, I concluded that the AR had the power under O 11 r 4 to order production of documents referred to in the statement of claim (at [30]). I then went further and said (at [35] and [37]) that the AR also had the power to make the order under O 3 r 2(2). However, my observation about the applicability of O 3 r 2(2) should be understood to have been made in the alternative, on the assumption that there was no express provision on the same matter. The language in O 3 r 2(2) is clear: it provides for the court’s powers where there is no express provision on the matter.

19 I also disagreed with the claimants’ submission that where an application for production of documents is made under O 3 r 2(2), the court can order production of documents even if the respondent does *not* have possession or control of the documents. How is a party expected to produce documents that are not within his possession or control? As will be seen later in these grounds, the court’s express power to order production of documents under O 11 rr 3 and 4 is also limited to documents in the producing party’s possession or control. The fact that a document is referred to in pleadings or affidavits does not displace the requirement for possession or control. It may support an inference that the party (who referred to the document) has the document in his possession or control, but the requirement for possession or control remains.

20 The claimants relied on *Rafidain Bank v Agom Universal Sugar Trading Co Ltd* [1987] 1 WLR 1606 (“*Rafidain Bank*”). That case concerned O 24 r 10(1) of the now revoked Rules of Supreme Court (Revision) 1965 (SI 1965 No. 1776) (UK) (“UK RSC”), which stated as follows:

Inspection of documents referred to in pleadings and affidavits

10.—(1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof.

21 Under O 24 r 11(1) of the UK RSC, if a party who was served with a notice under r 10(1) objected to produce any document for inspection, the court may, on the application of the party entitled to the inspection, make an order for the production of the document in question for inspection.

22 Order 24 r 11(2) of the UK RSC provided that the court may, on the application of any party to a cause or matter, order a party to permit inspection of documents in his “possession, custody or power” (“PCP”) relating to any matter in question in the cause or matter. At this juncture, it would be useful to note that the ROC 2021 uses the phrase “possession or control” instead of PCP. However, both phrases have similar effect because the word “control” includes “custody or power” (see [55] below).

23 Order 24 r 11(3) of the UK RSC provided that an application under r 11(2) must be supported by an affidavit stating (among other things) the deponent’s belief that the documents were in the PCP of the respondent to the application.

24 The plaintiff in *Rafidain Bank* served a notice on the first defendant under O 24 r 10(1) to produce documents referred to in the first defendant’s affidavits. The first defendant resisted the application on the ground that the documents were not in its PCP and argued that the court had no jurisdiction to order discovery of documents referred to in its pleadings or affidavits unless those documents were in its PCP. The English Court of Appeal interpreted r 10(1) to mean that the court’s power under the provision was not limited to

documents in the PCP of the party concerned (at 1610 G–H). The court contrasted r 10(1) with rr 11(2) and (3) and concluded that the omission of a reference to PCP in r 10(1) was deliberate.

25 In my view, *Rafidain Bank* had no application to the present case. The decision in that case was based on the court’s interpretation of O 24 r 10(1) of the UK RSC, in particular, its finding that the omission of a requirement for PCP in O 24 r 10(1) was deliberate. The present case concerned different rules under the ROC 2021, which no longer has a provision similar to O 24 r 10(1) of the UK RSC.

26 *Rafidain Bank* is not authority for a *general proposition* that a production order can be made against a party in respect of documents (including documents referred to in pleadings or affidavits) that are not in that party’s PCP. In any event, in my view, such a proposition cannot be supported in principle.

27 The difficulty in ordering a party to produce documents that are not in his PCP (or possession or control) is evident. In *Rafidain Bank*, the court recognised this difficulty and dealt with it by saying that an order would not be made if good cause to the contrary was shown and that absence of PCP would sometimes amount to a good cause (at 1611B). The court said that the absence of PCP would not invariably amount to a good cause and explained this statement with the example where evidence showed that a third party who had possession of the document would very likely make it available if only he was asked to do so (at 1611B–C).

28 However, the question as to whether a requirement for possession or control is necessary is distinct from the question as to whether the ability to obtain a document from a third party means that one has control of the

document. The example given by the court in *Rafidain Bank* pertained to the latter question, *ie*, whether there was power (or control) over the document in the third party's possession. The court in *Rafidain Bank* conflated both questions. In my view, to the extent that *Rafidain Bank* can be said to stand for a general principle that a party can be ordered to produce documents referred to in his pleadings or affidavits even though he does not have possession or control, it should not be followed.

29 As stated earlier, the fact that a document has been referred to in pleadings or affidavits does not displace the requirement for possession or control. What it does is that it gives rise to two consequences. First, as also stated earlier, it supports an inference that the party who has referred to the document has the document in his possession or control. However, such an inference is not inevitable. For example, the party who referred to the document may have learnt of the existence (and even the contents) of the document from a third party or some other source. Second, it would usually, but not always, be difficult for the party who referred to the document to deny that the document is material.

30 The claimants referred to *SK Shipping Co Ltd v IOF Pte Ltd* [2012] SGHCR 14 ("*SK Shipping*"). In that case, the court held (at [16]–[17]) that the requesting party should be conferred the same advantage as if the documents referred to in pleadings had been fully set out in the pleadings and that courts are strongly inclined to order production of those documents because the reference to those documents, in and of itself, was a form of "disclosure". The claimants reminded me that I had approved of *SK Shipping* in *Interactive* (at [33]).

31 However, neither *SK Shipping* nor *Interactive* stands for the proposition that an order for production of documents referred to in pleadings or affidavits can be made even if the party concerned does not have possession or control of the documents.

32 The claimants further referred to my observation in *Interactive* (at [34]) that instances in which a party can show good cause to oppose the production of documents (that he has referred to in his pleadings) would be rare and exceptional. I should explain that my observation was in relation to the presumed materiality of the documents: see *eSave AG v eSave APAC Pte Ltd* [2026] SGHCR 17 (“*eSave*”) at [55]. It was intended to mean that it would be the exception rather than the rule that a party who has found it necessary to refer to a document can dispute the document’s materiality. My observation had nothing to do with whether a production order can be made if the party, who has referred to the document in his pleadings or affidavits, does not have the document in his possession or control. That question did not arise in *Interactive*.

33 I agree with *eSave* (at [47]) that good cause may also be shown on the grounds of proportionality and other Ideals-based objections. My observation in *Interactive* that instances of good cause would be exceptional also had nothing to do with good cause being shown on grounds of proportionality or other Ideals-based objections.

Court’s powers under O 11 rr 3 and 4

34 Order 11 rr 3 and 4 of the ROC 2021 provide as follows:

Production of requested documents (O. 11, r. 3)

3.—(1) The Court may order any party to produce the original or a copy of a specific document or class of documents (called

the requested documents) in the party's possession or control, if the requesting party —

(a) properly identifies the requested documents; and

(b) shows that the requested documents are material to the issues in the case.

...

Court's power to order production of documents (O. 11, r. 4)

4. Subject to Rules 5, 8 and 9, the Court may, of its own accord and at any time, order any party or non-party to produce a copy of any document that is in the person's possession or control.

Rules 5, 8 and 9 are not relevant for present purposes.

35 It must be emphasised that the court's powers under O 11 rr 3 and 4 can be exercised only in respect of documents in a party's possession or control. Where documents are in a third party's possession, a production order can be made against a party only if it is shown that he has control of the documents. Where a party does not have control of documents in a third party's possession, the court does not have the power to order him to exercise best endeavours to request or obtain the documents from a third party: *Various Airfinance Leasing Companies v Saudi Arabian Airlines Corp* [2022] 1 WLR 1027 ("*Various Airfinance*") at [51], [54] and [59]. That case concerned r 31.8(1) of the Civil Procedure Rules 1998 (SI 1998 No. 3132) (UK) ("UK CPR"), which provided that "[a] party's duty to disclose documents is limited to documents which are or have been in his control".

36 In *Natixis, Singapore Branch v Lim Oon Kuin* [2024] 3 SLR 1502 ("*Natixis*"), a case to which Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC 2014") applied, the plaintiff sought specific discovery of what was described as "Compound Documents". The Compound Documents comprised two of the

second defendant's personal email accounts (described in the judgment as "Lonestar Yahoo E-mail Account" and "Lonestar Hotmail Account") and two mobile phones belonging to the second defendant (described collectively in the judgment as "Handphones").

37 The second defendant claimed as follows:

(a) He could not remember the passwords to the two email accounts and was unable to reset/retrieve the same because he no longer had access to the linked authentication method(s) and/or device(s).

(b) The recovery options for the Lonestar Yahoo E-mail Account included (i) emailing a code to the second defendant's personal email account (described in the judgment as "HLT E-mail Account") in a company (described in the judgment as "HLT") that he was a director of, and (ii) sending a code to the Handphones.

(c) The only recovery option for the Lonestar Hotmail Account was emailing a code to the HLT E-mail Account.

(d) The second defendant lost access to the HLT E-mail Account after HLT moved from its previous office and, in any case, the HLT E-mail Account was within the control of HLT's liquidators.

(e) The second defendant did not have access to the Handphones because they had been seized by and were in the possession of the Commercial Affairs Department of the Singapore Police Force ("CAD").

38 The plaintiff applied for (among other things) an order requiring the second defendant to take steps to locate and obtain the Compound Documents

including by making requests to the CAD and HLT's liquidators. The AR made the order sought and the second defendant's appeal to the High Court Judge was dismissed.

39 The ROC 2014 referred to PCP. The second defendant argued that there could be no obligation to take reasonable investigative steps because he did not have PCP over the Compound Documents. The High Court rejected the second defendant's argument and stated as follows (at [32] and [34]):

32 The law is clear that a party has a duty to take reasonable steps to search for relevant and material documents and to be satisfied that he has complied with his discovery obligations, *before* the affidavit verifying the list of documents can properly be treated as conclusive. This would include the usual statement in the verifying affidavit that the deponent does not have any other document in his PCP. Where the documents may lie with a *third party*, the duty extends to making reasonable efforts to request for the relevant documents: ... In my view, that must be the case; otherwise, the mere fact that documents (including in this case, the Compound Documents) lie with a third party would be a 'convenient ruse' for not providing discovery, even if those documents could be easily requested from the third party: *Hai Jiao* at [47]. A particularly wily defendant could even deliberately put documents within the possession of a third party in order to then use that as an excuse not to provide discovery.

...

34 The submission that PCP is a *prerequisite* for the obligation to take reasonable steps to search for the Compound Documents is, in my view, artificial and practically illogical. The very purpose of taking reasonable investigative steps is to determine whether the requested documents come within the party's PCP in the first place, in order for that party to then be satisfied that he has properly complied with his discovery obligations. The 2nd defendant's argument was therefore circuitous. The obligation to take reasonable steps to search for the relevant and material documents on the one hand, and PCP on the other, cannot be decoupled in the way the 2nd defendant envisioned.

[emphasis in original]

40 I agree that a party's disclosure obligation includes the duty to take reasonable steps to search for documents. However, under O 24 r 1 of the ROC 2014, a party's discovery obligation was expressly limited to documents in his PCP. In other words, it was a prerequisite to a party's discovery obligations that the documents be in his PCP: see, also, *Hai Jiao 1306 Ltd v Yaw Chee Siew* [2020] 3 SLR 142 ("*Hai Jiao*") at [44], citing *Alliance Management SA v Pendleton Lane P* [2008] 4 SLR(R) 1 at [23] with approval. In my respectful view, the duty to take reasonable steps to search for documents must similarly be limited to documents in a party's PCP. Thus, in my view, under the ROC 2014, PCP was a prerequisite for the obligation to take reasonable steps to search for relevant or material documents.

41 In addition, where a party did not have PCP of documents in a third party's possession, under O 24 r 6 of the ROC 2014, the requesting party could request the documents from, or apply for a discovery order against, the third party. I see no reason why a party (who did not have PCP of documents in a third party's possession) had to assist a requesting party by trying to obtain the documents from the third party in order to bring the documents within his own PCP, and thereby enable himself to produce the documents to the requesting party or enable the court to exercise its powers to order production of the same.

42 The position under the ROC 2021 is no different. A party's obligation to produce documents is expressly limited to documents in his possession or control: O 11 r 2 of the ROC 2021. His duty to take reasonable steps to search for documents must also be limited to documents in his possession or control. In addition, where a party does not have control of documents in a third party's possession, under O 11 r 11 of the ROC 2021, a requesting party can request the documents from, or apply for a production order against, the third party. There

is similarly no reason why he has to assist a requesting party by trying to obtain documents that are not in his possession or control from the third party.

43 My view is also supported by the decision in *Various Airfinance* that the court has no power to order a party to use best endeavours to request a third party to provide a document for disclosure in an action where that document is not within the party’s control (see [35] above). The court in *Various Airfinance* also noted the court’s separate power to make orders requiring a third party to provide disclosure of documents (at [54]).

44 In *Natixis* (at [32]), the court expressed its concern that the mere fact that documents lie with a third party would be a “convenient ruse” for not providing discovery, even if those documents could be easily requested from the third party, and cited *Hai Jiao* at [47]. As will be seen later in these grounds of decision, a party to the litigation does not have power over documents in a third party’s possession merely because of an expectation that the third party would comply with a request for the documents. In addition, the use of the phrase “convenient ruse” in *Hai Jiao* at [47] must be understood in context.

45 *Hai Jiao* concerned the defendant’s failure to comply with an order of court requiring him to give specific discovery of documents contained in (among other things) his email accounts at a company called Perdana ParkCity Sdn Bhd (“Perdana”). Perdana was a family-owned business in which the defendant was the executive chairman. In *Hai Jiao*, the court said (at [47]):

... [The defendant] clearly had an unfettered right to access the e-mail accounts at Perdana and the practical ability to do so. ... there was no basis to conclude that Perdana’s permission was necessary or would be refused. ... Further, the various discovery orders were made against him personally, and it was for him to procure any approvals that might be necessary as a matter of corporate policy. The purported need for approval seemed very much like a convenient ruse for not providing

discovery particularly when seen in light of the fact that the defendant had been allowed to use one of the e-mail accounts to communicate with the liquidators of [another company the defendant was the majority shareholder, sole director and executive chairman of]. While the suggestion was that he did not have the authority in Perdana to procure such access, this was not believable. ...

46 In *Hai Jiao*, the court found (at [46]) that the defendant had power (under O 24 of the ROC 2014) over emails in his email accounts at Perdana. As the court said (at [47]), the defendant had an unfettered right to access the email accounts. Having found that the defendant had power to access his email accounts at Perdana, the court then described the defendant’s argument that approval was required from Perdana as a “convenient ruse for not providing discovery” (at [47]). *Hai Jiao* does not support the proposition that an expectation that a third party would comply with a party’s request to produce documents means that that party has power over (or control of) the documents. It also does not support the proposition that PCP (or possession or control) is not a prerequisite for the obligation to take reasonable steps to search for material documents.

Whether O 11 r 3(1) or r 4 applied to the claimants’ application

47 The parties before me proceeded with the appeal on the basis that O 11 r 4 was the applicable rule for the claimants’ application. However, in my view, the applicable rule was O 11 r 3(1) rather than O 11 r 4.

48 The claimants referred to my decision in *Interactive* in which I had said (at [30]) that the AR had power under O 11 r 4 to make the order for production of documents referred to in the statement of claim. However, *Interactive* is not authority for the proposition that an application for production of documents referred to in pleadings or affidavits should be made under O 11 r 4.

49 In *Interactive*, the first defendant filed and served a notice to produce documents (“NTP”) referred to in the claimants’ statement of claim, using a form provided for under the ROC 2014. However, unlike the ROC 2014, the ROC 2021 (which applied to the case) did not contain any similar NTP procedure. At a case conference, the AR directed the claimants to produce documents, referred to in the statement of claim, that were subject to the claim against the first defendant. A question arose as to the basis of the AR’s power to make the production order. I rejected the first defendant’s attempt to rely on O 11 r 3 because it had not made any application pursuant to O 11 r 3 nor obtained the court’s approval to make such an application separately from the single application pending trial (*Interactive* at [29]). I then decided that, although O 11 r 3 did not apply, the AR had power to make the order pursuant to O 11 r 4 (*Interactive* at [30]).

50 Unlike the ROC 2014, the ROC 2021 does not contain a specific provision relating to documents referred to in pleadings or affidavits. Under the ROC 2021, an application for production of documents referred to in pleadings or affidavits would be an application for production of specific documents, which should be made under O 11 r 3 instead of O 11 r 4. Order 11 r 3 provides for the court’s power to order production of specific documents or classes of documents requested by a party. Thus, O 11 r 3 envisages an application made by the requesting party. In contrast, O 11 r 4 provides for the court’s power, *of its own accord*, to order production of documents. In the present case, O 11 r 3(1) was applicable because the claimants had filed an application for production of documents. Be that as it may, this made no difference to the present case. The question remained the same, *ie*, whether the Criminal Complaints were in Acuity’s control.

Burden of proof

51 A party applying for a production order under O 11 r 3(1) bears the legal burden of proving that the documents sought are within the respondent’s possession or control. Where the respondent has referred to documents in his pleadings or affidavits, it would be a reasonable inference that he has the documents in his possession or control. The evidential burden then shifts to the respondent. If the respondent takes the position that it does not have the documents in his possession or control, he ought to explain how he was able to refer to the documents in his pleadings or affidavits, in order to discharge his evidential burden.

52 The claimants referred to *eSave* in which the court decided that an application for production of documents referred to in a pleading or affidavit may be opposed if there is “good cause” (at [76(e)]), the burden rests on the party opposing the application to establish the existence of good cause (at [76(e)(i)]), and a party may show good cause where the document is not in the party’s possession or control (at [76(e)(iv)]). I do not think that the statement in *eSave* (that the burden rests on the opposing party) is inconsistent with what I have set out in [51] above (that the evidential burden shifts to the respondent).

Whether the Criminal Complaints were in Acuity’s control

53 The Criminal Complaints were made by NSH Petro to the Vietnamese Ministry of Public Security. They were documents in the possession of a third party, *ie*, the Vietnamese Ministry of Public Security. Possession entails a physical holding of the document coupled with a possessory right: *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd* [2025] 4 SLR 1262 (“*Wuhu Ruyi*”) at [124], citing Jeffrey Pinsler, *Principles of Civil Procedure* (Academy Publishing, 2013) at

para 17.005. The claimants accepted that the Criminal Complaints were not in Acuity’s possession.

54 However, the claimants submitted that the Criminal Complaints were in Acuity’s control. I disagreed with the claimants’ submission.

Concept of “control”

55 Order 24 of the ROC 2014 used the phrase “possession, custody or power” whereas O 11 of the ROC 2021 uses the phrase “possession or control”. The word “control” has a wide meaning and the obligation to produce documents would include, for example, documents in the party’s custody or power: Ministry of Law & New Rules of Court Implementation Team, *Response to Feedback from Public Consultation on the Civil Justice Reforms: Recommendations of the Civil Justice Commission and the Civil Justice Review Committee* (11 June 2021) at para 74. Thus, cases interpreting the phrase “custody or power” in O 24 of the ROC 2014 remain relevant to the interpretation of the term “control” in O 11 of the ROC 2021 (see, also, *Wuhu Ruyi* at [123]).

56 The term “power” in O 24 of the ROC 2014, and consequently the term “control” in O 11 of the ROC 2021, encompasses not only the enforceable legal right, but also the practical ability, to obtain documents in the possession of a third party: *Dirak Asia Pte Ltd v Chew Hua Kok* [2013] SGHCR 1 at [35]; *Hai Jiao* at [46]–[47]; *Natixis* at [35]; *Wuhu Ruyi* at [126].

57 An enforceable legal right is self-explanatory. However, the question as to when a party can be said to have a practical ability that amounts to “control” is more complicated. The authorities establish the following principles.

58 First, there must be compelling evidence of a party’s practical ability to obtain the documents from the third party: *Wuhu Ruyi* at [128]. This is understandable because the court is being asked to order a party to produce documents that are in the possession of a third party based not on a legal right but a practical ability. In my view, a finding that a party has control of documents in the possession of a third party, based on a practical ability to obtain such documents from the third party, should not be made lightly.

59 Second, an expectation that the third party would comply with a request of a party to the litigation is not sufficient: *Ardila Investments NV v ENRC NV* [2015] EWHC 3761 (Comm) (“*Ardila*”) at [13]; *Loreley Financing (Jersey) No. 30 Limited v Credit Suisse Securities (Europe) Ltd* [2023] EWHC 548 (Comm) (“*Loreley*”) at [13] and [15].

60 In *Wuhu Ruyi*, the court said it “would not go as far as ... to say that an expectation of compliance is invariably insufficient” (at [129]). However, the court was not saying that an expectation of compliance could, in and of itself, suffice to amount to control. The court reasoned that “if there is clear evidence before the court that a party’s request for documents from a third party would be complied with, there is no reason why such documents should not be said to be in the former’s control” (at [129]). The court’s reason shows that its view was that an expectation of compliance could amount to control if the evidence showed that the third party would comply with a party’s request. Where there is compelling evidence that the third party would comply with a party’s request, practical ability amounting to control would be established.

61 The court in *Wuhu Ruyi* also referred to *Phones 4U v EE Ltd* [2021] 1 WLR 3270 (“*Phones 4U*”), in which an employer was ordered to request its present and former employees to make available their personal electronic

devices to consultants engaged by the employer to search for *work-related* communications relating to the employer's business. However, in *Phones 4U*, it was common ground that (a) the present and former employees' personal devices were not in the employer's control (at [22]), but (b) the work-related emails and messages in those devices were in the employer's control for the purposes of disclosure (at [4]).

62 *Phones 4U* decided that under the UK CPR, the court had power to order a party (X) to *request* third parties (X's present and former employees) to allow X or X's agent access to the third party's personal devices (which were not in X's control) to search for work-related communications relating to X's business (which were in X's control) for the purposes of X's disclosure obligations under the CPR. The decision is logical. The employees' personal devices were the media on which the work-related communications were stored. The work-related communications were in the employer's control. The order was merely for the employer to request the employees for access to search for the work-related communications and, as the court acknowledged, the employees were not obliged to comply with the request (at [32]).

63 The decision in *Phones 4U* raises some interesting questions. It may be that a similar order is possible under the ROC 2021. However, that question did not arise in the present case and I would leave it to be decided in some future case with the benefit of full submissions. For present purposes, the important thing was that *Phones 4U* did not decide that an expectation of compliance can, in and of itself, amount to control for purposes of disclosure.

64 Third, it is not generally sufficient to demonstrate that there is a close legal or commercial relationship between the producing party and the third party, such as parent and subsidiary companies or employer and employee

relationships: *Various Airfinance* at [21]; *Loreley* at [14]. The nature of the relationship is not determinative: *Wuhu Ruyi* at [130].

65 Fourth, a party has a practical ability to obtain documents in a third party's possession where there is a standing arrangement under which the third party allows the former access to documents in the third party's possession: *Various Airfinance* at [21]; *Loreley* at [16]; *Berkeley Square Holdings Ltd v Lancer Property Asset Management Ltd* [2021] EWHC 849 (Ch) at [46(ii)].

66 Fifth, the ability to access or obtain documents in the third party's possession must be unfettered: *Ardila* at [14]; *Loreley* at [13]. In *Wuhu Ruyi*, the court said (without elaborating) that it would not pitch the threshold at the level of "unfettered access" (at [129]). However, in my view, the practical ability to access or obtain documents in a third party's possession should be unfettered in the sense that the party concerned should be able to access or obtain the documents without being restricted, controlled or limited by any other conditions.

67 Apart from the question as to when a practical ability amounts to control, it is also important to note that compliance with an order for production of documents in a third party's possession on the basis that the party concerned has control of the same is different from compliance with an order for production of documents in a party's possession.

68 A party complies with an order requiring him to produce documents in his possession by producing the documents. However, a party complies with an order requiring him to produce documents (in a third party's possession) that he has control of, by taking reasonable steps to exercise his control and obtain the documents from the third party. He is required to produce the documents only

if he succeeds in obtaining the documents from the third party. He will have complied with the production order so long as he had taken reasonable steps to obtain the documents from the third party even if he is not successful in doing so.

69 What does taking reasonable steps in this regard entail? In my view, a party who has an enforceable *legal right* to obtain documents in the possession of a third party is only required to exercise that right by making a demand for the documents. He need not make the demand through a solicitor (although he may choose to do so), much less commence legal proceedings to enforce his legal right. If the third party does not comply with the demand, the requesting party may, if he so wishes, make an application against the third party under O 11 r 11 of the ROC 2021 for production of the documents.

70 A party who has a practical ability to access or obtain the documents in the third party's possession should exercise that ability to access or obtain the documents. Whether he has to inform the third party depends on the arrangement or understanding with the third party. Further, since the arrangement or understanding with the third party does not give rise to a legal right, it is revocable at any time by the third party. If the party concerned is unable to access or obtain the documents because the third party has revoked the arrangement or understanding or for any other reason, the party concerned cannot be said to have breached the production order against him.

Whether Acuity had control

71 In my view, the claimants failed to show that the Criminal Complaints were in Acuity's control. The Criminal Complaints were made by NSH Petro to the Vietnamese Ministry of Public Security. They were therefore in the

possession of the Vietnamese Ministry of Public Security. There was no suggestion (understandably so) that Acuity had any arrangement or understanding with the Vietnamese Ministry of Public Security under which Acuity could have had access to the Criminal Complaints.

72 The claimants submitted that Acuity should be treated as having control of the Criminal Complaints if it did not attempt to ask the Vietnamese Ministry of Public Security for the same. The claimants referred to *Wuhu Ruyi* at [129], where the court referred to its earlier decision in *Natixis* (at [32]) that “[w]here the documents may lie with a *third party*, the duty extends to making reasonable efforts to request for the relevant documents” [emphasis in original].

73 I rejected the claimants’ submission. It was wholly unmeritorious. Further, neither *Wuhu Ruyi* nor *Natixis* stands for the proposition that a party (who does not have control of documents in a third party’s possession) should be treated as having control of those documents if he does not attempt to request a third party for the same.

74 The claimants next submitted that Acuity had not adequately explained why it did not have the Criminal Complaints in its possession. I disagreed with the claimants’ submission.

75 Janette’s reference to the Criminal Complaints in her affidavit gave rise to an inference that Acuity had control of the Criminal Complaints. This shifted the evidential burden to Acuity and Acuity had to explain how it was able to refer to the Criminal Complaints if it did not have control of the same.

76 Roe’s affidavit had referred to news articles, which reported that Ranjit had been detained in Vietnam and that the Vietnamese Ministry of Public

Security had received criminal complaints against Ranjit from (among others) NSH Petro (see [10] above). In her affidavit, Janette provided Acuity's responses to the news articles that Roe referred to in his affidavit. The only reference to the Criminal Complaints was in paragraph 86 of Janette's affidavit, in which she stated (see [11] above):

... It is also my husband's position that it is no coincidence that NSH Petro and its related companies had filed criminal complaints against him after Acuity had filed SIAC Arbitration Nos 461 to 463 of 2025 against them. This was a tactic to oppress and put pressure on him and to avoid paying the Fund Arrangement Fees.

77 The fact that Janette was able to refer to the Criminal Complaints (*ie*, the criminal complaints referred to in paragraph 86) was no surprise given what Roe had already stated in his affidavit. In addition, in the Summary Table for SUM 1086, Acuity clearly stated its position that the Vietnamese Ministry of Public Security did not provide copies of the Criminal Complaints to Ranjit. There was no evidence to the contrary. In my view, Acuity had adequately explained its position and discharged its evidential burden.

78 The claimants also submitted that it was unclear how Janette could assert in her affidavit that the Criminal Complaints were a tactic to oppress Ranjit unless she had sight of or been informed of the contents of the Criminal Complaints. I rejected the claimants' submission. It was baseless. The assertion that the Criminal Complaints were a tactic to oppress Ranjit was no more than an inference based on the fact that the Criminal Complaints were filed.

Whether the court's discretion should be exercised in favour of the claimants, if Acuity had control of the Criminal Complaints

79 In any event, even if the Criminal Complaints could be said to be within Acuity's control, I disagreed with the claimants' submission that without

knowing the contents of the Criminal Complaints, they were unable to properly evaluate whether Janette’s characterisation of the Criminal Complaints as mere oppressive tactics was accurate, incomplete or misleading.

80 I agreed with the AR that the claimants could respond to paragraph 86 of Janette’s affidavit without having sight of the Criminal Complaints. Paragraph 86 of Janette’s affidavit merely referred to the *existence* of the Criminal Complaints (which was not disputed). The statement that the Criminal Complaints were a tactic to oppress and to avoid payment obligations was an inference based on the fact that the Criminal Complaints were filed. There was no reason why the claimants could not respond without having sight of the Criminal Complaints.

81 Thus, even if the Criminal Complaints were in Acuity’s control, there was no reason to order Acuity to produce the same.

Conclusion

82 For the above reasons, I dismissed RA 117. I ordered the claimants to pay costs of RA 117 fixed at \$15,000 inclusive of disbursements.

Chua Lee Ming
Judge of the High Court

Khoo Boo Teck Randolph, Sharon Ki Su Jon and Swan Low Yu
Song (Drew & Napier LLC) for the claimants;
Tiong Teck Wee, Teo Wei Kiat Samuel, Teo Yu Hui Frederick and
Koh Chiu Hwee (WongPartnership LLP) for the respondent.
