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

[2026] SGHC 94

Originating Claim No 70 of 2025 (Registrar's Appeal No 10 of 2026)

Between

Matthew Benjamin Cape

… *Appellant*

And

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

… *Respondents*

GROUNDS OF DECISION

[Civil Procedure — Striking out]
[Contract – Contractual terms – Limits to assignment agreement]
[Insolvency Law — Winding up — Liquidator — Whether a consent order for release amounts to release under Section 276(4) of the Companies Act (Cap 50, 2006 Rev Ed)]

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Version No 2: 04 May 2026 (16:05 hrs)

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Cape, Matthew Benjamin
v
Collis, John Charles and others

[2026] SGHC 94

General Division of the High Court — Originating Claim No 70 of 2025
(Registrar's Appeal No 10 of 2026)
Kwek Mean Luck J
1 April 2026

30 April 2026

Kwek Mean Luck J:

Introduction

1 This was an appeal against the decision of the learned Assistant Registrar ("AR") to strike out the claims brought by the claimant in HC/OC 70/2025 ("OC 70"), Mr Cape Matthew Benjamin ("Mr Cape"), against the 9th defendant, Mr Tan Eng Soon ("Mr Tan"), for amongst other things, Mr Tan's alleged breach of fiduciary duties to NR Capital Pte Ltd (in liquidation) ("NR"). Mr Tan was the former court appointed liquidator of NR.

2 After consideration of the parties' submissions, I dismissed the appeal. First, I found that Mr Cape did not have the requisite standing to bring claims against Mr Tan as the Sale and Assignment of Claim Agreement ("Assignment Agreement") made in 2024 between NR and Mr Cape did not encompass such claims. Second, the release of Mr Tan as liquidator of NR discharged him of all

liability flowing from his conduct in the liquidation process. I set out my reasons in full below.

Background

3 Mr John Charles Collis ("Mr Collis") and Mr Thomas Glyn James ("Mr James") were the directors of NR.[1] Mr Cape was a former director and shareholder of NR. NR advised Emerging Asset Management ("EAM"), which managed a series of mutual funds. The material fund that NR advised EAM on was known as the "NR Capital Trade Flow Fund SP" ("Trade Flow Fund").[2] NR's primary revenue source was fees earned from being an investment advisor to EAM, under an Investment Advisory Agreement ("IAA"). This IAA was terminated shortly before NR's winding up.[3]

4 NR was wound up on 20 September 2019 pursuant to HC/ORC 6340/2019, upon a winding up application brought by Mr Collis in HC/CWU 238/2019.[4] Mr Tan was appointed as its liquidator.[5] In the liquidation process, Mr Tan sought to realise the assets of NR, including the sale of unregistered intellectual property, in particular "Tradeflow 90".[6]

5 Mr Cape subsequently executed the Assignment Agreement with NR on 13 August 2024 to acquire specific causes of action against the defendants in OC 70. In OC 70, the claimant, Mr Cape, averred amongst other things, that

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1 Appellant's Written Submissions ("AWS") dated 25 March 2026 at [3].

2 AWS at [3].

3 AWS at [3].

4 AWS at [4].

5 AWS at [4].

6 AWS at [15].

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Mr Collis and Mr James wrongfully caused NR's role as investment advisor under the IAA to be transferred from NR to the 8th defendant, Tradeflow Capital Management Pte Ltd ("Tradeflow"), an entity owned by them.[7]

6 Mr Cape's complaint against Mr Tan in OC 70 is that in breach of his fiduciary duties to NR, Mr Tan rubber-stamped the wrongful misappropriation of NR's business (including under the IAA) to Tradeflow. NR's intellectual property, Tradeflow 90, was sold at a nominal sum under the liquidation process to Tradeflow, which is owned by Mr Collis and Mr James. Mr Tan also turned a blind eye to Mr Collis and Mr James's breaches of director's duties to NR and the diversion of the IAA to Tradeflow by failing to investigate into the matter as part of the liquidation process.[8]

7 In HC/SUM 2236/2025, Mr Tan applied to strike out the claims brought against him by Mr Cape pursuant to O 9 r 16 of the Rules of Court 2021 ("ROC"). The AR struck out Mr Cape's claims against Mr Tan in its entirety. The AR held that:

(a) Mr Tan had been released and discharged from "all liability" in respect of his conduct as a liquidator by a consent order HC/ORC 1812/2022 ("ORC 1812") pursuant to s 276(4) of the Companies Act (Cap 50, 2006 Rev Ed) (the "CA").

(b) Even if he was not discharged, Mr Cape did not have *locus standi* to sue Mr Tan because the Assignment Agreement between Mr Cape

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7 AWS at [13].

8 AWS at [15]; Affidavit of Matthew Benjamin Cape filed in HC/SUM 2236/2025 dated 24 August 2021 at [25]–[64], exhibited in Affidavit of Tan Eng Soon ("TES-1") filed on 8 August 2025 at Tab 12.

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and NR did not extend to the claims brought by Mr Cape against Mr Tan in OC 70.

Issue 1: Whether the Assignment Agreement encompasses Mr Cape's claims against Mr Tan

8 The material parts of the Assignment Agreement are set out below:[9]

> (B) The Purchaser wishes to acquire the cause of action and claims of the Seller against inter alia Mr Thomas Glyn James (NRIC No. [XXX]) and Mr John Charles Collis (Identification No. [XXX]) for breach of directors' duties, breach of trust, dishonest assistance and/or knowing receipt and conspiracy to injure the Seller arising out of the appointment of Tradeflow Capital Management Pte. Ltd. (UEN. 201920511H) as new investment advisor ("Claims").
>
> …
>
> 2.2 Subject to Clause 2.1 above and the terms and conditions of this Agreement, the Seller shall sell and assign to the Purchaser, and the Purchaser shall purchase and consent to the assignment from the Seller of all the Seller's right, title and interest in, to and under the Claims.

9 At the appeal, Mr Tan adopted the AR's view on the interpretation of these clauses. The AR held that Mr Cape does not have *locus standi* to bring his claims against Mr Tan in OC 70, as:

(a) None of the identified causes of action in paragraph (B) of the preamble relate to the OC 70 claims against Mr Tan.[10]

(b) The causes of action in paragraph (B) refer only to the alleged diversion of the IAA and the appointment of Tradeflow as EAM's investment advisor, that had been perpetrated by Mr Collis and

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9 TES-1 at p 235.

10 Respondent's Written Submissions ("RWS") filed on 25 March 2026 at [IV].

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> Mr James in breach of their duties to NR, in conspiracy with the 3rd to 8th defendants. They have no connection to Mr Tan, whose role was limited only to carrying out the liquidation of NR. He would not have any involvement in or connection with the appointment of Tradeflow as EAM's investment advisor.[11]

10 Mr Cape cited *Solvadis Commodity Chemicals GmbH v Affert Resources Pte Ltd* [2018] 5 SLR 1337 ("*Solvadis*") where the court held at [24]–[25] that language such as "any and all causes of action … against any and all parties (including but not limited to …)" is "clear enough to identify the subject-matter of the assignment".[12]

11 Mr Cape averred that the phrase "breach of directors' duties, breach of trust" in paragraph (B) can encompass, as part of the same category of equitable wrongs, breaches of fiduciary duty by a court-appointed liquidator.[13]

12 In the original OC 70 Statement of Claim ("SOC") before the AR's order to strike out, Mr Cape pleaded the wrongful diversion of the IAA and NR's IP to Tradeflow and Mr Tan's failures and acts as liquidator in declining to investigate the circumstances of the transfer and failing to scrutinise Mr Collis's proof of debt, which cemented that diversion.[14]

13 Mr Cape submitted that therefore, Mr Tan's alleged misconduct "arises out of the appointment of Tradeflow …as new investment advisor".[15] As the

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11 RWS at [20].

12 AWS at [43]–[45].

13 AWS at [48].

14 Statement of Claim ("SOC") filed 28 January 2025 at [30(f)].

15 AWS at [50].

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court appointed liquidator, his role was not to simply carry out NR's liquidation – he owed fiduciary duties to NR to investigate its directors, Mr Collis and Mr James, and the pilfering of NR via the appointment of Tradeflow as investment advisor and/or the diversion of the IAA to Tradeflow.[16] Mr Tan's alleged breaches were the culmination of, and part of, the same series of acts "arising out of" Tradeflow's appointment as new investment advisor in place of NR.[17]

Assignment Agreement does not extend to the claims against Mr Tan

14 I begin with Mr Cape's reliance on *Solvadis*. This does not assist his case.

15 I observe preliminarily that the factual context is very different. The case before me involves the assignment of causes of action from a company to one of its directors. The issue to be determined is whether the cause of action relied upon falls within the ambit of the assignment agreement. The court in *Solvadis*, on the other hand, dealt with whether a liquidator could be permitted to sell a company's right to recovery of receivables under s 272(2)(*c*) of the CA. In making its determination, the court observed that it was held in *Cant, In the matter of Novaline Pty Ltd (in liq)* [2011] FCA 898 that where causes of actions are being sold, the liquidator must identify them with reference to, for example, extant proceedings, the parties being claimed against or the offending conduct: at [24].

16 Nevertheless, despite the different factual context, the core question which arose in *Solvadis* is similar to that here. In *Solvadis*, the court emphasised

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16 AWS at [53].

17 AWS at [54].

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that the ambit of what was to be assigned ought to be sufficiently identifiable: *Solvadis* at [25].

17 However, the respective material clauses are very different. Paragraph (B) of the preamble to the Assignment Agreement does not contain the clauses that Mr Cape references from *Solvadis*, *ie* relating to "any and all causes of action".

18 Moreover, contrary to Mr Cape's submission, the court in *Solvadis* did not accept the disposal clause based on the phrase "[a]ny and all causes of action" alone. Instead, the court found the disposal of "[a]ny and all causes of action" to be very wide and the ambit of what was being sold insufficiently identifiable. The liquidators in that case returned with a revised clause which the court accepted. The revised clause referred to a defined list of named third parties under a list of Assigned Receivables, and a gamut of possible causes of action. It was this revised clause that the court found to be clear enough to identify the subject matter of the assignment and therefore satisfied the threshold of being sufficiently identifiable: at [25]. The Court then interpreted the relevant clauses to determine whether there was a valid assignment, and if so, what was assigned.

19 Hence, the issue turns on the interpretation of the relevant clauses in this case, which is set out in the Assignment Agreement. Paragraph (B) encompasses causes of action for "breach of directors' duties, breach of trust, dishonest assistance and/or knowing receipt and conspiracy to injure the Seller *arising out of the appointment of Tradeflow … as new investment advisor*."

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20 It is not alleged that Mr Tan was involved in the appointment of Tradeflow as new investment advisor. As liquidator, his role was limited to carrying out the liquidation of NR.

21 Mr Cape submitted that paragraph (B) nevertheless encompasses his claims against Mr Tan in OC 70, as Mr Tan's alleged breaches were the culmination of and part of the same series of acts arising out of the appointment of Tradeflow.[18] With respect, I find this submission to be a very far stretch.

22 In the first place, there is no language in paragraph (B) that suggests that it covers the culmination of and part of the same series of acts arising out of the appointment of Tradeflow.

23 Second, it is also a stretch to say that Mr Tan's alleged breaches in his capacity as liquidator are the culmination and part of the same series of acts as those taken by Mr Collis and Mr James in their capacity as NR directors, in appointing Tradeflow.

24 Mr Cape in his submissions, references the original SOC (before the AR struck out the claim against Mr Tan), in which he pleaded the initial wrongful diversion of the IAA and NR's IP to Tradeflow and pleaded Mr Tan's failures and acts as liquidator, in declining to investigate the circumstances of the transfer and failing to scrutinise Mr Collis's proof of debt.[19]

25 However, Mr Cape's pleadings only reinforce the point that the claims he was pursuing against Mr Tan were for actions that occurred prior to Mr Tan's appointment as liquidator. In particular, the breaches stemming from the

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18 AWS at [54].

19 AWS at [50].

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wrongful diversion of the IAA, which Mr Cape alleged occurred on 26 August 2019, took place before NR was placed in liquidation on 20 September 2019.[20]

26 Furthermore, while Mr Cape pleads that the 3rd to 7th defendants dishonestly assisted Mr Collis and Mr James, the pleadings do not aver that Mr Tan was in any way working with them or was connected to them in their enterprise.[21]

27 Mr Tan's actions, or lack thereof, could then hardly be said to be the culmination of or same series of acts as those taken by Mr Collis and Mr James in diverting or assigning the IAA to Tradeflow.

28 I therefore agreed with the AR that the Assignment Agreement does not extend to the claims brought by Mr Cape against Mr Tan in OC 70, and that Mr Cape does not have the *locus standi* to bring such claims.

29 It is not disputed by parties that if Mr Cape does not have *locus standi*, his claim against Mr Tan can be struck out.[22] This flows from well-established law. In *Madan Mohan Singh v Attorney-General* [2015] 2 SLR 1085, the court held that an application discloses no chance of success if the applicant is unable to establish the requisite *locus standi* and may be struck out as being without legal basis and disclosing no reasonable cause of action: at [20]. I therefore affirmed the AR's decision to strike out Mr Cape's claims against Mr Tan on this basis.

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20 AWS at [4].

21 SOC at [30].

22 AWS at [56]; RWS at [22].

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30 Mr Cape submitted that in such an event, he would seek leave to amend his SOC to include a claim for lawful means conspiracy against Mr Tan.[23] I observed that this is a fundamentally different claim against Mr Tan. Mr Cape had not made any application to so or filed any documents in support of this. Consequently, Mr Tan had not had the opportunity to consider such application and respond. I thus made no comment on this but granted Mr Cape liberty to make the necessary application for such leave, which is to be considered on its merits.

Issue 2: Whether Mr Tan is discharged from all liability in respect of his conduct as liquidator

31 The appeal was dismissed on the ground that Mr Cape lacked standing. I nevertheless proceeded to determine the second issue, *ie*, whether Mr Tan had been released and discharged from "all liability" in respect of his conduct as a liquidator by a consent order ORC 1812 pursuant to s 276(4) of the CA, bearing in mind that this may affect any subsequent application to amend the SOC, and as there has not been any local decision on the interpretation of the relevant provisions.

32 For completeness, I note that since the introduction of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA"), substantially the same provision as at s 276(4) CA is now found at s 149(4) of the IRDA. The Judge that recorded the consent order in ORC 1812 and the AR in the lower court observed that it was an open issue whether the provisions of the IRDA or the CA applied to the liquidation of NR. The order was made with reference to both the IRDA and the CA, and the AR discussed his decision with respect to both the IRDA and the CA. For the purposes of the present appeal, both parties made

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[23] AWS at [56].

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submissions based on the provisions within the CA, and I set out my decision based on their pleadings.

33 Mr Tan adopted the findings of the AR on this issue.[24] The AR held that while ORC 1812 is a consent order, it is still an order of the Court releasing the liquidator, and therefore came within s 276(4) of the CA. Specifically, ORC 1812 states that Mr Tan has been "released as liquidator … pursuant to s 275(i) of the Companies Act". Section 275(i) of the CA provides that a liquidator may "*apply* to the Court — for an order that he be released" [emphasis added] where any one of the three scenarios in ss 275(*a*)–(*b*) CA applies. Pursuant to ORC 1812, the parties agreed for Mr Tan to be released as liquidator *as if* he had brought an application for his release under s 275(i) of the CA (presently s 147(*c*) of the IRDA).[25] Where an order for release is granted pursuant to an application brought under s 275(i) of the CA, its effect is as provided for in s 276(4) of the CA. ORC 1812 is therefore "[a]n order of the Court releasing the liquidator" coming within s 276(4) of the CA.

34 Further, Mr Tan argued that an order for release carries the effect stated in s 276(4) of the CA, namely that the liquidator shall be discharged from all liability, even if the underlying liquidation remains ongoing and the company has not been dissolved. The statute does not prescribe any limitation to the circumstances in which an order for release carries the effect stated in s 276(4) of the CA. Parliament would have legislated for exceptions if it had intended that the effect of s 276(4) be excluded in certain circumstances (such as where the liquidation remains ongoing and the company has not been dissolved). Section 275 of the CA envisions that a liquidator can apply for an order for

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24 RWS at [23].

25 RWS at [32].

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release where the liquidation remains ongoing, for example, where the liquidator "has resigned or has been removed from his office": s 275(*b*) CA. Section 275(i) of the CA also makes clear that a liquidator can apply to the Court for *only* "an order that he be released", in contrast to s 275(ii) which states that a liquidator can apply to court for "an order that he be released and that the company be dissolved". An application for release is intended as the forum for the consideration of any claim that the liquidator has been derelict or deficient in the performance of his functions.[26] If the relevant procedural requirements have been complied with, and no creditors have objected to the release of the liquidator or raised any concern as to the performance of his duties, the court would ordinarily make an order releasing the liquidator, unless any reason emerges why it should not do so: *In the matter of RR Impex Pte Ltd (in liquidation)* [2013] NSWSC 1667 ("*RR Impex*") at [3].[27] With the grant of release, the slate is "wiped clean" and the liquidator need not pay any further thought to his previous conduct, and any person with an interest in the performance of his duties is also deprived of any redress whatsoever in respect of his previous conduct.

35 Mr Cape's position was that ss 275 and 276 of the CA envision:[28]

(a) a post-dissolution release, after the liquidator has carried out all steps under ss 275(*a*) and 276(1), (2) and (3) of the CA; and

(b) a pre-dissolution release, which under s 276(5) of the CA operates only as a "*removal*", and not a full discharge of liability.

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26 RWS at [39].

27 RWS at [39].

28 AWS at [63]–[67].

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36 Mr Cape submitted that ORC 1812 falls within the regime of a pre-dissolution release, where Mr Tan's release operates merely as a removal from office under s 276(5) of the CA, and not a full discharge of liability.[29] Section 276(4) of the CA does not operate in isolation. It first presupposes and/or requires a formal application under s 275 of the CA. Section 276(2) of the CA provides safeguards, including notice to, and an opportunity for objections from, those interested, as well as the Court's determination that release is appropriate.[30] If s 276(4) CA were applied to pre-dissolution consent removal orders such as ORC 1812— where the liquidation continues, and the "*release*" wording is deployed merely as part of a compromise of a removal application — the safeguards s 276(2) of the CA have not, in any real sense, been engaged.[31]

37 Mr Cape also submitted that if the above position is not taken, then a liquidator facing serious complaints could secure *de facto* immunity from suit simply by agreeing to step down, while creditors and contributories would be deterred from agreeing to pragmatic resolutions of removal applications for fear of inadvertently extinguishing valuable company claims. As a matter of public policy this interpretation ought to be rejected.[32]

38 Finally, Mr Cape submitted that the Australian authorities cited by the AR, *ie*, *RR Impex*, *Re Australasian Barrister Chambers Pty Ltd* [2020] NSWSC 304 and *Re Bell Group NV (in liquidation)* [2023] WASC 151, dealt only with

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29 AWS at [63].

30 AWS at [65].

31 AWS at [70].

32 AWS at [70].

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classic end-of-liquidation scenarios.[33] They do not hold that any consent order, using the language of "release" in a removal application, automatically engages the same consequences.[34]

Release must amount to a discharge of liability of a liquidator

39 I was cognisant that this was an appeal against a striking-out order and that the threshold for striking out is a high one. The Court of Appeal held in *Gabriel Peter & Partners v Wee Chong Jin* [1997] 3 SLR(R) 649 at [21]:

> As long as the statement of claim discloses some cause of action, or raises some question fit to be decided at the trial, *the mere fact that the case is weak and is not likely to succeed is no ground for striking it out.*
>
> [emphasis added]

40 In *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at [21], the Court of Appeal held that:

> all that [the appellant against a striking out order] has to show is that *he has on* the facts and *law an arguable case*.
>
> [emphasis added]

41 In *The "Bunga Melati 5"* [2012] 4 SLR 546 at [39(a)], the Court of Appeal held the following in respect of when a claim should be held to be legally unsustainable:

> *Legally unsustainable*: if "it may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks" …

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33 AWS at [76].

34 AWS at [77].

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42 After careful consideration of the appellant's arguments, I was of the view that the threshold was met, even though it is a high one. It is "clear as a matter of law at the outset" that Mr Tan had been discharged from all liability as a liquidator pursuant to s 276(4) of the CA and Mr Cape *does not* have "an arguable case". Mr Cape's case rests on several planks, none of which are arguable, whether from an examination of the procedural history, the terms of ORC 1812 or the relevant provisions of the CA.

43 Before I discuss the material provisions, I found it pertinent to set out the three main modes a liquidator can vacate office, namely through resignation, removal and release.

44 Resignation is the voluntary unilateral withdrawal of a liquidator from his office effected by the liquidator himself. Under the CA, and presently the IRDA, the release of a resigned court appointed liquidator requires the court's sanction; although a liquidator in a compulsory winding up may divest himself of the office subject to giving two months' written notice. The release of a resigned liquidator takes effect only upon the making of the court order. Resignation itself does not carry any automatic discharge of liability. The resigning liquidator who has not applied for release remains exposed to claims for acts done or defaults made during the period of office. Instead, a resigned liquidator would have to apply under s 275(i) of the CA to be released (see *Yap Jeffrey Henry v Ho Mun-Tuke Don* [2006] 3 SLR(R) 427 at [19]; *Halsbury's Laws of Singapore – Insolvency* (Volume 13) (LexisNexis Singapore, 2022 Reissue) at para 150.496). The distinct feature of a liquidator departing his position by resignation is that it is initiated by the liquidator and does not require any allegation of misconduct or judicial scrutiny of the liquidator's administration.

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45 Removal on the other hand (other than that in a members' voluntary winding up or upon a liquidator's release) is the compulsory termination of a liquidator's appointment by a court order. Removal of a liquidator is typically sought for by disgruntled creditors who are not satisfied with the liquidator's conduct of the liquidation proceedings. To order a removal of a liquidator, the court must find due cause, which is measured by a real and substantial interest of the liquidation: *Tay Lak Khoon v Tan Wei Cheong (as judicial manger of USP Group Ltd)* [2025] 2 SLR 118 at [36]. In contrast with a resignation, the removal of a liquidator is an external intervention that brings the liquidator's tenure to an end, usually mid-liquidation. Fundamentally, removal does not discharge the removed liquidator from liability. The removed liquidator remains fully exposed to claims arising from his conduct of the liquidation. However, under s 275(*b*)(i) of the CA, a removed liquidator can similarly apply to the court for an order to be released, and this release is what brings the removed liquidator's legal liability to an end.

46 Release of a liquidator, on the other hand, is a judicial act that extinguishes the liability of a liquidator to acts done or defaults made in the conduct of the liquidation. Release is therefore a terminal event in the lifecycle of a liquidator's legal obligations, even if it does not terminate the winding up itself. Under s 276(4) of the CA, the statutory effect of an order for release expressly states that:

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

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The only qualification stipulated is that the order may be revoked on proof that the order for release was obtained by fraud, suppression or concealment of material facts.

47 The substantive pre-conditions that must be fulfilled by a liquidator prior to an application for release under s 275 of the CA are that:

> When a liquidator –
>
> (a) has realised all the property of the company or so much thereof as can in his opinion be realised, without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves and made a final return, if any, to the contributories; or
>
> (b) has resigned or been removed from his office

48 Further, the procedural steps required to be taken prior to an application for release are that the liquidator's final report be submitted to the Official Receiver and pursuant to r 149 of the Companies (Winding Up) Rules (Cap 50, R 1, 2006 Rev Ed) ("Companies (Winding Up) Rules"), a liquidator should notify the company's creditors and contributories of his intention to apply to the court for release from office together with a summary of all receipts and payments in the winding up in the prescribed form.

49 The question before this court was therefore: whether ORC 1812, which was recorded as a consent order for the release of the liquidator Mr Tan, amounted to a release that discharged him of all liability for his conduct as liquidator of NR.

50 The material provisions of the CA state:

> 275. When the liquidator —
>
> (a) has realised all the property of the company or so much thereof as can in his opinion be realised, without needlessly

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> protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves and made a final return, if any, to the contributories; or
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> (b) has resigned or has been removed from his office,
>
> he may apply to the Court —
>
> (i) for an order that he be released; or
>
> (ii) for an order that he be released and that the company be dissolved.
>
> …
>
> 276(3). Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks just charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.
>
> 276(4). An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

51 It was apparent from the procedural history that Mr Tan did initiate the process for his release as a liquidator, convening a creditor's meeting and issuing a notice to NR's creditors and contributories.[35] According to Mr Tan, at a creditors' meeting on 22 January 2021, a majority of NR creditors consented to him commencing the necessary procedures to finalise NR's liquidation.[36] On 4 August 2021, in accordance with r 149 of the Companies (Winding Up) Rules, Mr Tan gave notice to NR's creditors and contributories of his intention to apply for his release as NR's liquidators.[37] On 25 August 2021, Mr Tan received a letter from Mr Cape's solicitors containing Mr Cape's objections to Mr Tan's

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35 TES-1 at [13] and Tab 9.

36 TES-1 at [12(c)] and Tab 8.

37 TES-1 at p 152.

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release.[38] Mr Cape subsequently filed HC/SUM 3986/2021 ("SUM 3986"),[39] which applied for Mr Tan to be "removed, released and/or substituted" as NR's liquidators and for Mr Tan to be replaced by a new set of liquidators.[40] In his affidavit in support of SUM 3986, Mr Cape made several allegations against Mr Tan's conduct as a liquidator.[41] Mr Tan filed a response affidavit contesting the allegations.[42] The parties eventually entered into a consent order in ORC 1812, for the release of Mr Tan and for the appointment of a new set of liquidators. The material parts of ORC 1812 state:[43]

> … **UPON THE COURT** recording herein at the request of both parties that it has made no findings in respect of the allegations against Tan Eng Soon deposed to in the said Affidavits of Matthew Benjamin Cape:
>
> It is ordered that:
>
> 1. By consent, a. Tan Eng Soon […], be and is hereby ***released*** as liquidator of [NR], with effect from 10.00am on 4 April 2022, ***pursuant to Section 275(i) of the Companies Act (Cap. 50)*** ("the Act").
>
> [emphasis in bold underline in original, emphasis added in bold italics]

52 Mr Tan's initiation of the process for his release as a liquidator led to Mr Cape's objections, SUM 3986 and eventually ORC 1812. Thus, while Mr Tan did not eventually make the formal application to court for his release as a liquidator, the series of events that transpired arose from him initiating the process for it. Moreover, the need for him to make a formal application on his

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38 TES-1 at Tab 10, p 173.

39 TES-1 at [17] and Tab 10.

40 TES-1 at [18], Tab 11 and Tab 12.

41 TES-1 at [18] and Tab 12.

42 TES-1 at [19] and Tab 13.

43 TES-1 at Tab 14.

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own accord was obviated by the consent order in ORC 1812. Thus, while Mr Cape was technically correct that ORC 1812 was not, nor purports to be, the culmination of a s 275 application by Mr Tan, such a submission misconstrued what in substance transpired, which is that ORC 1812 arose from steps taken by Mr Tan to seek his release as liquidator, including the giving of notice to NR's creditors and contributories of his intention to apply for release.

53 Mr Cape's case is also contradicted by the plain terms of ORC 1812. Mr Cape asserted that ORC 1812 did not purport to be a culmination of a s 275 application by Mr Tan. This again misconstrued the point. ORC 1812 explicitly states that Mr Tan is released as liquidator of NR pursuant to s 275(i) of the CA. This provision relates to an application by a liquidator "for an order that he be released". Thus, under ORC 1812, parties agreed for Mr Tan's release to be treated as one pursuant to an application by him for release under s 275(i) of the CA. This places ORC 1812 squarely as an "order of the Court releasing the liquidator" within the meaning of s 276(4) of the CA.

54 ORC 1812 also recorded that "at the request of both parties that [the Court] has made no findings in respect of the allegations against Tan Eng Soon deposed to in the said Affidavits of Matthew Benjamin Cape."[44] This can be understood as the court not making any findings in respect of the allegations against Mr Tan, when ordering for his release.

55 I considered the viability of the highest case for Mr Cape based on an alternative construction of this, which is that the court made no findings in respect of the allegations, and left it open for subsequent findings to be made in

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44 TES-1 at Tab 14.

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respect of Mr Cape's allegations, despite the order for release. There are however three fundamental difficulties with this.

56 First, this requires reading more into ORC 1812 than what is plainly stated. Second, it is clear that ORC 1812 ordered for the release of Mr Tan as liquidator, and not a conditional release. Third, the statutory regime of the CA, *viz* ss 275 and 276, does not provide for, nor contemplate, a conditional release of the liquidator. Notably, s 276(4) of the CA does not contemplate a situation where a liquidator is conditionally released, subject to later findings by the court as to his liability. Instead, s 276(3) of the CA allows for the Court to withhold the release of the liquidator and charge the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

57 Mr Cape's submission that there is a distinction between pre-dissolution and post-dissolution applications under s 275 of the CA and that the discharge from liability under s 276(4) of the CA only applies to post-dissolution applications, also ran against the plain language of the statutory provisions.

58 Section 275 of the CA clearly contemplates that a liquidator can apply either for (i) an order that he be released (without dissolution of the company) or (ii) an order that he be released and the company be dissolved. In other words, the Court can order for the release of a liquidator in a pre-dissolution scenario. Section 276(4) of the CA, in turn, does not prescribe any distinction between pre-dissolution and post-dissolution release. It states that an "order of the Court releasing the liquidator shall discharge him from all liability …"

59 There was also no basis for Mr Cape's submission that unless s 276(4) of the CA is construed as only applying to post-dissolution release, a liquidator facing serious complaints could secure *de facto* immunity by simply agreeing

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to step down. As highlighted above, s 276(3) of the CA allows the Court to withhold the release of a liquidator and charge the liquidator for misconduct arising from his duty.

60 Sections 480 and 841 of the Australian Corporations Act 2001 (Cth) contain identical provisions to ss 275 and 276 of the CA. Australian authorities have held that the purpose of the notifications is to ensure that the application for the release of a liquidator provides the forum at which any claim that the liquidator has been deficient in performing his role should be advanced: *RR Impex* ([34] above) at [3]; *Re Wayland (as liquidator of ABC Containerline NV) (in liquidation)* [2005] NSWSC 1 at [28]. In the absence of such notifications, the Court could withhold the release of the liquidator. In this case, as set out above, Mr Tan had convened a creditors' meeting and later issued the notice to NR's creditors and contributories of his intention to apply for his release as NR's liquidators. It was following from such notice, that Mr Cape raised his objections and SUM 3986 which had been resolved by way of the consent order.

61 Given that the terms of ORC 1812 provides that Mr Tan is released as liquidator, he is discharged from all liability in respect of his conduct as liquidator pursuant to s 276(4) of the CA.

62 After considering the different aspects of Mr Cape's case, I found that the threshold for striking out his claims against Mr Tan on the basis of being legally unsustainable, had been met.

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Conclusion

63 For the reasons above, Mr Cape's appeal was dismissed. Costs were awarded to Mr Tan, in the sum of $25,000 all-in. As indicated above, Mr Cape has liberty to file an application to amend the SOC, and any such application will be judged on its merits.

Kwek Mean Luck
Judge of the High Court

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Lim Ming Yi (1forAll LLC) for the first, second and eighth defendants (watching brief);
Shobna d/o V. Chandran and Neo Yingwei Alex (Shobna Chandran LLC) for the fourth, fifth, sixth and seventh defendants (watching brief);
The third defendant absent and unrepresented.

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