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DISTRICT JUDGE EDWIN SAN
28 April 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGMC 53

Magistrate Court Originating Claim No 10616 of 2024
Registrar's Appeal No 6 of 2026

Between

Furama Hotel Singapore Pte Ltd

… *Claimant*

And

Ng Siew Moy t/a Singapore Victoria Dance & Art

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure] — [Judgment and orders] — [Setting aside of default judgement]

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v
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[2026] SGMC 53

Magistrate Court Originating Claim No 10616 of 2024 (Registrar's Appeal No 6 of 2026)
District Judge Edwin San
19 March 2026, 26 March 2026

28 April 2026

District Judge Edwin San:

Introduction

1 This was an appeal by the Claimant against the decision of a Deputy Registrar ("DR") to grant the Defendant's application in MC/SUM 4351/2025 to set aside the Default Judgement (MC /JUD 3635/2025) ("Default Judgment") entered against Defendant.

2 After considering the written and oral submissions of the parties as well as the relevant authorities, I allowed the appeal and reinstated the Default Judgment. These are the grounds of my decision.

Background

3 On 24 November 2024, the Claimant, Furama Hotel Singapore Pte Ltd,

commenced and filed MC/OC 10616/2024 against the Defendant, Mdm Ng Siew Moy, the sole proprietor of Singapore Victoria Dance & Art. On 13 March 2025, the Claimant was granted an extension of the Originating Claim for a period of 2 months together with an order for substituted service of the Originating Claim and Statement of Claim. Substituted service was effected by way of e-mail and registered post on 14 March 2025 and 19 March 2025 respectively. The Defendant did not file a Notice of Intention to contest or not contest and also did not file her defence within the respective prescribed timelines under the Rules of Court 2021 ("ROC 2021").

4 On 26 June 2025, the Claimant applied for and was granted Default Judgement (MC/JUD 3635/2025). On 24 September 2025, the Defendant's counsel filed a Notice of Appointment of Solicitor. On 23 Oct 2025, the Defendant filed MC/SUM 4351/2025 to set aside the Default Judgment.

5 After several hearings, the DR on 22 January 2026, allowed the Defendant's application to set aside the Default Judgment. The DR's reasons are set out in her Oral Judgment of the same date. On 5 February 2026, the Claimant filed an appeal against the DR's decision.

Applicable Legal Principles

6 The appeal was governed by O 18 r 16(4) of the ROC 2021 and proceeded by way of a re-hearing.

7 O 3 r 2(8) of ROC 2021 is also relevant to this appeal and it reads:

> **General powers of Court (O. 3, r. 2)**
>
> …
>
> (8) The Court may, on its own accord or upon application, if it is in the interests of justice, revoke any judgment or order obtained or set aside anything which was done —
>
> (a) without notice to, or in the absence of, the party affected;
>
> (b) without complying with these Rules or any order of Court;
>
> (c) contrary to any written law; or
>
> (d) by fraud or misrepresentation.

8 The principles relating to the setting aside of default judgments were comprehensively set out by the Court of Appeal in *Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 ("*Mercurine*"). This authority was cited and relied on by both parties in this appeal. Notwithstanding that *Mercurine* was a decision issued before the ROC 2021 came into effect, there is no dispute that the principles enunciated therein remain relevant and have continued to be applied by the Singapore courts in determining applications to set aside default judgements : see for example *Zhang Jinhua v Yip Zhao Lin* [2024] 5 SLR 1046, *Management Corporation Strata Title Plan No 4572 v Kingsford Development Pte Ltd and others* [2023] SGHCR 8 ("*Kingsford*"), *NW Corp Pte Ltd v HK Petroleum Enterprises Cooperation Ltd* [2025] 3 SLR 607 and *Sun Yongjian and another v Goh Seng Heng* [2025] SGHC 47.

9 After an extensive review of authorities, the Court of Appeal in *Mercurine* clarified that different tests and standards apply in relation to the setting aside

of regular default judgments as against irregular default judgments: see [95] and [96].

10 As regards a regular default judgment, the legal burden falls on the defendant to show that it can establish a *prima facie* defence in the sense of there being triable or arguable issues. This is then to be balanced against other relevant considerations, including any delay in bringing the setting aside application and the explanation for such delay: see *Mercurine* at [60] and [65].

11 As regards an irregular default judgment, the starting point is the *ex debito justitiae* rule *i.e*. the defendant is entitled to set aside the irregular default judgment as of right. The Court may, however, depart from this rule if there are proper grounds; and one key consideration is whether or not there has been such egregious breach of rules of procedural justice as to warrant the setting aside of the irregular default judgment as of right. Where there has been no egregious procedural injustice and the irregular default judgment is not set aside *ex debito justitiae*, the burden of proof shifts to the Claimant to prove that the Defendant is "bound to lose" if the default judgment is set aside and the matter re-litigated. If the Claimant is successful in this regard, the irregular default judgment will be upheld, subject to any variation or terms the Court deems fit to impose: see *Mercurine* at [96] and [98].

Issues to be determined

12 With the aforesaid principles in mind, the following issues arose for determination in this appeal:

(a) Whether the Default Judgement was regularly obtained or irregularly obtained;

(b) If the Default Judgement was irregularly obtained, whether there was any basis to depart from the *ex debito justitiae* rule;

(c) If the irregularly obtained Default Judgement was not set aside *ex debito justitiae*, whether there was any other sufficient reason, including the merits of the defence, to set it aside.

Whether the Default Judgment was regular or irregular

13 The first stage of the inquiry is to establish whether the default judgement in question was regular default judgement or an irregular default judgment. The court in *Kingsford* stated at [33] *"...it was clear from the Court of Appeal's judgment in Mercurine that, to determine if a default judgment has been irregularly obtained, the test is to consider if the claimant had breached a procedural rule in obtaining the default judgement. The question of whether there was substantive procedural unfairness caused to the defendant comes at the second stage of the analysis when considering if the irregularly obtained default judgment should be set aside as of right."* I agree with this analysis.

14 The DR found the Default Judgment in the present case to be irregular because of two procedural irregularities she identified, namely that " *the Order of Court granting substituted service had not been extracted and the papers that were served were thus not accompanied with the required Substituted Service Order*" and that " *although an order extending the validity of the Originating Claim ("OC") was granted, the renewed OC was not filed and properly endorsed in the prescribed manner. Instead, what the Claimant had done was to insert their own endorsement at the top of the expired OC and served the*

same along with the Statement of Claim and Registrar's Directions dated 14 March 2025 on the Defendant."[1]

15 At the appeal, counsel for the Claimant, Ms Amy Seow, did not dispute that the said Order of Court granting substituted service had not been extracted and served or that the renewed OC had not been properly endorsed. She argued that these two flaws "*are at the very most filing and administrative matters. They are not a breach of ROC 2021. They do not approach the standard of a breach of procedural rules necessary to characterize a default judgment as irregular"*.[2] Ms Seow further submitted that the issue of whether the judgement was regular or irregular should be decided in terms of substantive fairness and whether or not the Claimant had taken advantage of the breach.

16 I am unable to agree with these submissions. As observed by the Court in *Kingsford*, the question of substantive unfairness caused to the Defendant arises only at the second stage of the analysis when the court considers whether the irregularly obtained default judgment should be set aside as of right. The first stage in assessing whether a default judgment was regular or irregular entails an assessment of whether the Claimant had breached proper procedure in obtaining the default judgment. It is apposite to recall that in *Mercurine*, the Court of Appeal, in holding that the *ex debito justitiae* rule remained the starting point for the setting-aside applications involving irregular judgments, observed at [74] that "*the expectation that litigants should observe procedural rules cannot be lightly compromised*". Relatedly, as cited at paragraph 33(b) of *Kingsford*, Professor Jeffrey Pinsler SC states that *"[a] judgment is regular when there has*

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1 See [2] of the DR's Oral Judgment dated 22 January 2026.

2 See [33] of the Claimant / Appellant's written submissions dated 20 February 2026.

been full compliance with the rules so that there can be no objection on a procedural basis" (Jeffrey Pinsler SC, Singapore Civil Practice, Volume 1 (LexisNexis, 2022) at para 11-13):

17 In the present case, the Claimant can hardly be said to have been in full compliance with the rules and proper procedure insofar as the two procedural irregularities identified by the DR are concerned. First, in its summons for substituted service, the Claimant sought in Prayer 1, for the "*Service of the Originating Claim and the Statement of Claim together with a copy of the Order to be made hereon be effected*" (emphasis added) by the manner of substituted service prayer for. This was granted. Yet, as observed by the DR, the Claimant failed to extract the said Order granting substitute service and serve it on the Defendant. Second, after the validity of Originating Claim was extended by 2 months, the Claimant inserted its own endorsement at the top of the expired OC instead of having it filed in the State Courts' Registry and properly endorsed in the prescribed manner.

18 For the above reasons, I agreed with the DR and found the Default Judgment to be an irregular default judgement.

Whether there was sufficient basis to depart from the ex debito justitiae rule

19 In view of my finding that the Default Judgment is an irregular default judgment, the *ex debito justitiae* rule applies as a starting point (*Mercurine* at [96]). In this connection, I turned to consider whether there had been such an egregious breach of procedural rules by the Claimant in this present case to warrant setting aside the Default Judgement as of right in accordance with the *ex debito justitiae* rule. In this exercise, the key factors include whether the

Claimant had entered the default judgement prematurely, whether the Claimant had failed to give the defendant notice of proceedings and whether the Claimant's breach of procedural rules was in bad faith: see *Mercurine* at [76] and [91].

20 On the evidence before me, I found none of these factors to be present. In particular, I noted that the Claimant did not enter the Default Judgment prematurely and the Defendant was given notice of the present proceedings through the manner of substituted service granted by the Court, with the extended Originating Claim (albeit with the Claimant's own endorsement) and the Statement of Claim served on the Defendant. In the premises, I found that there had been no egregious breach of procedural rules by the Claimant who, in my view, had not offended the essence of due process or acted in bad faith.

21 Given that there had been no egregious procedural injustice in obtaining this irregular default judgment, I found that there was sufficient basis to depart from *ex debito justitiae* rule.

An assessment of the merits of the defence under the 'bound to lose' test

22 At this juncture, the following passage by the Court of Appeal at [96] of *Mercurine* is instructive:

> …
>
> In those instances where the court is of the view that there has been no procedural injustice of such an egregious nature as to warrant setting aside the irregular default judgment as of right, the court has to go on to consider whether to nonetheless set aside the irregular default judgment on some other basis apart from the *ex debito justitiae* rule. To this end, it is crucial for the court to take into account the merits of the defence. Should the court find that the defendant is "bound to lose" (*per* Sir Staughton in *Faircharm*

> ([77] *supra*)) if the default judgment is set aside and the matter re-litigated, the court should ordinarily uphold the default judgment, subject to any variation which the court deems fit to make and/or any terms which it deems fit to impose.

23 Accordingly, I moved on to consider the merits of the defence. In this exercise, I am mindful that burden lay with the Claimant to prove that the Defendant is "bound to lose" if the default judgment is set aside and the matter re-litigated.

24 In this connection, it will be useful to set out the salient facts of the dispute. On 6 October 2023, the Claimant and Defendant concluded a tenancy agreement (the "Tenancy Agreement"). The Claimant was the landlord and the Defendant was the tenant. Under the Tenancy Agreement, the Defendant rented the premises known as #01-17 for a period of one year commencing 9 October 2023.

25 The Claimant's case was that the Defendant paid only a single month's rent, breached various obligations under the Tenancy Agreement and abandoned the tenancy. The Claimant sought the reliefs as set out in its Statement of Claim, including the sum of $24,537.46 in respect of unpaid Monthly Rent and Monthly Service Charge under the Tenancy Agreement.

26 I first examined the Tenancy Agreement and the affidavits filed by the Defendant Ng Siew Moy dated 3 Sept 2025 and 7 January 2026 as well as the affidavits of Tan Kum Hui Jeredy ("Jeredy Tan") dated 6 November 2025 and 23 December 2025. Jeredy Tan is the Credit Manager of the Claimant.

27 I noted that the Tenancy Agreement was properly signed by the Defendant and a representative (Carol Yen) of the Claimant in the presence of a witness

(Esther Chay). It was also not disputed that the Defendant, with the assistance of one Kevin Liew, had the opportunity to inspect the premises as well as consider the Letter of Offer dated 3 October 2023 before formally entering into the Tenancy Agreement.[3] There was also no assertion on the Defendant's own affidavits that she had had been coerced or had entered into the Tenancy Agreement involuntarily. On the evidence before me, the Tenancy Agreement was voluntarily entered into at arms' length by the parties.

28 Based on the Defendant's affidavits, her defence to the Claimant's claim appeared to rest on two main planks. The first main plank may be discerned from paragraph 18 of the Defendant's affidavit dated 3 September 2025, wherein she states "*I have been advised by my lawyer that the Claimants have breached an implied term of the agreement between parties that they have to provide a unit which has to be suitable for the purpose of business*."

29 In this connection, the Defendant averred that there was a stench emanating from a rubbish area next to her unit and that there were also two KTVs and nightclubs with scantily clad girls next to her unit. I shall refer to these two issues as the "stench issue" and the "KTV issue" respectively.

30 At the hearing, it was pointed out to Mr Lim Tean, counsel for the Defendant, that Clause 20.7 of the Tenancy Agreement was titled "***Exclusion of Implied Terms, etc***" and it expressly provided that "*The covenants, provisions, terms and agreement herein comprise the whole of the agreement between the parties or their appointed agents*" and excluded all other covenants, agreements, provisions or terms. Furthermore, Clause 5.1 expressly provided

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[3] See paragraph 29 of 1st affidavit of Tan Kim Hui Jeredy dated 6 November 2025.

that "*The Tenant hereby acknowledge that he takes over the demised premises on an "as in where is*" basis; while Clause 4.9 contained the Tenant's express acknowledgment that the no promise, representation, warranty or undertaking had been given by the Landlord in respect of the suitability of the premises for the tenant's business.

31 In relation to the stench issue, the Defendant states at paragraph 17 of her affidavit dated 3 September 2025 that *"…The dreadful stench greatly affected by my business as clients and customers did not want to meet us in a place that stang* (sic) *to high heavens. We complained about this to management, repeatedly but they failed to take any remedial action*." Yet despite purported repeated complaints to the Claimant's management, the Defendant failed to produce any form of contemporaneous or remotely probative evidence concerning the stench issue or the KTV issue for that matter.

32 Taking all the aforementioned together, I arrived at the view that the Defendant's purported defence to rely on an implied term or implied terms in the Tenancy Agreement in respect of stench issue and KTV issue was 'bound to lose'.

33 I next considered the other main plank of the Defence, which was that there was a mutual agreement between parties for an early termination of the lease. In this connection, the Defendant stated:

(a) at paragraph 22 of her affidavit dated 3 September 2025 that "*After much negotiations, and toing and froing, the Claimant agreed to take back the unit on 31 May 2024*" and

(b) at paragraph 5 of her affidavit dated 7 January 2026 that "*This was after the Claimant and myself had agreed to an early termination of the lease because of the complaint I had made about the awful stench surrounding the unit and the disreputable environment around it with the scantily-clad KTV girls working in the 2 KTVs/night clubs*."

34 To support this contention, Mr Lim relied on two letters. The first is a letter dated 18 June 2024 from Jeredy Tan to the Defendant ("the 18 June 2024 letter"), seeking payment of $14,228.88 for outstanding rental and late payment interest charges.[4] The second is another letter dated 27 August 2024 from Jeredy Tan to the Defendant ("the 27 August 2024 letter"), seeking payment of $14,803.73 for outstanding rental and late payment interest charges.[5]

35 Mr Lim's argument appeared to be that these two letters indicated that there was no abandonment of the premises by the Defendant as pleaded by the Claimant in its Statement of Claim. Instead, Mr Lim argued that the amounts in these two letters reflected that there had, in fact, been a mutual agreement to terminate the lease at the point in May 2024 when the keys to the unit were handed back to the landlord (Claimant).

36 I was unpersuaded by this argument. In my assessment, the 18 June 2024 letter and the 27 August 2024 letter do not in any way lend any support to Mr Lim's argument that there had been a mutual agreement between parties to

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4 See page 36 of the 2nd affidavit of Tan Kim Hui Jeredy dated 23 December 2025.

5 See page 69 of the 2nd affidavit of Tan Kim Hui Jeredy dated 23 December 2025.

terminate the lease in May 2024. An examination of the contents of both letters revealed nothing to this effect. There was nothing in these two letters stating when or where, or with which of the Claimant's personnel the Defendant reached such a mutual agreement to terminate the lease.

37 On the contrary, from the contents of both letters, it was clear that the Claimant regarded the Defendant as being in breach of the Tenancy Agreement. In the 18 June 2024 letter, the Claimant wrote *"…and you are in serious breach of the Tenancy Agreement*" and "*…we reserve our right to take any appropriate action to recover the debt including interest, all loss and damage from you as a result of your breach of the Tenancy Agreement*." The same is repeated in the 27 August 2024 letter.

38 Pertinently, Ms Seow pointed to an email dated 29 May 2024[6] from Derek Chen, a Property Executive of the Claimant. The salient parts of this email read: "*Our tenancy agreement does not allow for early termination of the lease…*" and "*We will take back the unit on 31 May 2024 based on 13.6 Abandoning of Premises*". In my view, this email was a probative contemporary document as regards the issue of whether or not parties had come to a mutual agreement to terminate the lease in May 2024. This email indicated that there was no such mutual agreement between parties.

39 The High Court held in *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325, a "*court will not grant leave to defend if all the defendant provides is a mere assertion, contained in an affidavit, of a given situation which forms the basis of his defence*". In my view, this principle

6 See page 51 of the 1st affidavit of Tan Kim Hui Jeredy dated 6 November 2025.

applies with equal force in an assessment of the merits of a defendant's case under the 'bound to lose' test.

40 Flowing from the aforegoing analysis, I found the contention that there was a mutual agreement for early termination of the tenancy in May 2024 to be a bare assertion made by the Defendant on affidavit without any corroborative or contemporaneous evidence in support.

41 Further, as pointed out by Ms Seow, Clause 13.6(b) of the Tenancy Agreement entitled the Landlord, in the event of abandonment by the tenant, to forfeit the Security Deposit as well as claim damages from the Tenant; and Clause 3.9 provided for interests for late payments. These clauses addressed Mr Lim's argument that the claim amount stated in the Statement of Claim were inflated compared to that in the two said letters, and that somehow this was a triable issue. I found this argument to have no merit. The Claimant is entitled to crystalise its claim to the extent permitted by the Tenancy Agreement, and has provided a Statement of Account to explain the basis of the $24.537.46 [7] claimed in the Statement of Claim.

42 In view of the above, it can be seen that both main planks of the defence fall; and that brought me to the conclusion that the Claimant had discharged its burden to show that the defence in this case is 'bound to lose' if the present irregular judgment is set aside and the matter re-litigated.

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[7] See page 105 of the 2nd affidavit of Tan Kim Hui Jeredy dated 23 December 2025.

Conclusion

43 Having assessed the Default Judgment to be an irregular default judgment, I found that there had been no egregious breach of procedural rules by the Claimant in obtaining the irregular default judgment to warrant a departure from *ex debito justitiae* rule. I then considered the merits of the defence, which I assessed to be "bound to lose" if the Default Judgment was set aside and this matter re-litigated.

44 Accordingly, I allowed the appeal and ordered the Default Judgment (MC /JUD 3635/2025) to be reinstated.

45 The principle that costs follow the event applied in this appeal. After further hearing parties on costs, I awarded costs of $7,000 (all inclusive) to the Claimant for the appeal and the hearing below.

Edwin San
District Judge

Amy Seow and Wong Hui Min (Adroit Law Chambers LLC) for the Claimant/Appellant;
Lim Tean (ARShanker Law Chambers) for the Defendant/Respondent.