

25. RESTITUTION LAW

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I. Introduction

25.1 The year 2025 yielded a small number of cases on the law of unjust enrichment and restitution that touched on issues relating to the subsidiarity of the law of unjust enrichment to other branches of common law, the requirement of “at the expense of”, and subrogation. Whilst a few cases discussed the unjust factor of failure of consideration, they proceeded on well-established principles.

II. Subsidiarity of law of unjust enrichment

25.2 The subsidiarity of the law of unjust enrichment to the other branches of common law was affirmed in two cases: *Envy Asset Management Ltd v Ng Yu Zhi*¹ (“*Envy Asset Management*”) and *Robert Tantular v The Stephanie Karina*² (“*Robert Tantular*”). The dispute in *Envy Asset Management* concerned a Ponzi scheme involving nickel trading which resulted in the solicitation of over S\$1.5bn from investors to conduct allegedly highly profitable investments that did not in fact exist. The six plaintiffs comprised three companies collectively described as the Envy entities and the three liquidators of the Envy entities. The defendants were directors and/or employees of the Envy entities. In particular, the first defendant was the founder of the Envy entities and held 80% to 90% of the ordinary shares of these companies. The moneys received from the investors were used variously: (a) transferred to the first defendant; (b) utilised to pay the director fees of the first defendant and the second defendant; (c) utilised to pay commissions, profit sharing fees and other payments to the defendants and other employees of Envy entities; and (d) transferred to related entities. The plaintiffs sued the defendants for various claims, including a claim in unjust enrichment to recover the moneys paid to the defendants.

1 [2025] SGHC 143 (this case is partially reported in [2025] 5 SLR 87).

2 [2025] 1 SLR 1083.

25.3 Before the General Division of the High Court (“General Division”), the unjust enrichment claim was dismissed. The first reason for dismissal was that there was no recognised unjust factor to support the claim and second, given the availability of more conventional causes of action, there was no scope for the application of unjust enrichment in the case.³ Specifically, as to there being no applicable unjust factor, the court said that the payments were made to the defendants in respect of businesses that did not exist and this was to be properly characterised as a case concerning absence of consideration, instead of total failure of consideration. According to the court, absence of consideration is not an unjust factor under Singapore law that can support a claim in unjust enrichment.⁴

25.4 As to the second reason for dismissal, this case underlines the general trend in Singapore law towards confining the scope of the law of unjust enrichment.⁵ Nevertheless, it may be worth revisiting how best to demarcate the boundary of this branch of the law and whether the fact that there are other possible causes of action should prevent any claim in unjust enrichment from arising.⁶

25.5 Similarly, in *Robert Tantular*, the Appellate Division of the High Court confirmed that restitutionary remedies serve a “gap filling and auxiliary role”⁷ to avoid injustice in specific cases.⁸ The court dismissed the claim in that case because there was a more conventional cause of action – specifically, a claim for breach of fiduciary duty – available to the appellant, albeit one that became time-barred by reason of his own delay.⁹ However, the unjust enrichment claim in *Robert Tantular* was

3 *Envy Asset Management Pte Ltd v Ng Yu Zhi* [2025] SGHC 143 at [280] (this case is partially reported in [2025] 5 SLR 87), following *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235.

4 *Envy Asset Management Pte Ltd v Ng Yu Zhi* [2025] SGHC 143 at [278] (this case is partially reported in [2025] 5 SLR 87). The court, however, acknowledged (at [278]) that the distinction between total failure of consideration and absence of consideration is a fine one.

5 See, eg, *Esben Finance Ltd v Wong Hou-Lianq Neil* [2022] 1 SLR 136 at [247]; *Thong Soon Seng v Magnus Energy Group Ltd* [2023] SGHC 5 at [62]–[63].

6 It is arguable that such an approach to restricting the expansion of the law of unjust enrichment cannot be readily justified in the common law system which traditionally allows concurrent causes of action.

7 *Robert Tantular v The Stephanie Karina* [2025] 1 SLR 1083 at [146], quoting from *Esben Finance Ltd v Wong Hou-Lianq Neil* [2022] 1 SLR 136 at [247].

8 *Robert Tantular v The Stephanie Karina* [2025] 1 SLR 1083 at [146], quoting from *Esben Finance Ltd v Wong Hou-Lianq Neil* [2022] 1 SLR 136 at [247].

9 *Robert Tantular v The Stephanie Karina* [2025] 1 SLR 1083 at [145]–[146], endorsing *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [64]. Such an approach forms a basis for the striking out of unjust enrichment claims where other more established causes of action are available to the claimant: see *Sree Ram Construction Pte Ltd v* (cont'd on the next page)

mounted on the basis of lack of consent, a controversial unjust factor whose application the Court of Appeal was minded to carefully constrain in *Esben Finance Ltd v Wong Hou-Lianq Neil*¹⁰ (“*Esben Finance*”). In *Envy Asset Management*, the claim was mounted on a well-established unjust factor – failure of consideration.¹¹ Thus, strictly speaking, it did not give rise to the concerns which the apex court was addressing in *Esben Finance*. That being said, of course, Singapore law may take the view that the law of unjust enrichment as a whole (and not only in respect of controversial unjust factors such as lack of consent) should play a subsidiary role to established branches of common law.¹² That extension of logic from *Esben Finance*, however, requires more detailed justification.¹³

25.6 Notably, in *Petrotech Marine Services Sdn Bhd v Wong Wai Leng*¹⁴ (discussed below at paras 25.9–25.14), the General Division did not apply the same approach. The claim in unjust enrichment was allowed notwithstanding that the plaintiff also succeeded in other more conventional causes of action against the relevant defendants.

III. At the expense of, failure of consideration and defences

25.7 The unjust enrichment claim in *Robert Tantular* also failed on the separate basis that a constituent element of the cause of action – the enrichment being “at the expense of”¹⁵ the plaintiff – was not made out on the facts. In that case, the appellant and his brother-in-law, Tan Ho Yung (“Tan”),¹⁶ participated in an investment (concerning

Green Tag Scaffolding Pte Ltd [2025] SGHCR 39 (“*Sree Ram*”) at [36]. Notably, the claim in *Sree Ram* was found to be “unsustainable” on the separate and well-established basis that an unjust enrichment action “could not be brought where there is a valid and enforceable contract between the parties”, although the two bases were lumped together (see *Sree Ram* at [36]). This bar against recovery on the basis of unjust enrichment has been applied in *Tuffi (Pte) Ltd v Techkon Pte Ltd* [2025] SGHC 201 at [71].

10 *Esben Finance Ltd v Wong Hou-Lianq Neil* [2022] 1 SLR 136 at [195] and [241].

11 Perhaps, post-*Esben Finance v Wong Hou-Lianq Neil* [2022] 1 SLR 136, where the apex court held that unjust enrichment claims do not fall within the scope of the Limitation Act (Cap 163, 1996 Rev Ed) (see *Esben Finance v Wong Hou-Lianq Neil* [2022] 1 SLR 136 at [81]–[85]), the only way to control “too much” restitution for unjust enrichment is to carefully constrain these claims from arising in the first place.

12 Andrew Phang, “Unjust Enrichment Revisited” [2026] *Journal of Business Law* 465.

13 From a comparative perspective, English law and Hong Kong law do not take such a position.

14 [2025] SGHC 105.

15 *Robert Tantular v The Stephanie Karina* [2025] 1 SLR 1083 at [145].

16 The respondent was the wife of Tan Ho Yung (“Tan”) and was named as the defendant in her capacity as the administratrix of Tan’s estate, as Tan passed away
(cont’d on the next page)

a real estate that comprised residential condominium units, retail units and commercial units (collectively, “Real Estate Development”)) alongside two other stakeholders. The dispute concerned the appellant’s stake in the investment: he owned 27% interest in Spurlington Inc (“Spurlington BVI”), one of the three corporate entities involved in the initial stage of the investment. One of the three entities, Centrum GS Ltd, was to directly own the Real Estate Development, with the other two entities, Spurlington BVI and Goodyork Co, holding 80% and 20% of the shares of Centrum GS Ltd respectively. Tan was the sole shareholder of Goodyork Co. Pursuant to revisions of the corporate structure, in 1992, Spurlington BVI was replaced by Spurlington (USA) Inc, which was in turn wholly owned by Spurlington BVI. The residential units in the investment were sold on or around 5 August 2005. Tan remitted US\$2.7m to the appellant’s bank account on or around 27 January 2006. Tan alleged that this was the consideration for the buyout of the appellant’s stake in the investment. The appellant claimed that this sum represented his share of the proceeds from the sale of the residential units and that he had therefore not been bought out. On or around 29 November 2007, Spurlington (USA) Inc filed its articles of dissolution to cease existence. The appellant contended that he was never bought out and further that Tan had misappropriated his stake in the investment and the profits generated therefrom. He brought claims against Tan in contract, tort, equity and unjust enrichment (relying on the unjust factor of lack of consent). These claims were dismissed by the trial court which found on the evidence that he had been bought out of the investment and further that his claims were time-barred. The trial court also held that laches and acquiescence were applicable.

25.8 On the facts, the court found that the US\$2.7m was payment of the appellant’s share of proceeds from the sale of residential units. The Appellate Division of the High Court held that the requirement of “at the expense of”¹⁷ generally requires a direct transfer from the claimant to the defendant. Save for tracing,¹⁸ the court observed that it is presently “uncertain”¹⁹ as to whether the exceptions to the direct transfer rule recognised under English law (eg, agency, assignment, sham transactions, and co-ordinated transactions) are part of Singapore law.²⁰ On application of the direct transfer rule to the appellant’s unjust enrichment claim, the court found that Tan’s enrichment was not at the appellant’s expense because the alleged enrichment was not transferred

before the trial took place.

17 *Robert Tantular v The Stephanie Karina* [2025] 1 SLR 1083 at [149].

18 This exception has previously been endorsed by the Court of Appeal in *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 at [115]–[116].

19 *Robert Tantular v The Stephanie Karina* [2025] 1 SLR 1083 at [149].

20 *Robert Tantular v The Stephanie Karina* [2025] 1 SLR 1083 at [149].

directly from the appellant to Tan. The transactions took place between the companies. Nor did the appellant plead any applicable exception to the general rule.²¹

25.9 Apart from tracing, another exception to the direct transfer rule which has been recognised under Singapore law is where the value transferred was “provided [to the transferor] pursuant to a wider scheme but for which the transferor would not have had the value to transfer”,²² [emphasis in original omitted] and in that sense, the transferor was a mere intermediary to pass on moneys from the plaintiff (the ultimate value provider) to the defendant enricher.²³ This was applied in *Petrotech Marine Services Sdn Bhd v Wong Wai Leng*.²⁴ In that case, the plaintiff was in the business of providing ship-to-ship transfer services and had entered into agreements with Kunlun Trading Co Limited (“Kunlun”) to provide the required services. The services would be performed by third parties engaged by the plaintiff, and the plaintiff would then charge Kunlun for the services performed.

25.10 The plaintiff’s director in charge of its finance and administration department, Low Chong Peng (“Low”), then caused the plaintiff to enter agreements with the businesses Win Services & Agency (“Win”)²⁵ and Mozer’s Enterprises (“Mozer”), which had respectively been set up by one Wong Wai Leng (“Wai Leng”) and one Wong Yau Kan (“Yau Kan”) for provision of services to Kunlun and its ships. According to Low, the said agreements were entered into pursuant to requests by one Zhu Pang (“Zhu”) for the introduction of more service providers. Zhu claimed to be “responsible for managing Kunlun ships operating in both open seas and Malaysian territorial waters”²⁶ and that his duties “included sourcing spare parts, machinery, and maintaining the Kunlun ships”.²⁷ Zhu met Wai Leng through Low and subsequently, Zhu met Yau Kan through Wai Leng.

25.11 Between September 2018 and July 2021, Win received full payment for its 111 invoices issued to the plaintiff for the total amount of US\$2,853,250. In that same period, Mozer (*ie*, Yau Kan’s business) issued 223 invoices for the total amount of S\$4,695,201 which was paid in full

21 *Robert Tantular v The Stephanie Karina* [2025] 1 SLR 1083 at [150].

22 *Esben Finance Ltd v Wong Hou-Lianq Neil* [2022] 1 SLR 136 at [153].

23 *Esben Finance Ltd v Wong Hou-Lianq Neil* [2022] 1 SLR 136 at [153].

24 [2025] SGHC 105.

25 Win Services & Agency is to be distinguished from Winx Linen Enterprises, the other business of Wong Wai Leng (see para 25.10 above) which sold linen goods and related household products.

26 *Petrotech Marine Services Sdn Bhd v Wong Wai Leng* [2025] SGHC 105 at [17].

27 *Petrotech Marine Services Sdn Bhd v Wong Wai Leng* [2025] SGHC 105 at [17].

by the plaintiff. Of this amount, part of the moneys were paid to Winx Linen Enterprises (“Winx”) (*ie*, Wai Leng’s other business) for supply of linen goods, and part of the moneys were used for payment of Mozer’s fees and Yau Kan’s monthly allowance, leaving S\$72,000 unaccounted for.²⁸ The plaintiff’s internal investigation revealed these payments and led to the plaintiff commencing proceedings against Low, Wai Leng, Yau Kan and Zhu, alleging that it had been defrauded or misled into making payments of various invoices and that these payments were caused or enabled by Low in breach of his fiduciary duties and in conspiracy with the other defendants. The plaintiff also sued Low for deceit or negligent misrepresentation. Low contended that there was a payment arrangement between the parties that Win and Mozer would provide services to Kunlun but that their services would be paid by the plaintiff who would in turn be reimbursed by Kunlun.

25.12 Against Wai Leng and Yau Kan, the plaintiff brought claims for (a) deceit; (b) negligent or innocent misrepresentation; (c) dishonest assistance in Low’s breach of fiduciary duty; (d) knowing receipt of the moneys received; (e) unjust enrichment (using the unjust factor of total failure of consideration); and (f) conspiracy by unlawful or lawful means. Yau Kan argued that the defences of ministerial receipt and change of position applied to the case. Essentially, both defences rested on Yau Kan’s contention that there was a payment arrangement between the parties on terms as contended for by Low and that he had paid away moneys received to Zhu and Winx on the basis of this payment arrangement. Wai Leng, on the other hand, pleaded the defence of change of position on the basis that she had paid away 80% of the moneys received – to cover Win’s expenses in providing the services, to pay third parties, and as cash payments to Zhu.

25.13 The General Division allowed the unjust enrichment claim against Wai Leng and Yau Kan. The court found on the facts that:²⁹

- (a) there was no agreement between the plaintiff and Kunlun that the plaintiff would pay the invoices issued by Win and Mozer and then charge the same to Kunlun (*ie*, the payment arrangement alleged by Low did not exist);
- (b) the invoices were not charged to Kunlun pursuant to Low’s instructions and the plaintiff did not receive any reimbursement from Kunlun;

28 *Petrotech Marine Services Sdn Bhd v Wong Wai Leng* [2025] SGHC 105 at [31].

29 *Petrotech Marine Services Sdn Bhd v Wong Wai Leng* [2025] SGHC 105 at [94].

- (c) the plaintiff had paid the invoices pursuant to Low's instructions; and
- (d) the plaintiff did not receive any services from Win and Mozer and had therefore suffered losses.

25.14 Based on these factual findings, in respect of the unjust enrichment claim, the court went on to hold that Mozer operated as a mere intermediary to pass on payments received from the plaintiff to Winx.³⁰ Further, as the plaintiff did not enter into any contracts with Winx, any payments received by Winx would be unjust. In respect of Win and Mozer, as no services had been supplied by them to the plaintiff as required under the terms of the agreements, there was a total failure of consideration. The defences advanced by Yau Kan and Wai Leng failed as they had not acted in good faith, in view of the court's findings that they had acted in conspiracy with Low, dishonestly assisted Low's breach of fiduciary duty and were knowing recipients of the plaintiff's payments.

IV. Subrogation

25.15 In *Da Hui Shipping (Pte) Ltd v An Rong Shipping Pte Ltd*,³¹ the appellant and the respondent, as joint borrowers, obtained a loan facility from the bank. The loan was secured by three vessels, including one owned by the appellant and two owned by the respondent. Of the US\$29m that was drawn down under the loan facility, 29% was used for the refinancing of the appellant's vessel and 71% was used for the refinancing of the respondent's vessels. The appellant's vessel was sold for approximately US\$21m. The sale proceeds were utilised for paying off the appellant's portion of the debt and partially paying off the respondent's portion of the debt, with the remaining sum being applied towards costs and expenses incurred by the bank. The two vessels owned by the respondent were also sold through court orders subsequently when the bank took legal action to recover the remaining debt. After the court had determined the priorities between the bank and other creditors, and on the basis that the bank took priority over the other creditors, part of the sale proceeds were paid out of court to the bank to settle the respondent's debt owed to the bank, and the remaining proceeds were held in court. The appellant commenced civil action to recover from the proceeds held in court the amount corresponding to the portion of the respondent's debt that was settled using the proceeds from the sale of the appellant's vessel. The appellant sought a declaration that it was entitled to be subrogated to the bank's extinguished security rights over the respondent's vessels.

30 *Petrotech Marine Services Sdn Bhd v Wong Wai Leng* [2025] SGHC 105 at [274].

31 [2025] 1 SLR 998.

25.16 The General Division affirmed that the justification for allowing equitable subrogation was to prevent or reverse the unjust enrichment of one co-debtor at the other co-debtor's expense.³² However, it held that the claimant (*ie*, the appellant on appeal) could not be subrogated to the bank's extinguished securities over the defendant (*ie*, the respondent on appeal)'s vessels. When the bank had been paid in full for the defendant's debt, it fell out of the pool of *in rem* claimants and ceased to have any priority to which the claimant could succeed. The claimant appealed.

25.17 On appeal, the Court of Appeal ruled that it was procedurally improper for the appellant to seek subrogation in a civil action and use that *in personam* judgment to reorder the priorities for the proceeds to be paid out to the appellant. To do so, a judgment *in rem* would be required.³³ The appellant's subrogation claim "should have been advanced in an action *in rem* against [the respondent's] vessels before a court seized of admiralty jurisdiction".³⁴

32 See Yip Man, "Restitution Law" (2024) 25 SAL Ann Rev 757 at para 25.18.

33 *Da Hui Shipping (Pte) Ltd v An Rong Shipping Pte Ltd* [2025] 1 SLR 998 at [68].

34 *Da Hui Shipping (Pte) Ltd v An Rong Shipping Pte Ltd* [2025] 1 SLR 998 at [71].