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25. RESTITUTION LAW

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I. Introduction

25.1 The 2024 cases on the law of unjust enrichment and restitution addressed a wide range of issues, including: (a) the subsidiarity principle concerning the relationship between the law of contract and the law of unjust enrichment; (b) the interpretation of the Court of Appeal's decision in *Esben Finance Ltd v Wong Hou-Lianq Neil*[1] ("*Esben Finance*") as to the interstitial role of the law of unjust enrichment; (c) at the expense of; (d) failure of consideration; (e) mistake; and (f) subrogation. The case law is examined in detail below.

II. Contract and unjust enrichment: subsidiarity principle

25.2 The Singapore courts have consistently stressed that a subsisting contract will generally preclude a claim in unjust enrichment, so as to prevent the law of unjust enrichment from undermining parties' contractual allocation of risks between them (*ie*, the subsidiarity principle).[2] Three High Court decisions discussed the subsidiarity principle. The subsidiarity principle was applied in *Golden Barley International Pte Ltd v BASP International Pte Ltd*[3] ("*Golden Barley*") to bar a claim in unjust enrichment as the court had found in that case that the payment was made on the basis of a valid and subsisting contract.[4]

25.3 In *Riady Tjandra v Cheng Yi Han*,[5] on the other hand, the contract did not preclude a claim in unjust enrichment because the General Division of the High Court ("General Division") had found that the case fell within an exception to the subsidiary principle: there was a total

1 [2022] 1 SLR 136.
2 *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 at [104]–[108].
3 [2024] SGHC 235.
4 *Golden Barley International Pte Ltd v BASP International Pte Ltd* [2024] SGHC 235 at [49]. It was not investigated in this case as to whether it fell within an exception to the subsidiarity principle, for example, total failure of consideration.
5 [2024] SGHC 59.

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failure of consideration.[6] In *Riady Tjandra v Cheng Yi Han*, the plaintiff ("Tjandra") entered into an agreement to purchase 10,000 shares in Star Dust Developments Ltd ("Star Dust") which was the sole owner of Royal Eastern Bank, an offshore, cryptocurrency-friendly bank, for US$4m. Tjandra alleged that the Star Dust shares were never transferred to him. The defendant ("Cheng"), who had received US$1.36m from Tjandra under the contract and was a shareholder of Blue Summit Investments Ltd, which in turn owned 85% of the shares in Star Dust. Cheng contended that Tjandra failed to prove that he did not receive the shares and in any event, the contract was formed between Tjandra and Blue Summit Investments Ltd and Gestalt Group Ltd (a minority shareholder of Star Dust). The court found that there was a contract entered between Tjandra and Cheng and other shareholders. It held on the evidence that the Star Dust shares had not been transferred to Tjandra and that Cheng was therefore in breach of the agreement. The unjust factor of total failure of consideration will be considered at para 25.13 below.

25.4 In *Lim Chee Seng v Phang Yew Kiat*[7] ("*Lim Chee Seng*"), the General Division explained that "the existence of a valid contract does not create an absolute bar to a finding of total failure of consideration".[8] Instead, the salient question to ask in each case is "whether (and how) the parties have allocated their risks in their contract so as to preclude restitutionary relief".[9] In *Lim Chee Seng*, the plaintiff and the defendant entered into an agreement pursuant to which the plaintiff would invest $200,000 in a company by way of purchase of shares from the defendant who was a shareholder and director of the company. The agreement also provided, amongst other terms, that the plaintiff had the option to sell back the shares to the defendant (*ie*, an option to exit) within a certain prescribed timeline, if the company had not met certain performance targets. The agreement further stipulated that the defendant would provide quarterly financial statements of the company to the plaintiff and the plaintiff would spend a certain amount of time on strategy discussions with the defendant regarding the company's business. The plaintiff transferred the investment sum to the defendant but the plaintiff did not receive the shares. From 2018 to 2019, the defendant orally updated the plaintiff regarding the company's performance, including the fact that it did not meet its performance targets for 2018. However, the plaintiff did not exercise its option to exit within the contractually stipulated timeline. The company was later wound up. The plaintiff

6 *Riady Tjandra v Cheng Yi Han* [2024] SGHC 59 at [98]–[99], citing *Max Media FZ LLC v Nimbus Media Pte Ltd* [2010] 2 SLR 677 at [24] and *Carlsberg South Asia Pte Ltd v Pawan Kumar Jagetia* [2023] SGHC(A) 29 at [83].

7 [2024] 5 SLR 106.

8 *Lim Chee Seng v Phang Yew Kiat* [2024] 5 SLR 106 at [47].

9 *Lim Chee Seng v Phang Yew Kiat* [2024] 5 SLR 106 at [47].

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sought to recover the investment sum plus contractual interest from the defendant. The plaintiff's primary claim was that the agreement was in effect a convertible loan of $200,000 which could be converted into shares if the company met its performance targets. As the company failed to meet its performance targets, the loan was not converted into shares and the plaintiff was entitled to seek repayment of the investment sum. In the alternative, the plaintiff sought restitution for unjust enrichment on the ground of total failure of consideration. The defendant contended that there had been no total failure of consideration because the plaintiff had been provided with the benefit of quarterly financial statements. The court held that in the present dispute, the fact that the parties had a valid contract between them did not preclude the plaintiff's unjust enrichment claim. This is because the claim was not inconsistent with the contractual allocation of risks. The contractual option to exit would only be engaged if the shares had been transferred from the defendant to the plaintiff but that transfer never took place. The court's unjust factor analysis will be examined at para 25.12 below.

III. Interstitial role of the law of unjust enrichment

25.5 In *Ng Chee Tian v Ng Chee Pong*[10] ("*Ng Chee Tian*"), the General Division attempted to rationalise the full effects of *Esben Finance* in relation to the relationship of the law of unjust enrichment to other well-established areas of law. As the court astutely noted, the unjust enrichment claim was advanced in the case for two reasons: first, to avoid the application of the limitation periods set out in the Limitation Act 1959[11] because it was held by the Court of Appeal in *Esben Finance* that no statutory limitation periods applied to claims in unjust enrichment;[12] and second, to seek proprietary relief for unjust enrichment.[13] This should form the background to appreciate the General Division's comments on the interstitial role of the law of unjust enrichment.

25.6 To recall, in *Esben Finance*, the Court of Appeal had carefully circumscribed the scope of application of the controversial unjust factor "lack of consent" by limiting its invocation to cases where an action in unjust enrichment is "the only cause of action which is available on the facts", to avoid "unacceptable encroachments on other areas of law, denuding them of their legal significance" [emphasis in original

10 [2025] 3 SLR 235.
11 2020 Rev Ed.
12 *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [42].
13 *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [43].

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omitted].[14] In *Ng Chee Tian*, the General Division interpreted *Esben Finance* as laying down a more general restriction on the scope of the law of unjust enrichment:[15]

> [T]he law of unjust enrichment should only generally be allowed to operate in situations where other more established causes of action are unavailable. In essence, the Court of Appeal's approach appeared to be a decidedly conservative one, *ie*, it conceived of unjust enrichment (*qua* cause of action) as an interstitial mechanism, or a secondary legal vehicle, that serves to fill in the gaps between the more conventional areas of law …

25.7 Referencing the Court of Appeal's general reluctance to recognise a new unjust factor in cases which are already dealt with under other areas of law, the General Division in *Ng Chee Tian* was of the view that although the Court of Appeal did not foreclose the possibility of the law of unjust enrichment being engaged in cases where other causes of action are available, the opening for such engagement is "so narrow as to make it extremely difficult to pass through".[16] The General Division went on to affirm the subsidiarity of the law of unjust enrichment to other areas of the law, on the basis that this would follow from the logic of the holding in *Esben Finance*.[17] It thus rejected the claim in unjust enrichment even though the unjust factor at play was not "lack of consent" but mistake. The court observed that the claimants had advanced other "conventional" claims, including claims based on *non est factum* and undue influence.[18] To be clear, these other "conventional" causes of action were time-barred and were therefore only *theoretically* available claims. However, as alluded to above, the court saw the advancement of the unjust enrichment claim as a tactical ploy to get around the time bars which applied to other causes of action.[19] The court noted that the outcome might be perceived as "unsatisfactory", highlighting some issues that require clarification. For example, it was not very clear from *Esben Finance* whether "existing" causes of action would include causes of action that were time-barred and therefore not practically available to the claimant. Nor was it explicitly decided by the Court of Appeal that its observations on the subsidiarity of the law of unjust enrichment to other established areas of law would apply equally to other established unjust factors. *Ng Chee Tian* was a necessary step to unpack and rationalise the *Esben Finance* decision and its analysis must be reviewed seriously by an appellate court in the future.

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14 *Esben Finance Ltd v Wong Hou-Lianq Neil* [2022] 1 SLR 136 at [240] and [251]. See also Yip Man, "Restitution" (2022) 23 SAL Ann Rev 720 at paras 25.7–25.13.
15 *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [52].
16 *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [53].
17 *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [54] and [59]–[60].
18 *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [62].
19 *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [63].

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IV. Enrichment

25.8 In *Peck Wee Boon Patrick v Lim Poh Goon*[20] ("*Peck Wee Boon*"), the General Division confirmed that a defendant can be enriched without its knowledge that an enrichment has been received into its bank account. *Peck Wee Boon* involved a dispute arising out of a residential construction project. The plaintiffs claimed that pursuant to a written agreement between the builder ("D3") and them, they were promised attractive returns for contributing $340,000 as investment moneys towards a residential construction project by D1 (a director and shareholder of D3) and the company secretary of D4 (the developer). The plaintiffs argued that there was fraudulent misrepresentation by D1 because they were never paid the said returns and the investment moneys were also not returned to them. The trial was focused against D2 (the brother of D1 and a director of D4) and D4. The plaintiffs alleged that D2 and D4 were unjustly enriched at their expense. The court ruled that the claim against D2 was a non-starter because the investment moneys were paid into D4's bank account. As against D4, the enrichment was established even though the moneys were received into its bank account without its knowledge.

V. At the expense of

25.9 There were two cases decided in 2024 that considered the direct enrichment rule and possible exceptions. In *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd*,[21] the plaintiffs were two banks and one of them (*ie*, Banque de Commerce et de Placements SA, ("BCP Geneva")) issued a letter of credit to finance Zenrock Commodities Trading Pte Ltd ("Zenrock")'s purchase of a cargo from the defendant. The plaintiffs provided the financing on Zenrock's representation that the cargo would be on-sold to a third party (*ie*, PetroChina International (East China) Co Ltd ("PetroChina")) and the plaintiffs therefore expected that they would be reimbursed by PetroChina. After the sale was completed, UBS Switzerland AG ("UBS") paid out moneys to the defendant pursuant to the letter of credit and UBS was reimbursed for the same by BCP Geneva. However, when the plaintiffs wrote to PetroChina for payment, they were told that the contract between PetroChina and the defendant had been cancelled. Zenrock subsequently went into liquidation. The plaintiffs discovered during Zenrock's insolvency proceedings that the contract between

20 [2024] 5 SLR 1234.

21 [2024] SGHC 145. The appeal to the Court of Appeal was limited to the tort of deceit: *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [38].

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Zenrock and the defendant was a sham or fraudulent transaction and that the defendant allegedly did not sell the cargo to Zenrock. The plaintiffs sought to recover their losses from the defendant on various grounds, including a claim in unjust enrichment based on mistake or failure of consideration. The General Division affirmed that "there must be a direct transfer of the enrichment" from the plaintiff to the defendant in order to satisfy the element of "at the expense of" (*ie*, the direct enrichment rule).[22] The court also referenced the exceptions to the direct enrichment rule as enunciated by the UK Supreme Court in *Investment Trust Companies v Revenue and Customs Commissioners*.[23] It suggested that "assuming that the 'coordinated transactions' exception forms part of Singapore law" (but without deciding the matter), it is arguable that the case involved coordinated transactions because the plaintiff bore the responsibility to pay the defendant, even though the money went through an indirect pathway via UBS to the defendant.[24] In respect of the "coordinated transactions" exception recognised in Investment Trust Companies, the court further noted that there appears to be no "established test to determine when it would be 'unrealistic' to consider the transactions separately".[25] In any event, the unjust enrichment claim failed because there was no applicable unjust factor.

25.10 In *Center for Competency-Based Learning and Development Pte Ltd v SkillsFuture Singapore Agency*,[26] the plaintiff, a training organisation, entered into a contract with the defendant (*ie*, SkillsFuture Singapore Agency) and pursuant to which, the plaintiff would make *ad hoc* claims on the defendant's portal for the disbursement of monetary support in respect of the plaintiff's provision of training courses to trainees. Following an audit exercise conducted between April and July 2020 involving 14 of the trainees who attended the plaintiff's training programme, the defendant formed the opinion that the plaintiff was guilty of "gross moral turpitude" under the contract and elected to terminate the contract. In the period between the defendant's issuance of its notice of intention to terminate the contract dated 16 October 2020 and the notice of termination dated 25 March 2021, the plaintiff's account on the defendant's portal was not suspended and the plaintiff's claims were approved. Between April 2020 and March 2021, the plaintiff continued to provide training to the trainees. The plaintiff claimed

22 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2024] SGHC 145 at [217].
23 [2018] AC 275 at [47]–[49].
24 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2024] SGHC 145 at [219].
25 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2024] SGHC 145 at [218].
26 [2024] 5 SLR 481.

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against the defendant for *ad hoc* claims in respect of the training in contract and alternatively for restitutionary *quantum meruit*. It argued that the defendant had received a benefit from the plaintiff because the plaintiff had, through the training courses provided to the trainees, assisted the defendant in achieving its objectives to upskill and train the adult population in Singapore. The General Division allowed the plaintiff's contractual claim in respect of the training provided between 16 October 2020 and 25 March 2021. By way of *obiter*, the court said that the restitutionary claim would not succeed for two reasons. First, the objective benefit was received by the trainees who attended the training or the employers of the said trainees. The plaintiff could not explain why the concept of "at the expense of" should be extended in the present case[27] or how there was a sufficient nexus between the plaintiff's provision of training courses and the alleged enrichment of assisting the defendant in achieving its statutory objectives. Second, there was no relevant unjust factor to support the claim.

VI. Failure of consideration

25.11 The unjust factor of failure of consideration is the most frequently invoked unjust factor in case law. In both *Golden Barley*[28] and *Peck Wee Boon*,[29] it was emphasised that if there were no communications between the claimant and the defendant (or their agents/authorised representatives), there would be no joint understanding for establishing the basis for the transfer of the enrichment and there would accordingly be no failure of basis to speak of. The lack of communications between the parties can become another major impediment, apart from the subsidiarity principle, to a claim of unjust enrichment brought against the recipient of enrichment transferred pursuant to a contract entered into between the claimant and another party, to which the recipient is not a party. The recipient is often the nominated payee under the contract and the contracting party would usually have (mis)represented to the claimant that it controls or is related to the nominated payee. Seeking recourse against the contracting party may be fruitless.[30] It therefore

27 The exceptions to the direct enrichment rule enunciated by Henderson J in the English case of *Investment Trust Companies v Revenue and Customs Commissioners* [2021] EWHC 458 (Ch) were considered.

28 *Golden Barley International Pte Ltd v BASP International Pte Ltd* [2024] SGHC 235 at [60]–[62].

29 *Peck Wee Boon Patrick v Lim Poh Goon* [2024] 5 SLR 1234 at [189]–[191]. For completeness, it should be mentioned that the court found that induced mistake, the alternative unjust factor, was not made out (see [192]).

30 *Golden Barley International Pte Ltd v BASP International Pte Ltd* [2024] SGHC 235 at [23].

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leaves the payor (*ie*, the plaintiff) in an unenviable position of having no redress.

25.12 The facts of *Lim Chee Seng* had been set out above. In that case, the General Division rejected the defendant's argument that there had been no total failure of consideration simply because the plaintiff had received updates on the company's financial performance. It held that the contractual terms required the company's financial statements to be provided in written form, and not merely by way of oral updates.[31] It also noted that even if oral updates were acceptable under the contract, there was no oral update in respect of the financial year of 2019.[32] Importantly, the court construed the parties' essential bargain to comprise the plaintiff's payment of $200,000 in exchange of the shares.[33] The provision of financial information concerning the company's performance was merely an incidental or collateral benefit,[34] as was the opportunity to engage in strategy discussions concerning the company's business.[35] However, the court said, by way of *obiter*, that had the defendant provided to the plaintiff quarterly financial information as required under the contract; this could possibly amount to more than merely incidental or collateral benefit because "such information arguably comprises part of the essential bargain … in that it enables the [plaintiff] to decide meaningfully whether to exercise his option to exit the Company".[36] The line between the essential bargain and incidental/collateral benefits is not always a bright-line one and much would depend on the court's characterisation of the bargain.

25.13 The facts of *Riady Tjandra* are set out above. In this case, the General Division similarly found that there was a total failure of consideration. The court, following the Court of Appeal decision in *Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd*,[37] held that a transfer might have more than one basis.[38] On the facts, the court held that there were "at least two separate and distinct bases" for Tjandra's transfer of US$1.36m to Cheng: the transfer of the Star Dust shares (which is the performance of a counter-promise) and that the Royal Eastern Bank would be a licensed and operational bank (which is a non-promissory

31 *Lim Chee Seng v Phang Yew Kiat* [2024] 5 SLR 106 at [68].
32 *Lim Chee Seng v Phang Yew Kiat* [2024] 5 SLR 106 at [69].
33 *Lim Chee Seng v Phang Yew Kiat* [2024] 5 SLR 106 at [71].
34 *Lim Chee Seng v Phang Yew Kiat* [2024] 5 SLR 106 at [70].
35 *Lim Chee Seng v Phang Yew Kiat* [2024] 5 SLR 106 at [75].
36 *Lim Chee Seng v Phang Yew Kiat* [2024] 5 SLR 106 at [70].
37 [2018] 1 SLR 239.
38 *Riady Tjandra v Cheng Yi Han* [2024] SGHC 59 at [103].

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contingent condition).[39] Both bases had failed.[40] On the facts, the court also ruled that the defence of change of position was not made out.[41] Cheng was thus liable to make restitution to Tjandra.

25.14 In *Shree Ramkrishna Exports Pvt Ltd v J G Jewellery Pte Ltd*,[42] the plaintiff was an Indian company in the business of manufacturing and trading in jewellery and precious stones. The plaintiff was related to a group of companies, collectively known as the SRK entities. The JDM entities, controlled by Michael Bernard Kriss and David Miles Kriss ("Kriss brothers"), operated a New York-based, family-owned jewellery business. The plaintiff's managing director, R, met with the Kriss brothers and what transpired thereafter was hotly contested. The Kriss brothers claimed that R proposed a joint venture between the SRK entities (referring to the plaintiff's jewellery manufacturing factory in Sachin in India, The Jewelry Company, and TJC Jewelry, Inc) and the JDM entities (referring to four US entities owned and controlled by the Kriss brothers), with each party contributing selected assets, liabilities and activities to the joint venture. The Kriss brothers alleged that the parties agreed that the operation of the joint venture would commence on 1 April 2014. R contended that the Kriss brothers proposed a closer partnership which the plaintiff would explore. A year later, the defendant was incorporated with an issued capital of US$100. It was not disputed that from 1 April 2014, the JDM entities and the SRK entities were in some form of business collaboration but the parties disagreed as to the nature of the collaboration. The defendant and the Kriss brothers argued that the collaboration was pursuant to a joint venture agreement which provided, *inter alia*, that the diamonds and jewellery supplied by the SRK entities to the defendant (the joint venture company formed for the purpose of the joint venture) were to be treated as capital in the joint venture. The SRK entities said that the collaboration was simply a business arrangement pursuant to which the plaintiff would sell diamonds and jewellery to the defendant while they concurrently negotiated with the Kriss brothers on the terms of the proposed joint venture. The collaboration subsequently broke down and the plaintiff sued the defendant for the amount that remained outstanding under the invoices. It was not disputed that the jewellery supplied under the relevant invoices were shipped directly to the JDM entities. The plaintiff's primary claim was in contract (based on its version of the facts that there was a business arrangement for the sale and purchase of jewellery) and if no contract was found to exist, its alternative claim was for unjust enrichment on

39 *Riady Tjandra v Cheng Yi Han* [2024] SGHC 59 at [105]–[120].
40 *Riady Tjandra v Cheng Yi Han* [2024] SGHC 59 at [105].
41 *Riady Tjandra v Cheng Yi Han* [2024] SGHC 59 at [122]–[143].
42 [2025] 3 SLR 769.

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the basis of failure of consideration. The defendant resisted the plaintiff's claims, arguing that the jewellery had been supplied pursuant to a joint venture agreement under which these assets would be treated as capital in the joint venture. The defendant further claimed that the invoices were issued for the purpose of complying with tax requirements and to enable the export of the assets out of India; they were not meant to create any payment liability on the defendant's part.

25.15 The General Division held that the collaboration between the parties was on the basis of a joint venture and the plaintiff's alleged business arrangement was a concoction by the SRK entities.[43] However, the defendant's alleged joint venture agreement was unenforceable because it failed to prove that the joint venture agreement was entered into on 13 January 2015 and that it contained the alleged material terms relating to invoicing, valuation and profit distribution.[44] The court also found that the diamonds supplied by the parties under the joint venture were to be regarded as capital contributions to the joint venture (albeit not supported by an enforceable agreement) and the invoices were not intended to create payment liability.[45] Nevertheless, the court found for the plaintiff in respect of its unjust enrichment claim, rejecting the defendant's "technical" argument that the jewellery supplied did not amount to enrichment.[46] The court characterised the transaction as involving a sale by the plaintiff to the defendant and a corresponding sale by the defendant to the JDM entities.[47] The unjust factor, failure of consideration, was established on the facts. The enrichment was provided on the joint understanding that there would be an enforceable promise. The basis had therefore failed as a result of the unenforceability of the joint venture agreement.[48]

25.16 The Appellate Division of the High Court ("Appellate Division") dismissed the defendant's appeal.[49] Taking a contractual analysis, the Appellate Division held that the question was whether the defendant was contractually liable to pay for the diamonds supplied, which turned on the question as to whether they were supplied to the defendant as sales. It held that the lower court had erred in finding that the diamonds were supplied as equity contributions and did not need to be paid for by the defendant. The Appellate Division was firmly of the view that someone would have to account and be liable for the diamonds and, on the facts,

43 *Shree Ramkrishna Exports Pvt Ltd v J G Jewellery Pte Ltd* [2025] 3 SLR 769 at [63].
44 *Shree Ramkrishna Exports Pvt Ltd v J G Jewellery Pte Ltd* [2025] 3 SLR 769 at [172].
45 *Shree Ramkrishna Exports Pvt Ltd v J G Jewellery Pte Ltd* [2025] 3 SLR 769 at [194].
46 *Shree Ramkrishna Exports Pvt Ltd v J G Jewellery Pte Ltd* [2025] 3 SLR 769 at [209].
47 *Shree Ramkrishna Exports Pvt Ltd v J G Jewellery Pte Ltd* [2025] 3 SLR 769 at [209].
48 *Shree Ramkrishna Exports Pvt Ltd v J G Jewellery Pte Ltd* [2025] 3 SLR 769 at [211].
49 *J G Jewelry Pte Ltd v Shree Ramkrishna Exports Pvt Ltd* [2025] 1 SLR 336.

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this would have to be the defendant as the invoices were addressed to the defendant who in turned invoiced the JDM entities.

VII. Mistake

25.17 In *Golden Barley*, the General Division reminded that not every kind of mistake would ground a claim in unjust enrichment and a distinction is to be drawn between "(a) a mistaken payment *simpliciter*; and (b) a mistake in the formation of a contractual obligation which led to payment being made".[50] The court explained that in the second kind of mistake, the contract must be declared void or rescinded before a claim in unjust enrichment could be brought into play, to avoid "contradicting a valid contractual obligation to render the benefit".[51] Applied to the facts of the case, the court said that even if the plaintiff was mistaken that the counter contracting party and the defendant were affiliated and had therefore paid on that basis,[52] this was a mistake that went towards the formation of the contract.[53] No claim in unjust enrichment could be brought unless the contract is void or has been rescinded.

VIII. Proprietary relief

25.18 In *Ng Chee Tian*, the General Division followed the decision in *Ho Dat Khoon v Chan Wai Leen*[54] and held that a claimant can only obtain *in personam* relief for a claim in unjust enrichment.[55] It gave two "extremely cogent reasons" as to why proprietary relief ought not be available for a claim in unjust enrichment.[56] First, allowing proprietary relief would potentially allow claims to be made against *bona fide* third parties who paid consideration for the enrichment in question in subsequent transactions. Second, it is "*almost always* (if not always) in the interest of a party to assert a claim for proprietary remedies rather than *in personam* ones".[57] This would be problematic as it would have

50 *Golden Barley International Pte Ltd v BASP International Pte Ltd* [2024] SGHC 235 at [52].
51 *Golden Barley International Pte Ltd v BASP International Pte Ltd* [2024] SGHC 235 at [52].
52 The court was, however, not convinced that the plaintiff had proven this mistaken belief: *Golden Barley International Pte Ltd v BASP International Pte Ltd* [2024] SGHC 235 at [57].
53 *Golden Barley International Pte Ltd v BASP International Pte Ltd* [2024] SGHC 235 at [58].
54 [2023] SGHC 326.
55 *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [72].
56 *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [72]–[74].
57 *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [74].

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the potential to undermine the *Esben Finance* decision which, on the General Division's view, had confined the law of unjust enrichment to simply an interstitial role.[58] The court further qualified that it was not strictly necessary for it to make a determination on the issue and even if its views were wrong, this was not an exceptional case for the grant of proprietary remedies.[59]

IX. Subrogation

25.19 Finally, in *Da Hui Shipping (Pte) Ltd v An Rong Shipping Pte Ltd*,[60] General Division accepted that a non-contractual right of subrogation to a proprietary interest upon the discharge of a secured debt is an equitable remedy granted to prevent or reverse the unjust enrichment of one co-debtor at the other co-debtor's expense.[61] The court also held that partial subrogation was available where the debt was merely partially discharged, which was what happened in that case.[62] Adopting an unjust enrichment account of the remedy has two implications. First, the claimant of subrogation acquires "new rights which prima facie replicate the creditor's extinguished rights".[63] Second, the claimant must establish a cause of action in unjust enrichment to successfully claim the equitable remedy of subrogation. However, the court held that the claimant could not be subrogated to the bank's extinguished securities over the defendant'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.[64]

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58 *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [74].
59 *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [77].
60 [2025] 4 SLR 816.
61 *Da Hui Shipping (Pte) Ltd v An Rong Shipping Pte Ltd* [2025] 4 SLR 816 at [40]–[42].
62 *Da Hui Shipping (Pte) Ltd v An Rong Shipping Pte Ltd* [2025] 4 SLR 816 at [49]–[56].
63 *Goff & Jones on Unjust Enrichment* (Charles Mitchell, Paul Mitchell & Stephen Watterson eds) (Sweet & Maxwell, 10th Ed, 2022) at para 39-25.
64 *Goff & Jones on Unjust Enrichment* (Charles Mitchell, Paul Mitchell & Stephen Watterson eds) (Sweet & Maxwell, 10th Ed, 2022) at para 39-25.

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