

## THE RULES OF COURT 2021: PERSPECTIVES FROM THE BENCH (THE GENERAL DIVISION OF THE HIGH COURT)

This article analyses how the General Division of the High Court has applied the new Rules of Court 2021 (“ROC 2021”) and observes how the Singapore Bar has adapted to the implementation of the new ROC 2021. It examines key developments in the civil litigation process whilst highlighting principles which are still relevant from the previous Rules of Court (2014 Rev Ed).

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### I. Introduction

1 In 2015, Sundaresh Menon CJ constituted the Civil Justice Commission (“CJC”) to transform the litigation process by modernising it, enhancing efficiency and speed of adjudication and maintaining costs at reasonable levels. The CJC’s recommendations, together with the recommendations of the Civil Justice Review Committee (established by the Ministry of Law in 2016) led to the promulgation of the Rules of Court 2021 (“ROC 2021”).

2 The ROC 2021 transformed the entire civil litigation process in Singapore. Understandably, the bold and innovative changes were met initially with some reservations. To assist the Bar, a transitional learning phase for the ROC 2021 from 1 April to 30 June 2022 was implemented. During this period, the courts generally took a more sympathetic approach in dealing with non-compliance occasioned by a genuine lack of familiarity with the new procedural framework.<sup>2</sup>

3 Implementing the changes under the ROC 2021 requires a mindset change. This author is heartened by his own observations that the Bar has given its full co-operation to the implementation of the

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1 The views in this article are the author’s personal views. The author also thanks Ian Cheng and Sarah Banton for their assistance in researching the cases on the Rules of Court 2021. Any errors in this article are the author’s.

2 Chief Justice Sundaresh Menon, Supreme Court of Singapore, “Opening of the Legal Year 2022”, speech at the Opening of the Legal Year 2022 (10 January 2022) at para 17.

new rules, and has adapted well to the changes brought about by the ROC 2021.

4 This article seeks to set out some perspectives of how the ROC 2021 has been applied by the General Division of the High Court (“General Division”). This article shall focus on the following areas:

- (a) Purposive interpretation and the Ideals.
- (b) Overall flexibility.
- (c) A stricter approach in some areas: production of documents, affidavits of evidence-in-chief (“AEICs”) before documents and expert witnesses.
- (d) Continued application of principles under the former Rules of Court<sup>3</sup> (“ROC 2014”) where appropriate.

## II. Purposive interpretation and the Ideals

5 Order 3 r 1 of the ROC 2021 provides as follows:

- (1) These Rules are to be given a purposive interpretation.
- (2) These Rules seek to achieve the following Ideals in civil procedure:
  - (a) fair access to justice;
  - (b) expeditious proceedings;
  - (c) cost-effective work proportionate to —
    - (i) the nature and importance of the action;
    - (ii) the complexity of the claim as well as the difficulty or novelty of the issues and questions it raises; and
    - (iii) the amount or value of the claim;
  - (d) efficient use of court resources;
  - (e) fair and practical results suited to the needs of the parties.
- (3) The Court must seek to achieve the Ideals in all its orders or directions.
- (4) All parties have the duty to assist the Court and to conduct their cases in a manner which will help to achieve the Ideals.

6 The Ideals of achieving expeditious proceedings, cost-effective work, proportionality and efficient use of court resources recognise that court resources are limited. These Ideals strive to ensure that the courts

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3 2014 Rev Ed.

are available to adjudicate as many disputes as quickly as possible, thereby contributing to fair access to justice. The Ideal of fair and practical results recognises that the results of litigation must not only be fair, they also be practical and suited to the needs of the parties.

7 The Ideals are akin to constitutional principles by which the parties and the court are guided in conducting civil proceedings and are to be read conjunctively.<sup>4</sup> The following cases demonstrate how O 3 r 1 of the ROC 2021 has been applied by the General Division.

8 In *Janesh s/o Rajkumar v Unknown Persons (“CHEFPIERRE”)*<sup>5</sup> (“*Janesh*”), the claimant was the owner of a non-fungible token (“NFT”) known as the Bored Ape Yacht Club ID #2161 (the “Bored Ape NFT”). The claimant knew the defendant only by the pseudonym “chefpierre.eth”. The claimant took a loan from the defendant using the Bored Ape NFT as collateral. According to the claimant, one of the terms of the loan was that the defendant could not sell or dispose of the Bored Ape NFT and could only hold on to it pending repayment of the loan. The claimant defaulted. The defendant foreclosed on the Bored Ape NFT and transferred it from the escrow account into his cryptocurrency wallet. Thereafter, the defendant listed the Bored Ape NFT for sale on an online NFT marketplace.

9 The claimant sued the defendant and sought an injunction prohibiting the defendant from dealing with the Bored Ape NFT pending the trial of the claimant’s claim. As the identity of the defendant was unknown, he was described in the originating claim as “Unknown Person (‘CHEFPIERRE’)”. However, under O 6 r 5(1) of the ROC 2021, the originating claim must be in Form 8, which required the defendant’s name and identification to be stated. The issue arose as to whether the originating claim complied with O 6 r 5(1).

10 Lee Seiu Kin J referred to O 3 r 6(1) which states that “the Forms as set out in the practice directions must be used with such variations as the circumstances require”<sup>6</sup> Lee J concluded that the failure to name the defendant in the precise manner as stipulated in the relevant forms in that case did not amount to non-compliance because the description of the defendant was sufficiently certain so as to identify both those who are included and those who are not.<sup>7</sup> Lee J noted that O 3 r 1 made it

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4 Civil Justice Commission, *Civil Justice Commission Report* (29 December 2017) at p 6, para 3 (Chairperson: Justice Tay Yong Kwang).

5 [2023] 3 SLR 119.

6 *Janesh s/o Rajkumar v Unknown Persons (“CHEFPIERRE”)* [2023] 3 SLR 119 at [33].

7 *Janesh s/o Rajkumar v Unknown Persons (“CHEFPIERRE”)* [2023] 3 SLR 119 at [37] and [39]–[41].

clear that the ROC 2021 was to be interpreted purposively and that the court must seek to achieve the Ideals.<sup>8</sup> Lee J reasoned that requiring strict compliance with the formality requirements of an originating application or claim may well restrict access to justice.

11 In *Housing & Development Board v Cenobia Majella Chettiar*,<sup>9</sup> a deputy registrar gave the respondent unconditional permission to defend against some aspects of the applicant's claim. A district judge dismissed the applicant's appeal. The applicant sought permission to appeal against the district judge's decision. The applicant argued that the district judge had erred in relying on the respondent's Defence and Counterclaim (Amendment No 1), which was filed after the deputy registrar heard the application for summary judgment. The applicant relied on O 18 r 16(4) of the ROC 2021, which states that an appeal to a district judge against the decision of the registrar must proceed "by way of a rehearing on the documents filed by the parties before the Registrar". Goh Yihan JC dismissed the application for permission to appeal. His Honour interpreted O 18 r 16 purposively and held that its purpose was to prescribe the key steps by which an appeal is to proceed and is not meant to constrain the District Courts' broad powers to consider other documents.<sup>10</sup>

12 In *CZD v CZE*,<sup>11</sup> this author had to interpret the term "special case" in O 3 r 5(6) of the ROC 2021, which provides that the court will not allow further affidavits after the respondent to an application has filed his or her reply affidavit, except in a special case. This author decided that the fact that new issues are raised in a reply affidavit may constitute a special case for the purposes of O 3 r 5(6) if these issues could not reasonably have been within the applicant's contemplation when he filed his affidavit in support of his application.<sup>12</sup> One of the reasons for this author's decision was that the term "special case" should be interpreted with the Ideals in mind, in particular that of achieving expeditious proceedings.<sup>13</sup>

13 In *Lim Julian Frederick Yu v Lim Peng On*,<sup>14</sup> an application to amend the statement of claim by including a prayer for declaratory relief, was made on the fourth day of trial. Order 9 r 14(3) of the ROC 2021 provides that the court may only allow pleadings to be amended less than 14 days before the start of the trial in a special case. Philip Jeyaratnam J

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8 *Janesh s/o Rajkumar v Unknown Persons ("CHEFPIERRE")* [2023] 3 SLR 119 at [38].

9 [2023] 5 SLR 1514.

10 *Housing & Development Board v Cenobia Majella Chettiar* [2023] 5 SLR 1514 at [25].

11 [2023] 5 SLR 806.

12 *CZD v CZE* [2023] 5 SLR 806 at [21].

13 *CZD v CZE* [2023] 5 SLR 806 at [19].

14 [2024] SGHC 53.

allowed the application as the amendment was merely clarificatory and did not involve fresh evidence, additional witnesses or new arguments.<sup>15</sup> Although His Honour did not expressly refer to the Ideals, it can be seen that his approach in interpreting the term “special case” was consistent with the Ideals of fair access to justice, expeditious proceedings and fair and practical results.

14 Another issue in the same case concerned the second defendant’s failure to comply with O 15 r 16(7) of the ROC 2021, which requires notice to be given of any intention to rely on statements of relevant fact by a person who is dead or cannot be found pursuant to s 32 of the Evidence Act 1893.<sup>16</sup> The second defendant made a belated application during closing submissions for an extension of time to comply with O 15 r 16(7). Jeyaretnam J denied the application so as to accord “fair access to justice” (O 3 r 1(2)(a)) to the claimant and advance “fair and practical results suited to the needs of the parties” (O 3 r 1(2)(e)).<sup>17</sup>

15 In *Peloso, Matthew v Vikash Kumar*,<sup>18</sup> the claimant sued on an agreement allegedly signed by the first defendant on behalf of the second defendant. The defendants’ case was that the agreement was never signed. Both parties’ experts agreed that the first defendant’s signature on the agreement in question was likely copied and inserted from an earlier agreement. Goh Yihan J struck out the claim under O 9 r 16(1) of the ROC 2021 on the ground that the claimant’s sole pleaded case (that the first defendant signed the agreement physically) was factually impossible by virtue of the expert evidence from both parties. His Honour concluded that since the claimant had not advanced any alternative case in his pleadings, it did not advance the Ideals of expedience, cost-effectiveness or efficiency to put the parties through a full trial.

16 In *Lufti Salim bin Talib v British and Malayan Trustees Ltd*<sup>19</sup> (“*Lufti*”), this author decided that an affidavit relating to the production of documents was generally conclusive under the ROC 2021 unless it was plain and obvious from the documents that had been produced, the affidavits or pleadings or some other objective evidence before the court, that the requested documents: (a) had to exist or have existed; (b) were or had been in the respondent’s possession or control; or (c) were not protected from production.<sup>20</sup> This author rejected the test of a reasonable suspicion that further discoverable documents existed,

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15 *Lim Julian Frederick Yu v Lim Peng On* [2024] SGHC 53 at [26].

16 2020 Rev Ed.

17 *Lim Julian Frederick Yu v Lim Peng On* [2024] SGHC 53 at [106].

18 [2024] 4 SLR 289.

19 [2024] 5 SLR 56.

20 *Lufti Salim bin Talib v British and Malayan Trustees Ltd* [2024] 5 SLR 56 at [31]–[32].

which was supported under some cases under the previous versions of the Rules of Court. In this author's view, the reasonable suspicion test has no place under O 11 r 3 of the ROC 2021. The higher threshold of "plain and obvious" is consistent with the Ideals, in particular, expeditious proceedings, costs-effective work and efficient use of court resources.<sup>21</sup>

17 *Madison Pacific Trust Ltd v PT Dewata Wibawa*<sup>22</sup> concerned O 7 r 1(2) of the ROC 2021, which gives the court the discretion to dispense with personal service or with ordinary service or with service altogether in an "appropriate case". This author noted that personal service has traditionally been viewed as the most effective means of ensuring that the recipient is notified of the documents. This author then decided that it would be an appropriate case to dispense with personal service if personal service can reasonably be expected to be difficult or disproportionately time-consuming and the mode of ordinary service to be employed would be as effective in ensuring that the recipient is notified of the documents. In this author's view, such an approach would be consistent with the Ideals of achieving expeditious proceedings and fair and practical results suited to the needs of the parties.<sup>23</sup>

18 In *DHZ v DHY*,<sup>24</sup> the applicant sought to set aside several findings made by an arbitrator against the applicant. Two of the findings related to disputes involving claims of \$1,400 and \$105, respectively. This author made the observation that the amount of work done and time spent in respect of these two claims were clearly disproportionate and ran contrary to the Ideals set out in O 3 rr 1(2)(c) and 1(2)(d).

19 The court may also sanction parties if they act deliberately or unreasonably in conducting their cases in a manner which does not help to achieve the Ideals.

20 In *Beltran, Julian Moreno v Terraform Labs Pte Ltd*,<sup>25</sup> Hri Kumar Nair J dismissed the first defendant's appeal against the assistant registrar's decision denying a stay in favour of arbitration. His Honour agreed with the assistant registrar that the first defendant had taken multiple steps in the proceedings. The first defendant had filed a Defence on the merits although under the ROC 2021 (unlike the ROC 2014), a defendant seeking to challenge the jurisdiction of the court needed to file a defence contesting jurisdiction only. In addition, the first defendant had applied

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21 *Lufti Salim bin Talib v British and Malayan Trustees Ltd* [2024] 5 SLR 56 at [34].

22 [2024] SGHC 184.

23 *Madison Pacific Trust Ltd v PT Dewata Wibawa* [2024] SGHC 184 at [57].

24 [2024] SGHC 236.

25 [2024] 4 SLR 674.

(a) for further and better particulars which related to the merits; (b) to strike out and/or stay the action on various bases which invited the court to exercise jurisdiction over the action; and (c) for production of documents which were irrelevant to the jurisdictional challenge.

21 The following observations in the judgment deserve special note:<sup>26</sup>

... ROC 2021 is specifically designed to ensure that jurisdictional objections are filed and disposed of expeditiously and as early as possible, to ensure that time and costs are not wasted and that parties may then proceed to deal with the merits of the claim only if the challenge fails. That is also sensible from a case management standpoint, and is in the interests of all the parties. Indeed, the ROC 2021 was meant ‘to simplify and expedite applications and appeals on procedural matters so that disputes ... do not become procedural skirmishes which waste time and costs and often do not bring the parties any closer to the main battlefield’: Civil Justice Commission Report at p 2. Unfortunately, that philosophy was not embraced in this case, and parties (particularly [the first defendant]) engaged in the ‘old’ ways of procedural and ‘strategic’ manoeuvres unrelated and unnecessary to resolving the jurisdictional challenge.

All litigants should comply with the language and spirit of the ROC 2021, as embodied in the Ideals in O 3 r 1, and work with the courts to ensure a fair and expeditious resolution to their disputes (see O 3 rr 1(2)(b) and 1(2)(c)). While the basic structure of civil litigation was not altered by the ROC 2021, it is not old wine in new skins. It was intended for parties to approach the resolution of civil disputes with a new mindset – for cases to be managed closely and effectively so as to facilitate the crystallisation of key issues in dispute at an early stage, which will in turn enable cases to progress more efficiently: see Civil Justice Review Committee, Report of the Civil Justice Review Committee (2018) (Chairperson: Indraneel Rajah SC) at pp 6–7. ... As far as a party’s actions in delaying the judicial process are not intentional or disingenuous, some lenience may be granted: see *The Tokai Maru* at [22]–[23]. However, where such conduct is deliberate or unreasonable, parties should expect to be met with firm sanctions from the court.

22 It is not surprising that where the rules under the ROC 2021 are the same or similar to the predecessor rules under the ROC 2014, the court is likely to continue to apply the relevant principles that have been established under the ROC 2014. However, in such cases, the court remains mindful that the application of the relevant principles under the ROC 2014 must be subject to the Ideals.

23 For example, in *Yeo Su Lan v Hong Thomas*<sup>27</sup> (“*Yeo Su Lan*”), Goh JC set out the applicable principles governing consolidation of causes or matters under O 4 r 1(1) of the ROC 2014. His Honour then observed

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26 *Beltran, Julian Moreno v Terraform Labs Pte Ltd* [2024] 4 SLR 674 at [184]–[185].

27 [2024] 3 SLR 672.

that O 9 r 11 of the ROC 2021 was framed in substantively the same terms and expressed his view that there was no reason why the well-established principles in relation to O 4 r 1(1) of the ROC 2014 should not, *subject to the Ideals*, apply equally to O 9 r 11 of the ROC 2021.<sup>28</sup>

24 Subsequently, Goh JC had the opportunity to deal with O 9 r 11 of the ROC 2021 in *Horizon Capital Fund v Ollech David*.<sup>29</sup> His Honour referred to and affirmed the view that he expressed in *Yeo Su Lan*.

### III. Overall flexibility

25 The ROC 2021 has given the court more flexibility in a number of aspects and the courts have shown that they are prepared to exercise their powers in the interests of justice.

#### A. Broad discretion and power under Order 3 rules 2(1) and 2(2)

26 The ROC 2021 has given the court a broad discretion and power under O 3 rr 2(1) and 2(2), which state as follows:

(1) Unless the context otherwise requires and subject to any other written law, all requirements in these rules are subject to the Court's discretion to order otherwise in the interests of justice, even if they are expressed using imperative words such as 'must', 'is to' or 'shall'.

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

27 The cases show that the courts have been robust in exercising the discretion and powers found in O 3 rr 2(1) and 2(2).

28 In *Re Civelli, Carlo Giuseppe*,<sup>30</sup> Kwek Mean Luck J decided that the Evidence (Civil Proceedings in Other Jurisdictions) Act 1979<sup>31</sup> ("ECPOJA") did not preclude the appointment of a private examiner to take evidence for foreign proceedings. Section 4(3) of the ECPOJA provides that any steps to be taken under the order for the obtaining of evidence must be steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the General

28 *Yeo Su Lan v Hong Thomas* [2024] 3 SLR 672 at [17].

29 [2023] SGHC 164.

30 [2024] 5 SLR 446.

31 2020 Rev Ed.



Division. In this connection, Kwek J analysed O 9 r 24 and O 55 rr 4 and 5 of the ROC 2021 and noted the broad discretion given to the court under O 3 r 2(1) of the ROC 2021. His Honour then concluded that O 9 r 24, O 55 rr 4 and 5, and O 3 r 2(1) of the ROC 2021 evinced a framework in which a pre-trial examination may be ordered in Singapore for the purposes of obtaining evidence for civil proceedings in the General Division, where the examiner could be any fit and proper person nominated by a party.<sup>32</sup>

29 In *Interactive Digital Finance Ltd v Credit Suisse AG*,<sup>33</sup> the claimant sought production of documents referred to in the defence. The defendant refused on the ground that, unlike the ROC 2014, the ROC 2021 has no express provision requiring a party to produce documents referred to in its pleadings. This author affirmed the assistant registrar's decision to order the production of the documents referred to in the Statement of Claim. This author decided that the assistant registrar had the power to make the order under O 11 r 4 which provides that the court may, of its own accord and at any time, order party or non-party to produce a copy of any document in his possession or control.<sup>34</sup> This author also decided that, alternatively, O 3 r 2(2) gave the assistant registrar the power to make the order that she did, at a case conference. This was necessary to ensure that justice was done and it was consistent with the Ideals, in particular those relating to expeditious proceedings (O 3 r 1(2)(b)) and fair and practical results to the needs of the parties (O 3 r 1(2)(e)).<sup>35</sup>

30 In *Re Gabriel Silas Tang Rafferty*,<sup>36</sup> Menon CJ dismissed an application for admission as an Advocate and Solicitor of the Supreme Court and imposed a condition that the applicant was not to bring a fresh application for a period of not less than five years. His Honour decided that he could impose the condition under the court's inherent power to regulate its own processes to serve the ends of justice and noted that this is implicitly acknowledged in O 3 r 2(2) of the ROC 2021.<sup>37</sup>

31 In *Blomberg, Johan Daniel v Khan Zhi Yan*,<sup>38</sup> See Kee Oon J noted the broad powers given to the court by O 3 r 2(2) and suggested (as a provisional view) that this could form the juridical basis for setting aside a contractual consent order if there are vitiating factors.<sup>39</sup>

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32 *Re Civelli, Carlo Giuseppe* [2024] 5 SLR 446 at [21]–[22].

33 [2023] 5 SLR 1735.

34 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [30].

35 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [37].

36 [2024] 4 SLR 401.

37 *Re Gabriel Silas Tang Rafferty* [2024] 4 SLR 401 at [55].

38 [2024] 3 SLR 1079.

39 *Blomberg, Johan Daniel v Khan Zhi Yan* [2024] 3 SLR 1079 at [45].

### **B. Power to waive non-compliance under Order 3 rule 2(4)(a)**

32 Order 3 r 2(4)(a) gives the court the power to waive non-compliance of the ROC 2021, written law, the court's order or direction or practice direction, subject to r 2(5) which states that the court may waive non-compliance with any written law other than the ROC 2021 only if the written law allows such waiver.

33 In *Janesh*,<sup>40</sup> Lee J added that in any event, if the description of the defendant in the originating claim did not comply with the form requirements set out under O 6 r 5(1), he was prepared to waive the non-compliance pursuant to O 3 rr 2(4)–2(5).<sup>41</sup>

### **C. Wider discretion under Order 4 rule 3(3)**

34 Order 4 r 3(3) of the ROC 2021 gives the court the discretion to permit an officer of a company, variable capital company or limited liability partnership to act on behalf of the relevant entity in court proceedings if: (a) the officer has been duly authorised to so act; and (b) the officer has sufficient executive or administrative capacity or is a proper person to so act.

35 Order 4 r 3(3) gives the court a wider discretion compared to the equivalent provision under the ROC 2014. As Goh JC noted in *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP*,<sup>42</sup> the focus of O 4 r 3(3) is seemingly more on the substance of the application, leaving the court with a wider discretion to decide how and if the procedural requirement under O 4 r 3(3)(a) has been satisfied.<sup>43</sup> Under O 1 r 9(4) of the ROC 2014, the application had to be supported by an affidavit in a particular form and substance. For example, the supporting affidavit needed to be made by “any other officer” of the entity concerned.<sup>44</sup>

### **D. Default judgment permitted in every case**

36 Under the ROC 2014, a claimant had to fit his claim squarely within the prescribed categories in O 13 rr 1–5 of the ROC 2014 (*ie*, for

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40 *Janesh s/o Rajkumar v Unknown Persons (“CHEFPIERRE”)* [2023] 3 SLR 119.

41 *Janesh s/o Rajkumar v Unknown Persons (“CHEFPIERRE”)* [2023] 3 SLR 119 at [41].  
42 [2024] 3 SLR 1020.

43 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2024] 3 SLR 1020 at [20].

44 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2024] 3 SLR 1020 at [21].

liquidated demand, unliquidated damages, detinue and possession of immovable property) before he was entitled to enter judgment in default of appearance. In contrast, O 6 r 6(5) of the ROC 2021 permits a claimant to enter judgment in default of filing and serving a notice of intention to contest or not contest in every case, regardless of the nature of his claim: see *Shanmugam Kasiviswanathan v Lee Hsien Yang*.<sup>45</sup>

#### ***E. Non-exhaustive list of factors for service out***

37 With respect to service out of the jurisdiction, case law had treated the list of factors set out in O 11 r 1 of the ROC 2014 as exhaustive such that a claim must come within the scope of one or more of those factors to show sufficient nexus to Singapore. However, as this author noted in *Cheong Jun Yoong v Three Arrows Capital Ltd*,<sup>46</sup> under the ROC 2014, these factors are set out in para 63(3) of the Supreme Court Practice Directions 2021 and are expressly stated to be non-exhaustive.

#### **IV. Production of documents**

38 One major change in the ROC 2021 concerns discovery or the obligation to produce documents. The ROC 2021 imposes a new regime which works on the principle that a claimant is to sue and proceed on the strength of his case and not on the weakness of the defendant's case. It aims to prevent parties from engaging in unnecessary requests and applications with the hope of uncovering a "smoking gun".<sup>47</sup> The principle that a claimant is to sue on the strength of his case is spelt out in O 11 r 1(2)(a) of the ROC 2021.

39 Under the ROC 2021, the general principle is that parties are to produce: (a) all documents that each party will be relying on; and (b) all known adverse documents: O 11 r 2(1). The term "known adverse documents" is defined in O 11 r 2(2). However, the ROC 2021 provides for exceptions where parties may agree to broaden the scope of documents to be produced, and the court may allow a broader scope of discovery if it is in the interests of justice to do so (*ie*, where it could aid in disposing fairly of the proceedings: O 11 rr 1(1), 1(3)–1(4) and 2(1)(c).

40 Under O 11 r 3(1), the test for production of specific documents or class of documents is whether the requested documents are material to

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45 [2024] 4 SLR 580 at [21]–[22].

46 [2024] 4 SLR 907 at [39].

47 Civil Justice Commission, *Civil Justice Commission Report* (29 December 2017) at p 19, para 2 (Chairperson: Justice Tay Yong Kwang).

the issues in the case. In line with the stricter approach to production of documents under the ROC 2021, it has been held that the test of materiality mandates a higher or stricter threshold than the relevance-necessity test under the ROC 2014; the requested documents must have a significant bearing on an issue in a case such that it could potentially affect the court's ultimate decision: *Eng's Wantan Noodle Pte Ltd v Eng's Char Siew Wantan Mee Pte Ltd*.<sup>48</sup>

41 As discussed earlier, in *Lufti*, this author rejected the reasonable suspicion test with respect to challenges against the conclusiveness of an affidavit by a party stating that no further discoverable documents remained in its possession or control. Instead, I decided that such an affidavit is conclusive unless it is plain and obvious from the documents produced, the affidavits or pleadings, or some other objective evidence, that the requested documents: (a) had to exist or have existed; (b) were or had been in the respondent's possession or control; and (c) are not protected from production. This plain and obvious test is consistent with the stricter approach towards production of documents under the ROC 2021.

## V. AEICs before exchange of documents

42 As stated earlier, under the ROC 2021, a claimant is to sue and proceed on the strength of his case and not on the weakness of the defendant's case. Consistent with this, O 9 r 8(1) of the ROC 2021 provides that the court may order the parties to file their AEICs before any exchange of documents.

43 Anecdotally, filing AEICs before exchange of documents ("AB4D") is fairly common in certain types of cases such as contract, employment, tort (other than those involving defamation, statutory torts and professional negligence). AB4D orders have also been made in some building and construction cases, finance cases and shipping cases. In contrast, AB4D is less common in cases such as minority oppression, breach of fiduciary duties and breach of confidence.

44 There have been cases in which AB4D orders were made and after the AEICs were exchanged, the parties had to apply for production of documents, permission to file supplemental AEICs or amendment of pleadings. One reason for why this happened may have been that the litigants failed to give proper or complete instructions to their lawyers.

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48 [2023] SGHCR 17 at [49(b)].

The lawyers involved in these cases know the reasons best. The lessons learnt should be shared.

## VI. Expert evidence

45 Order 12 r 3(1) of the ROC 2021 provides that (except in simplified trials in a Magistrate's or District Court), as far as possible, parties must agree on one common expert. Anecdotally, this provision has not given rise to any significant issues and common experts are the exception. A common expert is not likely to be appropriate if the subject matter that requires expert evidence is controversial or is capable of different analyses by experts.

## VII. Principles under ROC 2014 continue to apply where appropriate

46 Whilst the ROC 2021 has made some significant changes to the rules of procedure, many of the rules under the ROC 2014 have also been retained. This makes eminent sense. There is no need for change simply for the sake of change. There is no reason why these rules, which have worked well and which are consistent with the philosophy and Ideals under the ROC 2021, need changing. In such cases, the courts have continued to apply the relevant principles that were applicable under the ROC 2014. As the following cases show, the courts have applied the principles that were applicable under the ROC 2014 to the following matters under the ROC 2021:

(a) Setting aside a default judgment: *Management Corporation Strata Title Plan No 4572 v Kingsford Development Pte Ltd*.<sup>49</sup>

(b) Adding parties under O 9 r 10(1) of the ROC 2021: *DFD v DFE*.<sup>50</sup>

(c) Further and better particulars under O 9 r 13 of the ROC 2021: *Access Medical Pte Ltd v MHC Medical Network Pte Ltd*.<sup>51</sup>

(d) Summary judgment under O 9 r 17 of the ROC 2021: *Nimisha Pandey v Divya Bothra*.<sup>52</sup>

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49 [2023] SGHCR 8 at [8].

50 [2023] SGHCR 23 at [24].

51 [2023] SGHCR 19 at [18].

52 [2024] SGHC 88 at [13]–[14].

- (e) Pre-action production of documents under O 11 r 11 of the ROC 2021: *Gillingham James Ian v Fearless Legends Pte Ltd*.<sup>53</sup>
- (f) Interpleader relief under O 13 r 10 of the ROC 2021: *Singapore Asia Trust Company Pte Ltd v Avium Origins Pte Ltd*.<sup>54</sup>
- (g) Conversion of an originating application into an originating claim under O 15 r 7(6)(c) of the ROC 2021: *Indian Trading Pte Ltd v De Tian (AMK 529) Pte Ltd*.<sup>55</sup>
- (h) Power of an appellate court to receive further evidence under O 18 r 8 of the ROC 2021: *Horizon Capital Fund v Ollech David*.<sup>56</sup>
- (i) Permission to appeal under O 19 r 15(2) of the ROC 2021: *Hon G v Tan Pei Li*.<sup>57</sup>

## VIII. Conclusion

47 It has been less than three years since the ROC 2021 came into force. The courts are giving effect to the changes brought about by the ROC 2021 and the Bar has adapted well. The implementation and application of the new rules have been smooth, with the co-operation of the Bar. Feedback from the Bar will continue to improve the ROC 2021.

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53 [2023] SGHCR 13 at [14].

54 [2023] SGHCR 18 at [34].

55 [2023] SGHCR 3 at [25]–[27].

56 [2023] SGHC 164 at [21]–[22].

57 [2023] SGHC 193 at [15]–[16].