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Case Note

DOWN FOR THE (AC)COUNT: CLARIFICATION REGARDING THE DUTIES OF A PRIVATELY APPOINTED RECEIVER

Victory International Holdings Pte Ltd v Borrelli, Cosimo [2025] 1 SLR 49

This case note analyses the recent decision of the Appellate Division of the High Court in *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49, where the court clarified the nature and scope of a privately appointed receiver's duties to the chargor company, specifically in relation to the production of documents in the course of the receivership. No Singapore court had squarely dealt with this issue previously. In this note, the author critically evaluates this decision, arguing that it represents a welcome development in local jurisprudence, and provides some much-needed clarity on this issue.

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I. Introduction

1 A receivership is a frequently deployed mechanism in the context of share pledges/charges and mortgages. Within this relationship, a chargor grants the chargee rights and powers over the former's property, and agrees to the chargee using those rights and powers in their own interests to achieve repayment of the debt. To secure its rights, the chargee appoints a receiver, who is an agent for both the chargee and the chargor, but is an agent only to the extent of being able to deal with the chargor's assets that are the subject of the security.

1 This article is written in the author's personal capacity. The views expressed in this article are entirely the author's own, and any errors or mistakes remain the author's alone. The author wishes to express his thanks to the anonymous reviewer for their helpful comments, as well as to Nuraziah for her excellent copyediting.

2 While the existence of such an agency is not contentious, the precise nature and ambit of this agency remains unclear. In this connection, the recent decision of the Appellate Division of the High Court ("Appellate Division") has provided some much-needed clarity on this issue. For the interests of convenience, all references to a "chargor" and "chargee" in this article refer to a "chargor or mortgagor" and "chargee or mortgagee" respectively.

II. Facts

3 The claimant ("Victory") and another company ("Navis") were shareholders in OPV Pharmaceutical Holdings Pte Ltd ("OPV"). Pursuant to a shareholders' agreement between Victory and Navis, drag-along rights in relation to the shares in OPV were conferred on Navis, the 65% majority shareholder.[2]

4 Victory subsequently entered into a facility agreement with Navis, where the latter loaned Victory a sum of US$2.5m.[3] In exchange, the parties entered into a share pledge, under which Victory assigned and charged its shareholding in OPV to Navis. When Victory failed to repay the loan, Navis appointed a receiver over Victory's shareholding in OPV in order to complete the sale of the shares pursuant to the drag-along rights under the shareholders' agreement between Victory and Navis.[4]

5 Having unsuccessfully challenged the sale of its shares *via* arbitration, Victory accepted that the receiver could proceed to sell its shares in OPV.[5] However, Victory proceeded to make multiple requests for information from the receiver.[6] Dissatisfied with the responses provided by the receiver, Victory commenced proceedings in the General Division of the High Court ("General Division"), and sought the following against the receiver:[7]

> (a) Production of the executed drag-along sale and purchase agreement between Victory and the third-party purchaser in respect of Victory's minority shareholding in OPV;
>
> (b) A full account of the sale proceeds received from the third-party purchaser, as well as the application of the

2 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [3].
3 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [11].
4 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [18].
5 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [19].
6 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [20]–[21].
7 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [23].

sale proceeds against the secured liability under the facility agreement, with a detailed calculation of costs, expenses, and interest accrued; and

(c) A report by the receiver on the sales process in respect of Victory's shares in OPV, and on the alleged delay in the sale of the shares ("Prayer for a Report").

III. Holding and reasoning at first instance

6 At first instance, Goh Yihan J delivered a carefully reasoned judgment that considered: (a) the nature of a privately appointed receiver's duties; (b) the extent of a privately appointed receiver's duties to account to the chargor; and (c) the relevant test governing when a receiver needs to produce documents.

7 Firstly, Goh J considered the tripartite relationship existing between a chargor, chargee (or "debenture holder"), and receiver, and observed that: "[t]he primary purpose of this relationship is to protect the mortgagee/chargee".[8] As a necessary corollary of this, and consistent with existing authority, he affirmed that while a privately appointed receiver was an "agent" of the chargor, the scope of such an agency relationship was limited.[9] Goh J found that the general duties arising from the "limited" agency relationship between a receiver and the chargor arose by virtue of the chargor's equity of redemption in respect of the charged property,[10] and held that aside from duties arising when exercising their power of sale, a receiver generally owed "little by way of duties to the [chargor]".[11]

8 Secondly, Goh J considered parties' submissions in respect of a receiver's duty to account. He observed that a duty to account was "not inconsistent with [the receiver's] other duties" as recognised under Singapore law, and noted that such a duty would give effect to such recognised duties.[12] Having acknowledged that a receiver's relationship of agency was a limited one, and that the receiver's primary duties were owed to the debenture holder, Goh J held that a receiver was under no general obligation to provide information to the chargor during the currency of a receivership.[13]

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8 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [70], citing *Gomba Holdings UK Ltd v Minories Finance Ltd* [1988] 1 WLR 1231 at 1233.
9 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [71]–[72].
10 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [77].
11 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [80].
12 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [86]–[87].
13 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [93].

9 Finally, Goh J observed that there were different tests capable of governing when a receiver needs to produce documents in furtherance of their limited duty to account to the chargor. Following a brief consideration of the merits of parties' submissions, he ultimately held that a receiver's duty to account to the chargor was subject to the court's overriding discretion,[14] which was embodied in, among other things, proof of the chargor's "need to know" the contents of the documents sought.

10 Having set out the relevant principles in considerable detail, Goh J went on to decide that: (a) Victory was entitled to a copy of the executed drag-along sale and purchase agreement in respect of its shares in OPV; (b) the receiver was not obliged to provide a full account of the sale proceeds to Victory; and (c) the receiver was not obliged to provide a report on the sales process in respect of Victory's shares in OPV.

IV. Appeal to the Appellate Division

11 The decision of Goh J was subsequently appealed by Victory to the Appellate Division.[15] On appeal, Victory sought to challenge Goh J's decision, specifically in relation to the Prayer for a Report.

12 The Appellate Division dismissed this appeal, holding that the receiver was under no obligation to provide the Report. In so holding, the Appellate Division affirmed the "need to know" test, adopted by Goh J in his decision below, as the appropriate test in determining whether a chargor is entitled to receive information from the receiver. Such a test was justified on the basis that it "cohere[d] with a receiver's obligations and duties", and thus "[struck] the appropriate balance between the duties owed by a receiver and the obligations of directors to their companies".[16]

13 On this basis, the Appellate Division held that Victory "[had] not shown that there [was] a need to know the information that was to be provided in the Report".[17] Observing that the information sought by Victory was likely motivated by an intention to pursue the receiver, the Appellate Division held that Victory's request for information "must be seen as [being] prejudicial to the receivership",[18] and accordingly dismissed Victory's appeal for a Report.

14 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [101].
15 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49.
16 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [91].
17 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [97].
18 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [98].

V. Analysis

A. Nature of privately appointed receiver's duties

14 The weight of authority makes it clear that the origin of a receiver's duties toward a chargor lies in equity, and are imposed to ensure that a receiver, "while discharging his duties to manage the property with a view to repayment of the secured debt, nonetheless in doing so takes account of the interests of the mortgagor and others interested in the mortgaged property".[19] Such duties arise because of the equity of redemption,[20] which is of "central importance" to the relationship.[21] By virtue of this, the duty owed by the receiver to the chargor is therefore not one owed to them individually, but rather incidentally on account of their being "one of the persons interested in the equity of redemption".[22]

15 However, no Singapore court had previously provided a rationalisation of *why* this was the case. At first instance, Goh J explained that in a legal mortgage, the chargor conveyed legal title in the property to the chargee, and retained only the equity of redemption. The chargee was not under any common law duty because the common law regarded them as the owner of the property.[23] However, as equity regarded the chargor as the owner of the property, it would operate to impose duties on the chargee toward the chargor – since a receiver was exercising powers received from the chargee, their duties were thus governed by equity rather than by common law.[24]

16 Goh J noted that within the confines of this unique tripartite relationship, the primary purpose of the receiver's agency was to protect the debenture holder,[25] and that the receiver acted as the agent of the chargor "only to the extent that he [had] the power to affect the position of the mortgagor/chargor by acts which, while done for the benefit of the mortgagee/chargee, [were] treated as if they [were] that of the mortgagor/chargor".[26] This description of the tripartite relationship between a chargor, chargee and receiver was subsequently affirmed by the Appellate Division.[27]

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19 *Medforth v Blake* [2000] Ch 86 at 101–102.
20 *Downsview Ltd v First City Corporation Ltd* [1993] AC 295 at 299.
21 *CPIT Investments Ltd v Qilin World Capital Ltd* [2017] 5 SLR 1 at [144].
22 *Silven Properties Ltd v Royal Bank of Scotland plc* [2004] 1 WLR 997 at 1008.
23 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [77].
24 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [77].
25 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [70].
26 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [70].
27 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [68].

17 The position that a receiver's agency is for the primary purpose of benefitting the debenture holder is one that finds consistent support in case law.[28] Indeed, the primacy of the debenture holder's interests was recognised by the Court of Appeal in *Roberto Building Material Pte Ltd v Oversea-Chinese Banking Corp*,[29] where the court stated that "[t]he primary duty of the receiver is to the debenture holders and not to the company".[30] Flowing from the above, any duties owed by a receiver to the chargor must naturally be qualified by the receiver's primary duty to realise the security *for the benefit of the debenture holder*, which is the purpose of their appointment. This upholds the basis for the receivership, and is consistent with the court's observation that a receiver's equitable duties "are not inflexible [and] [w]hat a mortgagee or a receiver must do to discharge them depends upon the particular facts of the particular case".[31]

B. Limits of duty to account

18 Goh J found that a privately appointed receiver's duty to account was "not inconsistent with [the receiver's] other duties" as recognised under Singapore law, and noted that such a duty would give effect to such recognised duties.[32] This finding was made in the face of the defendants' concession at the hearing that such a duty existed under Singapore law, following the decision in *Hang Huo Investment Pte Ltd v Wong Pheng Cheong Martin*[33] ("*Hang Huo*"). The Appellate Division similarly cited with approval the same extract from *Hang Huo*:[34]

> … The duties of the receiver towards the company would thus include all the ordinary duties of an agent save for those that are inconsistent with the purpose of his appointment and his primary duty to the debenture holder or mortgagee: *Corporate Receivership* at p 108. The fiduciary duty of an agent to account to the company ought to remain, as such a duty does not derogate from the receiver's duty to the debenture holder or mortgagee: *Corporate Receivership* at p 114.

19 However, while both Goh J and the Appellate Division purported to "agree with and gratefully adopt Tan JC's reasoning in

28 See for example *In Re B Johnson & Co (Builders) Ltd* [1955] Ch 634 at 661.
29 [2003] 3 SLR(R) 217.
30 *Roberto Building Material Pte Ltd v Oversea-Chinese Banking Corp* [2003] 3 SLR(R) 217 at [51].
31 *Medforth v Blake* [2000] Ch 86 at 102.
32 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [86]–[87].
33 [2024] 4 SLR 1142. See *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [84].
34 *Hang Huo Investment Pte Ltd v Wong Pheng Cheong Martin* [2024] 4 SLR 1142 at [117].

Hang Huo",[35] it is suggested that the reasoning in *Hang Huo* is, in fact, not strictly aligned with that of both Goh J and the Appellate Division for two key reasons. Firstly, it is respectfully suggested that the court in *Hang Huo* adopted an incorrect approach in ascertaining the duties of a privately appointed receiver. In *Hang Huo*, the court sought to ascertain a receiver's duties by elimination, *ie,* by considering all the fiduciary duties owed by an ordinary agent, eliminating those duties which the court deemed to derogate from the receiver's duty to the debenture holder, and keeping those which the court found were not inconsistent with such a duty to the debenture holder.[36] While intuitive, such an approach is arguably not sound in principle. As noted by eminent academic authority, the unique nature of the receiver's agency means that "analogy with the fiduciary character of other kinds of agency is misleading".[37] Indeed, Goh J appeared to allude to this through his pointed observation that:[38]

> … *the label 'fiduciary' is 'a conclusion which is reached only once it is determined that particular duties are owed' …* [*I*]*t is incumbent on Victory to explain why it is owed a duty to account by the Receivers, and why this duty is fiduciary in nature, rather than simply asserting that a receiver is a fiduciary and expecting legal consequences to flow therefrom*. Indeed, as the Court of Appeal pointed out, '[g]iven that a fiduciary obligation is a conclusion rather than a premise, the meaning of the term "fiduciary relationship" is naturally thrown into doubt'. [emphasis in original omitted; emphasis added in italics]

20 The findings of the court in *Hang Huo* thus adopted the wrong starting point, and proceeded on the wrong legal basis. Indeed, this author has, in another article critiqued the decision in *Hang Huo*, arguing that the reasoning there was flawed and should not be followed by the Singapore courts.[39] To the extent that the High Court and the Appellate Division appeared to affirm the reasoning of *Hang Huo*, it is thus respectfully suggested that this aspect of the reasoning should not be followed.

21 Secondly, and in any case, even assuming that the basis on which the court in *Hang Huo* ascertained the scope of a privately appointed receiver's duty to account to the chargor company was correct, it was

35 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [86]. See also *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [75].

36 *Hang Huo Investment Pte Ltd v Wong Pheng Cheong Martin* [2024] 4 SLR 1142 at [117].

37 J D Heydon, Mark Leeming & Peter Turner, *Meagher, Gummow and Lehan's Equity: Doctrines and Remedies* (Butterworths, 5th Ed, 2015) at para 29-180.

38 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [83].

39 Noah Lim, "Serving Two Masters? Analysing the Agency of a Privately-Appointed Receiver" [2025] JBL 91.

arguably not a prerequisite for the courts' ultimate finding that any duty on the receiver to account to the chargor must be limited by virtue of the former's limited relationship of agency.[40] Indeed, such a finding is already a logical corollary of the existing *corpus* of case law, which stresses that the agency of a privately appointed receiver is a limited one.[41] There was thus no need for the courts to ground their observations on the fiduciary-based reasoning adopted in *Hang Huo*, when the same ultimate principle could be reached by relying on the *corpus* of existing case law.

22 Ultimately, the decision of the Appellate Division affirms that, by virtue of the unique nature of a privately appointed receiver's agency, their duty to account to the chargor company during the currency of the receivership is consequently a limited one. This clarification is certainly desirable, given that the entire purpose of a receivership is to afford creditors "speed and flexibility".[42] Were a receiver to owe broader duties to other parties, conforming with these duties would significantly increase the cost of decision-making,[43] thereby reducing its overall utility toward a creditor and undermining the commercial rationale underpinning a private receivership.

C. The relevant test – "need to know" versus "prejudice"

23 One of the key issues that arose within the appeal to the Appellate Division was the relevant test that ought to be adopted in determining whether a receiver is obligated to disclose information to the chargor company, and necessarily, the limits of a receiver's discretion to withhold information from the company.

24 One test was the "need to know" test as laid down in the English case of *Gomba Holdings UK Ltd v Homan*[44] ("*Gomba*"). There, Hoffman J held that the chargor company's right to information depended on its being able to prove a "need to know" such information for the purpose of enabling the board to exercise its residual rights or perform its duties.[45]

40 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [89]; *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [76].

41 See, *eg*, *BP Singapore Pte Ltd v Jurong Aromatics Corp Pte Ltd* [2020] 1 SLR 627 at [31].

42 John Armour & Sandra Frisby, "Rethinking Receivership" (2001) 21 *Oxford Journal of Legal Studies* 73 at 95.

43 John Armour & Sandra Frisby, "Rethinking Receivership" (2001) 21 *Oxford Journal of Legal Studies* 73 at 89.

44 [1986] 1 WLR 1301.

45 *Gomba Holdings UK Ltd v Homan* [1986] 1 WLR 1301 at 1308A; *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [102].

The second, alternative test was the "prejudice" test as endorsed by the Australian court in *Re Geneva Finance*[46] ("*Re Geneva*").

25 In *Re Geneva*, the Supreme Court of Western Australia appeared to cast doubt on the "need to know" test under *Gomba*, stating that it was "a conclusion … rather than a statement deduced from specific authority".[47] Instead, the court there held that the *real* question was whether the directors, wishing to exercise a power which they would otherwise have, can do so without "imping[ing] upon the functions of the receiver or [causing] prejudice or detriment to the interest of the debenture holder in the realisation of the assets".[48] Before the Appellate Division, the Appellant argued that this "prejudice" test was the appropriate one, and should be adopted instead of the "need to know" test laid down in *Gomba*.[49]

26 Faced with these two tests, the Appellate Division held that the correct test was the "need to know" test laid down in *Gomba*, and stated that the test "does encapsulate the 'prejudice' element set out in *Re Geneva*".[50] The Appellate Division went on to state that:[51]

> The 'need to know' test … serves as a necessary threshold to sieve out unjustified requests from the chargor given the paramount duty of the receiver to the chargee. Once a 'need to know' has been demonstrated, it is incumbent on the receiver to show prejudice (to the chargee) if disclosure is to be denied. The flaw in the 'prejudice' test operating on its own is that it assumes that the information sought by the chargor is in fact needed by the board for the purpose of discharging its duties.

27 This statement of principle is helpful in rationalising the differences between the two tests, and arguably helps to crystallise the reasoning that Goh J had in mind at first instance when he stated that the "need to know" test was necessary as it "affirms the receiver's overriding duty to the mortgagee/charge *during the receivership*" [emphasis in original].[52] Equally helpful is the Appellate Division's clarification on the relevance of ownership within this enquiry. Specifically, while a receiver "*must* hand over all documents owned by a chargor" [emphasis in original] upon the termination of the receivership,[53] the question of

46 (1992) 7 WAR 496.
47 *Re Geneva Finance* (1992) 7 WAR 496 at 511.
48 *Re Geneva Finance* (1992) 7 WAR 496 at 511–513.
49 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [50].
50 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [89].
51 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [90].
52 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [103].
53 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [94].

ownership is irrelevant during the currency of the receivership – in such cases, the "need to know" test would operate with full force.[54]

28 However, this article deviates from the reasoning of the Appellate Division by suggesting that, in fact, the two tests merely reflect two sides of the same coin. The excerpt from the Appellate Division above helpfully fleshes out how the element of "prejudice" is one that is built into the "need to know" test. At the same time, however, the "need to know" element is arguably also built into the "prejudice" test, given that the "prejudice" test necessarily entails the same balancing of competing values as under the "need to know" test. Put another way, the mere adoption of the "prejudice" test ahead of the "need to know" test would *not* mean that a director/company can ask for any document, regardless of how useful (or useless) such documents might be.

29 In this connection, and as observed by the court in *Re Geneva*:[55]

> The question is not who has the higher duty, as between receiver and directors … That question must always be answered in favour of the receiver unless the receiver has abandoned the asset or is acting in breach of duty. *The real question is whether the directors, wishing to exercise a power which they would otherwise have, can do so without prejudicing the legitimate interests of the receiver and the secured creditor in the realisation of the assets*. [emphasis added]

30 Here, it is suggested that the "prejudice" test as framed by the court in *Re Geneva* has an inbuilt requirement of relevance/"need to know" – a document requested by the company must be relevant (*ie*, the company must need to know the contents of the document) as a prerequisite condition, because: (a) frivolous requests would prejudice the legitimate interests of the receiver and debenture holder, as the former would consequently be unable to focus their efforts on realising the assets for the benefit of the latter; and (b) were such a condition not to exist, this would incentivise the making of frivolous requests, which clearly cannot have been the intention of the court in *Re Geneva*. The courts have also highlighted that the scope of a chargor company's rights "must also be understood with reference to the purpose for which the receiver is appointed",[56] and that the functions of a receiver are "to administer the company and realise the assets in order to repay or reduce the debt owing to the appointing creditor".[57]

54 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [93].
55 *Re Geneva Finance* (1992) 7 WAR 496 at 511.
56 *Re Geneva Finance* (1992) 7 WAR 496 at 508–509.
57 *Re Geneva Finance* (1992) 7 WAR 496 at 513.

31 Moreover, there is a clear line of authority holding that private receivers are in a fiduciary relationship with their appointor debenture holder.[58] Where a receiver is understood as being a fiduciary of the appointing debenture holder, it *cannot* be the case that the "prejudice" test obviates any need to consider the relevance/need-to-know status of any requested document, since a receiver who accedes to any frivolous request without inquiring as to the merits of such a request would not be acting in the best interests of the debenture holder.

32 Ultimately, the decision of the Appellate Division is useful in fleshing out an approach toward governing a private receiver's obligations towards a chargor company that balances the duties owed by the former to different stakeholders, while also taking into consideration the relative priority in which such duties are owed.

VI. Further reflections

33 To the extent that the courts declined to intervene in the receiver's exercise of his discretion, it should be noted that such a decision was likely undergirded by issues of knowledge (or lack thereof). Indeed, any court would, and rightly should, be cautious in disturbing a receiver's exercise of his discretion. This is because to intervene in such a way would be to substitute the court's judgment for that of the receiver, which would enliven practical issues such as the court's ability to verify the appropriateness of the receiver's actions,[59] and the risk of judging with the benefit of hindsight.

34 As Armour and Frisby astutely observe:[60]

> *Judicial decisions which are not as well-informed as those of the decision-maker, or which tend to condemn failed risk-taking without full assessment of the expected benefits at the time, are likely to give receivers incentives to behave in too risk-averse a fashion, thus reducing the expected returns to all parties.* Finally, even if it is possible for the court to make informed and appropriate decisions, one must ask: at what price? The instigation and conduct of legal proceedings is highly costly, and may well amount to more than the funds available in the company. [emphasis added]

35 To iterate, within the context of a private receivership, the receiver's primary duty is to their appointing chargee, for whose benefit

58 *Salmon v Albarran* [2023] NSWSC 1238 at [309].

59 John Armour & Sandra Frisby, "Rethinking Receivership" (2001) 21 *Oxford Journal of Legal Studies* 73 at 100.

60 John Armour & Sandra Frisby, "Rethinking Receivership" (2001) 21 *Oxford Journal of Legal Studies* 73 at 100.

the receiver manages the security.[61] The receiver's primary aim is thus to bring about a situation in which the secured asset is realised, and the secured debt repaid.[62] Two key observations stem from this. Firstly, receivers are appointed by virtue of their unique expertise, and should thus be afforded the necessary time and space to conduct their affairs in the way they think best. They should thus be "left alone",[63] so that they can focus on maximising returns for the debenture holder. Such efforts might involve taking a certain level of risk, but such risk is socially desirable as it increases the expected returns to the parties.

36 Secondly, the fact that the receiver's primary duty in exercising their powers of management is to bring about a situation in which the secured debt is repaid means that the chargor is likely to take a keen interest in ensuring that the receiver is held accountable. This is especially so given that any proceeds from the realisation of the assets would go towards the repayment of the chargor's debt towards the chargee.[64]

37 However, as a matter of practice, a receiver is often granted an indemnity against all claims arising out of the receivership,[65] with their expenses deducted from the pool of proceeds received from realising the charged asset. Chargors should accordingly remain alive to the delicate balance that ought to be struck between the possible benefits of holding a receiver accountable, alongside the equally possible detriment of further reducing the proceeds from any asset by virtue of commencing legal proceedings against the receiver. While the relative risk appetite of the chargor and the chargee, in relation to how the charged asset is dealt with, could potentially be diametrically opposed, this decision is a timely reminder of the perils of adopting an overly litigious approach towards holding the receiver accountable.

VII. Conclusion

38 Ultimately, the Appellate Division's decision provides significant guidance on the scope of a privately appointed receiver's duties toward a chargor company. It is certainly hoped that the decision allows for a

61 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [37] and [68].

62 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2025] 1 SLR 49 at [37] and [68].

63 *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [93].

64 Indeed, such an argument was run by the appellant in the decision below – see *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 at [121].

65 *Kerr and Hunter on Receivers and Administrators* (Thomas Robinson & Peter Walton eds) (Sweet & Maxwell, 21st Ed, 2020) at para 16-43.

better understanding of the receivership mechanism, and how it operates to fulfil its commercial function.
