

8. CIVIL PROCEDURE

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I. Leave to appeal from the Appellate Division of the High Court

8.1 In *UJM v UJL*,¹ the Court of Appeal considered for the first time an application for leave to appeal from a decision of the Appellate Division of the High Court. The decision concerned the division of matrimonial assets and costs.² The leave application was filed out of time.³

8.2 The Court of Appeal dismissed the application on the ground that leave should not be granted for the application to be filed out of time. The applicant had given no explanation for the delay and had failed to address the general requirements for the grant of an extension of time, which are listed in *Bin Hee Heng v Ho Siew Lan*.⁴

8.3 Because the application was the first of its kind to come before the Court of Appeal, the Court of Appeal nevertheless considered the principles governing such applications.⁵ The Court of Appeal emphasised that, in most cases, the Appellate Division serves as the final appellate court, and that leave to bring a further appeal to the Court of Appeal will be granted only in exceptional cases.⁶ The purpose of the scheme under the Supreme Court of Judicature Act 1969⁷ (“SCJA”) is to provide a highly limited avenue for parties to appeal against certain decisions of the Appellate Division.⁸ Whereas the common law as set out in *Lee Kuan Yew v Tang Liang Hong*⁹ governs applications for leave to appeal against decisions of the General Division of the High Court, the statutory

1 [2021] SGCA 117.

2 *UJM v UJL* [2021] SGCA 117 at [19].

3 *UJM v UJL* [2021] SGCA 117 at [20].

4 [2020] SGCA 4 at [23]; *UJM v UJL* [2021] SGCA 117 at [55].

5 *UJM v UJL* [2021] SGCA 117 at [56].

6 *UJM v UJL* [2021] SGCA 117 at [129].

7 2020 Rev Ed.

8 *UJM v UJL* [2021] SGCA 117 at [61].

9 [1997] 2 SLR(R) 862 at [16].

scheme governs applications for leave to appeal against decisions of the Appellate Division.¹⁰

8.4 The Court of Appeal summarised the statutory scheme as follows. The applicant must first ascertain whether the further appeal falls within any of the prescribed categories of cases in the Ninth Schedule to the SCJA. If it does, no appeal may be brought to the Court of Appeal, as provided by s 46 of the SCJA.¹¹ If it does not, the applicant must seek leave in order to bring an appeal before the Court of Appeal, as provided by s 47(1) of the SCJA.¹²

8.5 In the leave application, the applicant must satisfy two requirements:

(a) First, under s 47(2) of the SCJA, the appeal must raise a point of law of public importance. This is a threshold requirement.¹³

(b) Second, it must be appropriate for the Court of Appeal to hear a further appeal from the Appellate Division, taking into account all relevant matters, including at least one of the two considerations stipulated in O 57 r 2A(3) of the Rules of Court¹⁴ (“the Stipulated Considerations”).¹⁵ This requirement of appropriateness gives the Court of Appeal the discretion to determine whether the appeal ought to be heard.¹⁶

8.6 If both requirements are satisfied, the Court of Appeal may but will not necessarily grant leave.¹⁷

8.7 On the threshold requirement, the Court of Appeal interpreted the phrase “an appeal will raise a point of law of public importance” with reference to its previous decision in *Noor Azlin bte Abdul Rahman v Changi General Hospital Pte Ltd*,¹⁸ which had interpreted the same phrase in O 56A r 12(3)(b) of the Rules of Court.¹⁹ Order 56A r 12(3)(b) applies to an application to transfer an appeal that is pending before the Appellate Division to the Court of Appeal. It provides that, when determining

10 *UJM v UJL* [2021] SGCA 117 at [93].

11 *UJM v UJL* [2021] SGCA 117 at [83(a)].

12 *UJM v UJL* [2021] SGCA 117 at [64(c)] and [83(a)].

13 *UJM v UJL* [2021] SGCA 117 at [64(d)].

14 2014 Rev Ed.

15 *UJM v UJL* [2021] SGCA 117 at [66] and [77].

16 *UJM v UJL* [2021] SGCA 117 at [117].

17 *UJM v UJL* [2021] SGCA 117 at [82] and [83(d)(i)].

18 [2021] 2 SLR 440.

19 *UJM v UJL* [2021] SGCA 117 at [97]–[99].

whether it is more appropriate for the Court of Appeal to hear the appeal, the Court of Appeal may have regard to whether the appeal will raise a point of law of public importance. The Court of Appeal compared three aspects of the phrase in the context of transfer applications and in the context of applications for leave to appeal.

8.8 First, in both transfer applications and applications for leave to appeal, the point of law must arise directly for the Court of Appeal's determination and must have a substantial bearing on the outcome of the appeal.²⁰ In applications for leave to appeal, the point of law must also have been raised before the Appellate Division.²¹

8.9 Second, in both applications, a point of law is distinguished from a mere question of fact.²²

8.10 Third, in transfer applications, a point of law is of public importance if it will have weighty ramifications that go beyond the parties such that it would be more appropriate for the Court of Appeal than the Appellate Division to deal with the appeal. Examples include new questions of law of general application and conflicting decisions of the Court of Appeal or the Appellate Division which must be resolved to bring certainty to significant areas of law. In ascertaining whether a point of law of public importance arises, relevant matters include the stipulated considerations.²³ The same principles apply to applications for leave to appeal, save that it must be appropriate for the Court of Appeal to hear a further appeal from the Appellate Division and that the stipulated considerations are not considered at this stage of the analysis.²⁴

8.11 On the facts, the Court of Appeal observed that the applicant's appeal did not satisfy the threshold requirement. Although the dispute generated interesting legal questions, these questions had not been raised before the Appellate Division. So the appeal would not raise these points of law.²⁵ Further, the questions that the applicant claimed would raise points of law were questions of fact.²⁶

20 *Noor Azlin bte Abdul Rahman v Changi General Hospital Pte Ltd* [2021] 2 SLR 440 at [54]; *UJM v UJL* [2021] SGCA 117 at [100]–[101].

21 *UJM v UJL* [2021] SGCA 117 at [103]–[104].

22 *Noor Azlin bte Abdul Rahman v Changi General Hospital Pte Ltd* [2021] 2 SLR 440 at [55]; *UJM v UJL* [2021] SGCA 117 at [105]–[106].

23 *Noor Azlin bte Abdul Rahman v Changi General Hospital Pte Ltd* [2021] 2 SLR 440 at [56], [58] and [62]; *UJM v UJL* [2021] SGCA 117 at [107].

24 *UJM v UJL* [2021] SGCA 117 at [108].

25 *UJM v UJL* [2021] SGCA 117 at [132].

26 *UJM v UJL* [2021] SGCA 117 at [133].

8.12 As for the second requirement in an application for leave to appeal, the first stipulated consideration is whether a decision of the Court of Appeal is “required” to resolve the point of law. The first stipulated consideration will be fulfilled only in exceptional cases. Examples of scenarios that may fulfil it include the following:²⁷

- (a) where there are conflicting decisions of the Court of Appeal on the point of law;
- (b) where there are conflicting decisions of the Appellate Division on the point of law;
- (c) where the Bench of the Appellate Division which heard the appeal was split on the result of the case, and the divergence is on a point of law which has a substantial bearing on the outcome of the case and which directly contributed to the split; and
- (d) where the Bench of the Appellate Division is unanimous in their decision but expresses serious reservation or strong disagreement with legal principles set out in a Court of Appeal precedent.

8.13 The second Stipulated Consideration is whether the interests of the administration of justice, either generally or in the particular case, require the consideration by the Court of Appeal of the point of law.²⁸ Examples of cases that may fulfil the second Stipulated Consideration include those that concern the functioning of crucial aspects of Singapore’s legal system or that will remedy serious injustice.²⁹

8.14 The Court of Appeal also noted that the Appellate Division has the power to overrule decisions of the General Division and of other lower courts and to depart from Appellate Division precedents. Unlike the Court of Appeal, it does not have the power to overturn or overrule other decisions of the Appellate Division or to depart from decisions of the Court of Appeal.³⁰

II. Principles on who must be served with a notice of appeal

8.15 In *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd*,³¹ the respondents were the shareholders of a company under judicial management. The respondents brought a summons against the judicial

27 *UJM v UJL* [2021] SGCA 117 at [120].

28 *UJM v UJL* [2021] SGCA 117 at [121].

29 *UJM v UJL* [2021] SGCA 117 at [124].

30 *UJM v UJL* [2021] SGCA 117 at [115].

31 [2021] 2 SLR 1113.

managers seeking a declaration that the sale of an asset to the first applicant was null and void. The applicants were allowed to participate in the proceedings as non-parties.³² The High Court dismissed the respondents' application and awarded costs in favour of the judicial managers and the applicants. The respondents filed an appeal but did not serve the notice of appeal on the applicants.³³

8.16 The applicants then brought an application before the Court of Appeal seeking to strike out the notice of appeal on the basis that it was not served on them. They also sought, among other things in the alternative, to be served the appeal papers and to participate in the appeal.³⁴ The application raised two issues:³⁵

(a) Does O 57 r 3(6) of the Rules of Court require an appellant to serve the notice of appeal on a non-party who participated in the proceedings below?

(b) If not, can the Court of Appeal exercise its discretion under O 57 rr 10(1)–10(2) of the Rules of Court to direct that the notice of appeal and other appeal papers be served on that non-party, so that it may participate in the appeal?

8.17 On the first issue, the question was whether the applicants constituted “parties to the proceedings in the Court below who [were] directly affected by the appeal” within the meaning of O 57 r 3(6).³⁶ After surveying UK and Malaysian authorities,³⁷ the Court of Appeal set out the two conjunctive requirements in O 57 r 3(6).

8.18 First, O 57 r 3(6) limits the necessity for service of the notice of appeal to persons who were parties to the proceedings below.³⁸ “Non-parties” encompasses all persons who were not named as parties to the

32 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [2].

33 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [3].

34 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [19]–[20].

35 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [4] and [24].

36 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [29].

37 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [33]–[37].

38 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [39].

proceedings below, even if they were permitted to participate in those proceedings.³⁹

8.19 Second, O 57 r 3(6) limits the necessity for service of the notice of appeal to parties whose rights are “directly affected by the appeal”. A party is directly affected by the appeal only if his status and legal rights would be affected by the substantive decision in the appeal without the intervention of any intermediate agency such as a right of indemnity.⁴⁰

8.20 On the facts, the Court of Appeal held that the second requirement might be satisfied as the applicants might well be directly affected by the appeal. The outcome of the appeal would affect their legal rights to the costs that had been awarded in their favour below, and the relief sought in the appeal would directly affect their legal ownership of the asset in question.⁴¹ But the first requirement was not satisfied. Because the applicants had been allowed to participate in the proceedings below as a matter of the court’s discretion and not under any order for joinder, they were not parties to the proceedings below and O 57 r 3(6) did not apply.⁴² So the Court of Appeal did not strike out the notice of appeal.⁴³

8.21 As for the second issue, the Court of Appeal held that the court’s power to allow a non-party to participate in an appeal under O 57 rr 10(1)–10(2) is to be exercised sparingly.⁴⁴ Relevant factors include the nature of the interest of the person to be served, what contribution he was likely to be able to make to the achievement of justice, and what adverse effect the parties would suffer by him being put into the position of a party to the extent that the notice of appeal was served on him.⁴⁵ Further, it is undesirable for unnecessary parties to be before the court as they add to the expense of and may cause delay in the proceedings.⁴⁶ A non-party who has a shared interest with a person who is a party to the appeal

39 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [40].

40 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [46].

41 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [47].

42 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [42] and [48].

43 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [48].

44 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [57].

45 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [50].

46 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [51].

can usually protect his position by informing that party of any argument which the non-party would like to be advanced.⁴⁷

8.22 Applying these principles, the Court of Appeal allowed the applicants to participate in the appeal.⁴⁸ In particular, the applicants could not depend upon the judicial managers' solicitors to represent their interests in the appeal as their interests were not directly aligned with those of the judicial managers.⁴⁹

III. *Riddick* undertakings

8.23 In *Ong Jane Rebecca v Lim Lie Hoa*,⁵⁰ the appellant was a judgment creditor of her former mother-in-law's estate, which was one of the respondents.⁵¹ She brought examination of judgment debtor ("EJD") proceedings against the estate.⁵² The executor of the estate, who was the other respondent, filed affidavits in the EJD proceedings.⁵³ The appellant used information in these affidavits to bring a suit against the executor, alleging breaches of duties he owed to the estate.⁵⁴ When the appellant applied for summary judgment, the executor applied to strike out the claim, alleging that the appellant had violated the *Riddick* principle by using the affidavits in the EJD proceedings to commence the suit.⁵⁵ The High Court held that the appellant was not entitled to use the affidavits in the suit without the leave of court and refused to grant leave.⁵⁶ The suit was consequently struck out for abuse of process.⁵⁷

8.24 According to the Court of Appeal, the issue was whether the affidavits were covered by a *Riddick* undertaking when the appellant commenced the suit and, if so, whether leave of court was required for their use.⁵⁸ The appellant argued that the *Riddick* undertaking did not apply because the affidavits were not disclosed on compulsion and

47 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [51].

48 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [52].

49 *Golden Hill Capital Pte Ltd v Yihua Lifestyle Technology Co, Ltd* [2021] 2 SLR 1113 at [53].

50 [2021] 2 SLR 584.

51 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [7]–[8], [15], [17], [19] and [21].

52 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [24].

53 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [7] and [24].

54 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [25].

55 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [26].

56 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [28]–[31].

57 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [32] and [34].

58 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [95]–[96].

because the suit constituted enforcement proceedings in relation to her proceedings against the estate.⁵⁹

8.25 The Court of Appeal laid down a framework for cases involving the *Riddick* principle. The first question is whether a document produced in discovery is disclosed on compulsion and is therefore covered by the *Riddick* undertaking.⁶⁰ If the document is covered by the *Riddick* undertaking, the next question is whether it may nonetheless be used without leave of court, due to the nature of the related enforcement proceedings for which it is being used.⁶¹ Finally, if the document cannot be used without leave of court, the party relying on the document to commence or sustain related proceedings must seek the court's leave for the undertaking to be lifted.⁶² The Court of Appeal proceeded to apply this framework to documents disclosed in EJD proceedings.

8.26 On the first question, the Court of Appeal held that documents disclosed in EJD proceedings are generally covered by the *Riddick* principle.⁶³ The element of compulsion exists because it is the court that orders a judgment debtor to disclose documents and furnish answers, and non-compliance with orders made in EJD proceedings can result in committal proceedings.⁶⁴ The Court of Appeal rejected the appellant's argument that the executor's disclosure had been voluntary because he had filed the affidavits voluntarily.⁶⁵

8.27 On the second question, the Court of Appeal held that, to determine whether subsequent related proceedings are "enforcement" proceedings in which protected documents may be used without leave, the court will consider two matters.⁶⁶

8.28 First, the court will consider the nature of the proceedings in which the documents were disclosed.⁶⁷ Because EJD proceedings are intended to obtain information that might result in the actual execution of the judgment, the judgment debtor would know that the information disclosed in the EJD proceedings would be used for later related proceedings. In contrast, a party producing documents for specific

59 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [97].

60 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [99(a)] and [100].

61 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [99(b)].

62 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [99(c)].

63 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [106].

64 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [103] and [105].

65 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [119].

66 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [112].

67 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [112].

discovery in an action would not ordinarily expect the documents to be used in related proceedings.⁶⁸

8.29 Second, if that hurdle is crossed, the court will consider the nature of the proceedings in which the documents are to be used.⁶⁹ If the related proceedings satisfy the following three factors, leave of court is not required because the documents are being used for the very purpose for which they were sought.⁷⁰

(a) **Identity of parties.** If the defendant in the related proceedings is either the defendant in the original proceedings or an entity legally empowered or obliged to make payment on behalf of that defendant, a case may be made that the related proceedings constitute enforcement against that defendant.

(b) **Nature of debt.** If the sum being pursued in the related proceedings forms the subject of the original proceedings, this would indicate that the related proceedings are an enforcement of the original proceedings rather than a claim *de novo*.

(c) **Nature of related proceedings.** Whether the related proceedings constitute “enforcement” in the ordinary sense, that is, modes of execution or proceedings that facilitate the payment of judgment debts, is to be determined in the context of the particular case.

8.30 On the facts, the Court of Appeal held that the estate knew that the affidavits, having been disclosed in the EJD proceedings, would likely be used in related enforcement proceedings.⁷¹ But the suit was against the executor, not the estate which was the judgment debtor, and concerned a different cause of action.⁷² Further, a pending civil suit could not be characterised as enforcement because it did not fall within any of the modes of execution under O 45 of the Rules of Court and did not, in itself, compel payment in satisfaction of a debt.⁷³ So leave had to be sought to use the affidavits in the suit.⁷⁴

8.31 On the third question of whether the *Riddick* undertaking should be lifted, the Court of Appeal applied the law as set out in its previous decision in *Lim Suk Ling Priscilla v Amber Compounding*

68 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [113].

69 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [114].

70 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [114] and [116].

71 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [128].

72 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [129]–[130].

73 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [131].

74 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [132].

Pharmacy Pte Ltd.⁷⁵ It held that the balance of interests lay in favour of lifting the *Riddick* undertaking.⁷⁶ First, the appellant did not bring the EJD proceedings with a collateral purpose.⁷⁷ When a plaintiff has taken documents covered by the *Riddick* undertaking from one set of proceedings for use in another, the plaintiff has the burden of proving that the events leading to the discovery of the documents were not set into motion improperly. Discharging this burden will not be difficult if the plaintiff has acted *bona fide* throughout.⁷⁸ Second, the affidavits were being meaningfully used to support distinct related proceedings, namely, the proceedings against the estate.⁷⁹ Finally, there were no considerations militating against lifting the *Riddick* undertaking.⁸⁰

8.32 The Court of Appeal granted the appellant retrospective leave because the case was exceptional and the appellant had a plausible explanation for not seeking prospective leave.⁸¹

IV. Post-judgment Mareva injunctions and modification or removal of undertakings

8.33 In *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd*,⁸² the appellant had obtained a worldwide Mareva injunction against the first respondent and a domestic Mareva injunction against the second respondent pending the determination of the appellant's suit. The High Court dismissed the appellant's suit, and the appellant appealed.⁸³ The Court of Appeal reinstated the Mareva injunctions pending the final determination of the appeal or further order,⁸⁴ and later allowed the appeal.⁸⁵

8.34 The appellant then sought an order to extend the reinstated Mareva injunctions until the judgment debt was satisfied and costs were paid.⁸⁶ As the appellant wished to bring enforcement proceedings in other jurisdictions, it also sought, among other things, to be released from

75 [2020] 2 SLR 912; *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [136].

76 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [139].

77 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [139(a)].

78 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [149].

79 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [139(b)] and [155].

80 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [139(c)].

81 *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [169]–[170].

82 [2021] 1 SLR 1298.

83 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2021] 1 SLR 1298 at [4].

84 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2021] 1 SLR 1298 at [4].

85 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2021] 1 SLR 1298 at [5].

86 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2021] 1 SLR 1298 at [7].

undertakings it had provided when it obtained the worldwide Mareva injunction.⁸⁷

8.35 The Court of Appeal affirmed the High Court decision in *Hitachi Leasing (Singapore) Pte Ltd v Vincent Ambrose*,⁸⁸ which had held that three conditions must be met to obtain a post-judgment Mareva injunction:⁸⁹

- (a) There must be a real risk of the debtor dissipating his assets with the intention of depriving the creditor of satisfaction of the judgment debt.
- (b) The injunction must act as an aid to execution.
- (c) It must be in the interests of justice to grant the injunction.

8.36 On the facts, the Court of Appeal held that all three conditions were met. Given a real risk of dissipation, the Mareva injunctions would indisputably facilitate execution of the judgment debt. There was no injustice in enjoining the sum required to ensure that the judgment sum was promptly paid to the appellant.⁹⁰

8.37 Regarding releasing the appellant from its undertakings, the Court of Appeal stated that the standard undertakings accompanying a worldwide Mareva injunction should not be removed without a sound and proper reason.⁹¹ The Court of Appeal transposed the test for modifying or removing *Riddick* undertakings in the context of discovery orders to the context of Mareva injunctions. A plaintiff who seeks to be released from his undertakings must: (a) demonstrate cogent and persuasive reasons for the release; and (b) show that the release would not occasion injustice to the defendant who is enjoined by the Mareva injunction or who had disclosed information under any court order.⁹²

8.38 Applying this test, the Court of Appeal held that there was no cogent reason to release the appellant from its undertakings. It was not necessary to permit the appellant to bring foreign enforcement proceedings at that time, because the respondents who were subject to the Mareva injunctions had shown an intention to pay the judgment debt. The Court of Appeal gave the appellant liberty to file a fresh application for the release of the undertakings.⁹³

87 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2021] 1 SLR 1298 at [8] and [18].

88 [2001] 1 SLR(R) 762.

89 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2021] 1 SLR 1298 at [21].

90 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2021] 1 SLR 1298 at [24].

91 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2021] 1 SLR 1298 at [69].

92 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2021] 1 SLR 1298 at [70].

93 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2021] 1 SLR 1298 at [73].

V. Joinder in applications for leave to bring statutory derivative actions

8.39 In *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd*,⁹⁴ the appellant had entered into shipbuilding contracts with the companies that were the first respondents in each appeal.⁹⁵ The Bermudan holding company of the first respondent companies became insolvent, and the appellant purported to terminate the contracts.⁹⁶ The second respondent, which was a majority shareholder and a creditor of the Bermudan holding company, applied for and obtained leave under s 216A(2) of the Companies Act⁹⁷ to commence derivative arbitrations in the names of the first respondent companies against the appellant.⁹⁸ After the time for appeal against the leave orders expired, the appellant applied to be joined to the leave applications under O 15 r 6(2)(b) of the Rules of Court, on the basis that it was the intended defendant in the arbitrations.⁹⁹ The High Court dismissed the joinder applications, holding that, although the court had the power to order the appellant's joinder, the appellant did not satisfy the requirements for joinder under O 15 r 6(2)(b).¹⁰⁰

8.40 The Court of Appeal held that the High Court had no power to order the appellant's joinder when the time for appeal against the orders granting leave had expired.¹⁰¹ As stated in *Ernest Ferdinand Perez De La Sala v Compañía De Navegación Palomar, SA* (“*De La Sala*”),¹⁰² the court has the power to order joinder post-judgment if and only if something “remains to be done” in the matter.¹⁰³ In *De La Sala*, the Court of Appeal had in *obiter* expressed its reservations about a more liberal standard in an English case that interpreted “proceedings” broadly to include the post-judgment stage when further action may be needed to enforce the judgment.¹⁰⁴

8.41 The Court of Appeal rejected the liberal standard. It stated that the liberal standard has troubling implications for finality in litigation as it renders joinder possible so long as any part of a judgment debt remains unpaid.¹⁰⁵ Further, it is not necessary to adopt the liberal standard to give

94 [2021] SGCA 109.

95 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [1].

96 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [1]–[2].

97 Cap 50, 2006 Rev Ed.

98 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [1] and [3].

99 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [4] and [21].

100 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [5].

101 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [21].

102 [2018] 1 SLR 894 at [198].

103 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [11].

104 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [12].

105 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [14].

effect to the purpose of O 15 r 6(2). Whether proceedings remain afoot turns on a substantive consideration of whether something “remains to be done” in the case, not on a formalistic assessment of whether a final judgment or order has been made.¹⁰⁶ The approach taken must be conditioned on the nature of the action, with especial attention to the nature of the remedy sought. Generally, if there has been a judgment on the merits conclusively determining parties’ rights in the action (for example, a judgment determining liability and quantum in an ordinary writ action for damages) and the time for appeal has expired, then nothing “remains to be done” and the court’s power to order joinder ceases on the expiry of the time for appeal.¹⁰⁷

8.42 Applying these principles, the Court of Appeal held that, in a s 216A application for leave, the only issue is whether the complainant is entitled to commence derivative proceedings. Once the court decides the application and makes an order granting or refusing leave, and the time to appeal against that order expires, the complainant’s entitlement under s 216A(2) as to the proposed derivative proceedings is conclusively determined. Thus, nothing “remains to be done”, and the court’s power to order joinder ceases.¹⁰⁸ Even if the court’s order contains an ancillary order giving the parties liberty to apply, that does not mean that something “remains to be done” in the s 216A application until the derivative proceedings are concluded. The liberty to apply order pertains to the conduct of the derivative proceedings, which are distinct from the s 216A application.¹⁰⁹

8.43 Another issue before the Court of Appeal was whether the appellant satisfied the non-discretionary requirements for joinder in O 15 r 6(2)(b) as the intended defendant in the arbitrations.¹¹⁰ The Court of Appeal agreed with the High Court that only insiders of the company with an interest in its management, namely, its shareholders and directors, can satisfy the non-discretionary requirements for joinder to a s 216A application.¹¹¹

8.44 Where the intended defendant relies on the “necessity” limb in O 15 r 6(2)(b)(i), the non-discretionary requirements for joinder will not be satisfied because the sole issue in a s 216A application is whether the court should compel a company to litigate contrary to the will of its

106 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [15].

107 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [17].

108 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [19].

109 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [20].

110 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [7(c)].

111 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [5] and [8].

shareholders and directors. That is an issue exclusively for the company's insiders.¹¹²

8.45 Where the intended defendant relies on the “just and convenient” limb in O 15 r 6(2)(b)(ii), the non-discretionary requirements for joinder will likewise not be satisfied.¹¹³ In the derivative proceedings, the intended defendant may raise the issue of the merits of the derivative proceedings in a striking out application. But that issue does not bear the requisite relationship with any of the issues in a s 216A application.¹¹⁴

VI. Indemnity costs in applications to set aside arbitral awards

8.46 In *CDM v CDP*,¹¹⁵ the appellants applied to set aside part of an arbitral award under the International Arbitration Act.¹¹⁶ Their challenge failed in both the High Court and the Court of Appeal.¹¹⁷ The respondent initially contended that it should be entitled to costs on an indemnity basis. Although the respondent abandoned this position at the appeal hearing, the Court of Appeal addressed whether there should be a presumption of indemnity costs when an application for setting aside an arbitral award fails.¹¹⁸

8.47 The Court of Appeal rejected the approach of the Hong Kong courts, which granted indemnity costs when an award was challenged unsuccessfully unless special circumstances were shown.¹¹⁹ The Hong Kong position was based on the reasoning that a party's challenge to an arbitral award in court was tantamount to going back on the party's recognition of the award as final and binding. According to the Court of Appeal, this reasoning failed to recognise that the limited avenues for challenging an arbitral award were provided for by statute.¹²⁰

8.48 Approving the High Court decision in *BTN v BTP*,¹²¹ the Court of Appeal noted that Singapore's approach to indemnity costs involves a highly fact-specific assessment to determine whether there are exceptional circumstances warranting indemnity costs.¹²² The setting-

112 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [24]–[25].

113 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [29].

114 *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGCA 109 at [27].

115 [2021] 2 SLR 235.

116 Cap 143A, 2002 Rev Ed. *CDM v CDP* [2021] 2 SLR 235 at [11]–[13].

117 *CDM v CDP* [2021] 2 SLR 235 at [4] and [14].

118 *CDM v CDP* [2021] 2 SLR 235 at [48].

119 *CDM v CDP* [2021] 2 SLR 235 at [50]–[52].

120 *CDM v CDP* [2021] 2 SLR 235 at [55].

121 [2021] 4 SLR 603.

122 *CDM v CDP* [2021] 2 SLR 235 at [53].

aside context is merely one factor that the court considers when deciding whether to order indemnity costs.¹²³ It would be neither appropriate nor permissible for parties in proceedings to set aside an arbitral award to insist on different treatment from other cases before the courts.¹²⁴

VII. Principles on assessment of costs in the Singapore International Commercial Court

8.49 In *Kiri Industries Ltd v Senda International Capital Ltd*,¹²⁵ the plaintiff filed a claim for minority oppression in the High Court and had the case transferred to the Singapore International Commercial Court (“SICC”).¹²⁶ The proceedings were bifurcated.¹²⁷ The plaintiff substantially succeeded in its claim. The SICC awarded the plaintiff costs for the liability tranche; such costs were to be taxed if not agreed. The parties were unable to agree on costs.¹²⁸ After the valuation tranche, the plaintiff sought costs for both tranches as well as disbursements, which included items to which the defendant objected.¹²⁹

8.50 The first issue was whether the costs ordered for the liability tranche should be taxed by the Registrar under O 59 r 20 of the Rules of Court or decided by the trial *coram*.¹³⁰ The SICC rejected the defendant’s argument that the costs order had directed taxation by the Registrar under O 59.¹³¹ As O 110 r 46(6) states, O 59 does not apply to SICC proceedings.¹³² Consistent with the efficiency and flexibility of the SICC regime, the trial *coram* is to fix costs after an assessment, whether summary or detailed, that is commensurate with the complexity of the matter.¹³³

8.51 The second issue was whether the plaintiff was entitled to the costs of the valuation tranche. The SICC held that the plaintiff was entitled to reasonable costs of the valuation tranche because it had persuaded the court that its shares should be valued at a certain amount.¹³⁴

123 *CDM v CDP* [2021] 2 SLR 235 at [53].

124 *CDM v CDP* [2021] 2 SLR 235 at [54].

125 [2022] 3 SLR 174.

126 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [2] and [8].

127 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [3]–[6].

128 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [3].

129 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [9] and [12].

130 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [15]–[16].

131 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [16]–[17].

132 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [20].

133 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [23].

134 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [26].

8.52 The third issue was what quantum the plaintiff should be awarded for costs before the transfer to the SICC, costs after the transfer and disbursements.

8.53 For the pre-transfer costs, the SICC took Appendix G of the Supreme Court Practice Directions as the initial reference point.¹³⁵ Following the Court of Appeal's decision in *CBX v CBZ*,¹³⁶ the SICC stated that, because the Registrar's transfer order did not disapply Appendix G and the parties did not agree to disapply Appendix G, Appendix G would apply unless the party seeking to depart from it provided compelling justification for departing from it.¹³⁷ On the facts, the plaintiff provided no justification.¹³⁸ Minority oppression cases of a similar complexity were routinely heard in the High Court. Transferring the case to the SICC did not justify departing from Appendix G and thus treating the pre-transfer costs of the case differently from the costs of similar cases heard in the High Court.¹³⁹

8.54 The SICC then applied an uplift to the Appendix G scale to reflect the complexity of the matter.¹⁴⁰ The difficulty was that the applicable version of Appendix G, which was the 2019 version, did not differentiate between pre-trial costs and trial costs.¹⁴¹ To determine the pre-transfer costs, the SICC therefore assessed the costs of the liability tranche as if the matter had been conducted entirely in the High Court, applying an uplift for complexity, and apportioned those costs between the pre-transfer and post-transfer periods.¹⁴²

8.55 As for the post-transfer costs, the SICC noted that the court has a wide discretion in assessing what "reasonable costs" are under O 110 r 46.¹⁴³ Following *CBX v CBZ*, the SICC stated that the issue was whether the facts justified rejecting Appendix G or giving it weight as one of several factors.¹⁴⁴ The burden was on the party seeking to apply Appendix G to show that the post-transfer work was no different from the usual run of similar cases in the High Court.¹⁴⁵ On the facts, the matter increased

135 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [31].

136 [2022] 1 SLR 88.

137 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [33]–[34].

138 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [34].

139 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [38].

140 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [31].

141 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [42].

142 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [43] and [46].

143 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [56].

144 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [54] and [56].

145 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [55].

in complexity after its transfer, raising novel and challenging issues that involved valuation, economics and statistics and required expert evidence.¹⁴⁶ The SICC thus gave Appendix G no weight in assessing the post-transfer costs.¹⁴⁷

8.56 The SICC then set out principles for assessing “reasonable costs” under O 110 r 46. First, costs should generally be assessed based on the time spent on the matter multiplied by an appropriate hourly tariff. Second, the reasonableness of those two figures can be assessed using the factors set out in para 152(3)(a) of the SICC Practice Directions. In determining whether the litigation or aspects of it have been reasonably pursued, it is useful to assess whether the issues canvassed were reasonably pursued. If an issue was not reasonably pursued, it should be disallowed by deducting the hours attributed to that issue from the costs claimed. If the parties have not presented their costs in terms of the issues canvassed, the court will use a proxy for the hours attributed to that issue.¹⁴⁸ Even if an issue was reasonably pursued, the court may find that the time spent on the issue or the hourly rates used were not reasonable given the nature of the issue.¹⁴⁹ Third, where the court holds that Appendix G should be departed from, the final quantum of costs should not be disproportionate to the value of the claim.¹⁵⁰

8.57 The SICC explained that, under this approach, costs awarded in the SICC will generally be higher than in the High Court and may well exceed indemnity costs in the High Court.¹⁵¹ That is because the policy concern in the High Court of access to justice is replaced in the SICC by the commercial consideration of ensuring that a successful litigant is not generally out of pocket for prosecuting its claim sensibly.¹⁵² At the same time, the SICC’s approach to costs does not pave the way for an award of solicitor-and-client costs, because only reasonable costs are recoverable.¹⁵³ Applying this approach, the SICC awarded post-transfer costs that were higher than indemnity costs in the High Court but did not amount to solicitor-and-client costs.¹⁵⁴

146 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [58] and [60].

147 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [63].

148 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [81].

149 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [80].

150 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [82].

151 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [74] and [78].

152 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [77].

153 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [79].

154 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [68].

8.58 On disbursements, the SICC noted that there was no local decision on whether foreign counsel's fees were recoverable, and it expressed no view on whether they should be recoverable as a general rule.¹⁵⁵ The SICC held that the party seeking to recover foreign counsel's fees must cogently explain why it needed foreign counsel when it had separate representation for the SICC proceedings.¹⁵⁶ On the facts, the plaintiff had no cogent explanation.¹⁵⁷ The SICC also disallowed a portion of the plaintiff's expert witness fees. It applied the distinction between costs that are unreasonably incurred and thus not recoverable and costs that are recoverable for expert evidence which is not accepted by the court but was reasonably sought.¹⁵⁸ The SICC also held that a party may recover not only travel expenses incurred for its witnesses to attend court but also travel expenses incurred for the purpose of prosecuting its claim, such as to attend meetings with counsel.¹⁵⁹

8.59 Finally, the SICC awarded the plaintiff post-judgment interest on the costs awarded. The SICC held that interest should run from the date of the judgment awarding costs.¹⁶⁰

VIII. Date of set off for crossclaims in different currencies

8.60 In *Haribo Asia Pacific Pte Ltd v Aquarius Corp*,¹⁶¹ the High Court allowed the plaintiff's claim, which was denominated in euro, and part of the defendant's counterclaim, which was denominated in the Korean won.¹⁶² This raised the issue of what the appropriate date was for the defendant's smaller judgment debt to be converted to euro and set off against the plaintiff's larger judgment debt.¹⁶³

8.61 The High Court ordered that the parties determine the exchange rate and set off their judgment debts on the date of the High Court's judgment.¹⁶⁴ The set off should not be postponed without good reason and should be applied as soon as the judgment debtor's right to set off

155 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [99].

156 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [99].

157 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [100].

158 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [102], [105], [108] and [109].

159 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [110]–[111] and [114].

160 *Kiri Industries Ltd v Senda International Capital Ltd* [2022] 3 SLR 174 at [119].

161 [2021] SGHC 278.

162 *Haribo Asia Pacific Pte Ltd v Aquarius Corp* [2021] SGHC 278 at [237] and [239].

163 *Haribo Asia Pacific Pte Ltd v Aquarius Corp* [2021] SGHC 278 at [241].

164 *Haribo Asia Pacific Pte Ltd v Aquarius Corp* [2021] SGHC 278 at [240].

arises.¹⁶⁵ When the party who pleads set-off makes a claim for damages to be assessed, the right to set off arises on the date of the judgment determining the entitlement to damages.¹⁶⁶

8.62 Further, the High Court held that the set-off should not be applied before the date of the judgment without good reason.¹⁶⁷ As for the currency conversion, it should be effected as close as possible to the date of set-off. If the set-off cannot be applied before the date of judgment, there will likely be no justification for converting currencies before the date of judgment either.¹⁶⁸

8.63 Using the date of the judgment as the date of the set off, the High Court applied the approach in *Fearns v Anglo-Dutch Paint & Chemical Co Ltd*¹⁶⁹ to ordering a set-off between amounts payable in different currencies:¹⁷⁰

- (a) First, assess and add to each principal amount any interest accruing up to the date of the set-off.
- (b) Second, convert the smaller amount into the currency of the larger amount at the exchange rate prevailing at that date.
- (c) Third, order payment of the balance in the currency claimed by the overall judgment creditor.

The High Court also observed that, if the overall judgment creditor seeks to enforce payment of the balance in Singapore, the balance will be converted to Singapore dollars on the date on which execution is authorised.¹⁷¹

IX. Limitation periods and the meaning of “knowledge”

8.64 In *Leow Peng Yam v Kang Jia Dian Aryall*,¹⁷² the respondent was injured in an accident and regained reasonable cognitive ability eight weeks later.¹⁷³ After discovering the appellant’s identity, she commenced proceedings against him for negligence three years and one month after

165 *Haribo Asia Pacific Pte Ltd v Aquarius Corp* [2021] SGHC 278 at [243] and [245].

166 *Haribo Asia Pacific Pte Ltd v Aquarius Corp* [2021] SGHC 278 at [245].

167 *Haribo Asia Pacific Pte Ltd v Aquarius Corp* [2021] SGHC 278 at [247].

168 *Haribo Asia Pacific Pte Ltd v Aquarius Corp* [2021] SGHC 278 at [252].

169 [2011] 1 WLR 366.

170 *Haribo Asia Pacific Pte Ltd v Aquarius Corp* [2021] SGHC 278 at [254].

171 *Haribo Asia Pacific Pte Ltd v Aquarius Corp* [2021] SGHC 278 at [248] and [254].

172 [2021] SGHC 275.

173 *Leow Peng Yam v Kang Jia Dian Aryall* [2021] SGHC 275 at [2].

the accident.¹⁷⁴ The District Court held that the action was not time barred under s 24A(2) of the Limitation Act.¹⁷⁵ On appeal, the issue was whether the impairment of the respondent's cognitive functions affected the time at which she acquired the requisite knowledge for the purpose of ss 24A(2)(b), 24A(4)(b) and 24A(6)(a) of the Limitation Act.¹⁷⁶

8.65 The High Court held that "knowledge" for the purpose of ss 24A(2)(b), 24A(4)(b) and 24A(6)(a) includes a reasonable cognitive understanding of the information within a plaintiff's possession.¹⁷⁷ The question is whether, given the circumstances of the case, the plaintiff could reasonably have been expected to acquire the requisite knowledge from facts observable and ascertainable by her, whatever her personal characteristics or intelligence may be.¹⁷⁸ If the plaintiff lacked sufficient cognitive function, facts "observable or ascertainable" by the plaintiff would have no meaning.¹⁷⁹

8.66 The High Court found that the respondent's impairment in cognitive function was a direct result of the accident. It was reasonable for her to be permitted a period of time to regain sufficient cognitive function to be aware of and able to understand that she had suffered a serious injury for which she should pursue a claim, and to obtain the identity of the driver involved in the accident, before the limitation period began to run.¹⁸⁰

8.67 The High Court also held that the time period must be reasonable. For example, if the injured person permanently lost cognitive function such that the suit would reasonably be brought by a deputy or legal representative, the standard of reasonableness would apply; the suspension of limitation would not be indefinite.¹⁸¹ In ascertaining a reasonable time for the purpose of s 24A(6), the degree of knowledge required under ss 24A(2)(b) and 24A(4)(b) is that of reasonable belief in the defendant's identity.¹⁸²

8.68 On the facts, the High Court held that the respondent's eight-week recovery period should be excluded in calculating the limitation

174 *Leow Peng Yam v Kang Jia Dian Aryall* [2021] SGHC 275 at [6].

175 Cap 163, 1996 Rev Ed. *Leow Peng Yam v Kang Jia Dian Aryall* [2021] SGHC 275 at [7].

176 *Leow Peng Yam v Kang Jia Dian Aryall* [2021] SGHC 275 at [13].

177 *Leow Peng Yam v Kang Jia Dian Aryall* [2021] SGHC 275 at [14].

178 *Leow Peng Yam v Kang Jia Dian Aryall* [2021] SGHC 275 at [24].

179 *Leow Peng Yam v Kang Jia Dian Aryall* [2021] SGHC 275 at [25].

180 *Leow Peng Yam v Kang Jia Dian Aryall* [2021] SGHC 275 at [25].

181 *Leow Peng Yam v Kang Jia Dian Aryall* [2021] SGHC 275 at [25].

182 *Leow Peng Yam v Kang Jia Dian Aryall* [2021] SGHC 275 at [27].

period.¹⁸³ During those eight weeks, she could not reasonably have been expected to acquire knowledge of the appellant's identity and could not have acquired any reasonable belief as to his identity.¹⁸⁴

X. Warrants to act for foreign entities

8.69 In *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar*,¹⁸⁵ the plaintiffs were a state agency and state-owned companies of Mongolia.¹⁸⁶ Proceedings were brought in the plaintiffs' names in Mongolia and other jurisdictions.¹⁸⁷ The plaintiffs obtained a freezing order against the defendants in Singapore.¹⁸⁸ Two of the defendants applied to have the freezing order discharged on the preliminary point that the plaintiffs' solicitors had not produced a warrant to act from the plaintiffs or their duly authorised agent.¹⁸⁹ Those two defendants argued that O 64 r 7 of the Rules of Court required the warrant to act to be signed either by the party or by its duly authorised agent.¹⁹⁰

8.70 The plaintiffs had not themselves or by any agent given authority to anyone to execute a warrant to act.¹⁹¹ Rather, a prosecutor from the Metropolitan Prosecutor's Office of Mongolia, who was authorised under Mongolian law to participate in proceedings in the names of state organisations, had instructed an English solicitor to seek freezing orders in all relevant courts, and that English solicitor had countersigned the letter of engagement produced by the plaintiffs' solicitors.¹⁹² The issue was whether O 64 r 7 allowed proceedings to be maintained in the name of a foreign party which did not itself give consent and for whom another

183 *Leow Peng Yam v Kang Jia Dian Aryall* [2021] SGHC 275 at [36].

184 *Leow Peng Yam v Kang Jia Dian Aryall* [2021] SGHC 275 at [35].

185 [2021] 5 SLR 556.

186 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [2].

187 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [3].

188 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [4].

189 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [5].

190 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [10].

191 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [1] and [8].

192 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [8] and [33].

person had been given the right to act under the law of the foreign country.¹⁹³

8.71 According to the High Court, the purpose of O 64 r 7 was to ensure that, when a solicitor takes steps in proceedings on behalf of a named party, the court and the opposing party can hold the named party bound by and responsible for those steps.¹⁹⁴ This purpose would not be promoted by limiting the authority of solicitors to that derived from consent of the named party, because there are recognised examples of a solicitor having authority to act for a party even without that party's actual consent.¹⁹⁵

8.72 The High Court therefore held that proceedings can be maintained in a party's name on the instructions of a person having a common law or statutory right to sue in that party's name, or on the instructions of a duly authorised agent of that person.¹⁹⁶ The consent of the named party is not required.¹⁹⁷ In such a case, the solicitor should obtain a warrant to act from the person having the right to sue or from that person's duly authorised agent. If there is no such warrant, the solicitor may still prove by other evidence that he has authority to represent the named party.¹⁹⁸ On the facts, the Mongolian prosecutor had the right under Mongolian law to act on behalf of the plaintiffs, so the plaintiffs were properly represented by the plaintiffs' solicitors.¹⁹⁹

193 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [1].

194 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [17].

195 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [18].

196 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [23]–[24] and [36].

197 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [23].

198 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [24].

199 *The Agency for Policy Coordination on State Property of Mongolia v Batbold Sukhbaatar* [2021] 5 SLR 556 at [36].