8. CIVIL PROCEDURE

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I. Undertaking from litigation funders as security for costs

8.1 In *Lum Ooi Lin v Hyflux Ltd*,[1] the senior assistant registrar ("SAR") below ordered the plaintiffs to furnish security for the defendant's costs by way of:[2]

> (a) a costs undertaking jointly by the plaintiff's litigation funders, Omni Bridgeway Ltd ("OB") and Omni Bridgeway (Singapore) Pte Ltd ("OBS"), on terms satisfactory to the defendant ("Omni Undertaking");
>
> (b) if not (a), a banker's guarantee on terms satisfactory to the defendant;
>
> (c) if not (a) or (b), a solicitor's undertaking on terms satisfactory to the defendant; and
>
> (d) if the parties could not agree on the terms of (a) to (c), then the security was to be provided by way of payment into court.

8.2 The plaintiffs appealed the SAR's decision to the General Division of the High Court ("General Division"), seeking to restrict the form of security to the costs undertaking only, instead of effectively allowing the eventual form of security to be determined by the defendant.[3] On appeal, the General Division considered two novel issues. First, whether a plaintiff was restricted to any fixed form of security for costs. Second, whether the Omni Undertaking from the plaintiff's litigation funders was an adequate form of security.

8.3 In addressing these two issues, the General Division distilled two key principles, relying heavily on the Victoria Supreme Court

1 [2023] 2 SLR 640.
2 *Lum Ooi Lin v Hyflux Ltd* [2023] 2 SLR 640 at [5].
3 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [2].

decision of *DIF III Global Co-Investment Fund LP v BBLP LLC*.[4] First, a plaintiff was not restricted to any fixed form of security for costs.[5] Second, the plaintiff bore the burden of showing that the proposed form of security was "adequate".[6] Although this case was decided under O 23 of the Rules of Court[7] ("ROC 2014"), the General Division held that the same principles regarding the provision of security for costs would apply, with the appropriate adaptation, to O 9 r 12 of the Rules of Court 2021 ("ROC 2021").[8] This was because the two provisions were materially the same in substance.[9]

8.4 On the first issue, the General Division held that a plaintiff was not restricted to any fixed form of security for costs. There was also no default starting point as to the form of security.[10] Order 23 r 2 of the ROC 2014 did not prescribe a particular form of security, giving the court a wide discretion to order security in any form it deemed fit.[11] There was also no principled reason why some forms of security should be preferred over others.[12] As such, the mere fact that the Omni Undertaking was from the plaintiff's litigation funders did not, in itself, mean that it was inadequate security.[13] There was no general proposition that the courts did not consider undertakings from litigation funders to be adequate security.[14]

8.5 Although the court had a wide discretion under O 23 r 2 to order security in any form it deemed fit, this discretion had to be exercised pursuant to clear principles.[15] As such, on the second issue of whether the Omni Undertaking from the plaintiff's litigation funders was adequate security, it was for the plaintiff to prove that the proposed form of security was "adequate". This meant that the security had to be enforceable in a simple and straightforward manner, such that the defendant could recover the costs of the action if he succeeded.[16]

8.6 As long as the plaintiff's proposed security was adequate, the purpose of the defendant's security for costs application would be met

4 [2016] VSC 401.
5 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [12].
6 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [12].
7 2014 Rev Ed.
8 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [8].
9 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [8].
10 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [21].
11 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [10].
12 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [21].
13 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [34].
14 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [34].
15 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [10].
16 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [28].

and there was no further reason for the court to compel the plaintiff to provide security in a particular form.[17] The General Division nevertheless recognised that there were some "traditional" forms of security (such as bank guarantees, solicitors' undertakings and payments into court) that would be more readily characterised as being adequate, either due to their inherent advantages or historical usage.[18] This did not mean that forms of security other than the "traditional" ones could never be adequate – the court ultimately had to consider their characteristics and the circumstances of the case.[19]

8.7 In the present case, the General Division was satisfied that the Omni Undertaking was an adequate form of security for costs.

(a) First, the Omni Undertaking was an irrevocable and unconditional promise to pay the defendant the amount of any costs order (up to S$90,000) in her favour, and hence was akin to a bank guarantee.[20]

(b) Second, the plaintiff's litigation funders had sufficient assets to satisfy a costs order up to S$90,000, which was a small fraction of the funders' total assets.[21] Significantly, the General Division rejected the defendant's argument that the funders might not be able to satisfy a costs order because being in the litigation funding business, they were subject to commercial risk.[22] Other commercial enterprises, including banks, were also subject to commercial risks, and it was not realistic to eliminate all commercial risk.[23] Given the assets owned by the funders, the risk that their businesses would fail in the time when security for costs was provided was "extremely low".[24]

(c) Third, there was little to no risk of the plaintiff's funders not honouring the Omni Undertaking due to the substantial reputational damage they would suffer.[25]

(d) Fourth, the defendant could easily enforce the Omni Undertaking against the funders. She had immediate recourse against OBS, which was based in Singapore. Even if she had to bring proceedings against OB in Australia, Singapore judgments

17 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [21].
18 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [26].
19 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [26].
20 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [41].
21 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [43].
22 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [43].
23 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [43].
24 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [43].
25 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [44].

could be enforced in Australia with relative ease.[26] Further, the Omni Undertaking provided that OB would not seek to set aside any court judgment in the Australian courts or seek security for costs in any proceedings by the defendant to enforce the Omni Undertaking there.[27] These provisions narrowed the scope of problems that the plaintiff's funders could create, and were a factor pointing in favour of finding that the Omni Undertaking was adequate security.[28] Indeed, while the risk of satellite litigation was a factor that the court should take into account, it did not necessarily follow that all "non-conventional" modes of security would increase the risk of satellite litigation.[29]

(e) Finally, the Omni Undertaking required the plaintiff's funders to notify the defendant in writing if the funding agreement was terminated and meet any adverse costs orders made during the term of the funding agreement.[30] These terms led the General Division to find that the defendant would be protected against the risk of incurring substantial costs without knowing that the funding agreement had been terminated.[31]

8.8 Hearing the defendant's further appeal, the Court of Appeal affirmed the General Division's decision in all material regards.[32] In support of the proposition that there could not be a default "conventional" starting point as to the form of security, the Court of Appeal explained that what was "conventional" would change with the times. Courts should expect forms of security reflective of the times.[33] As such, the court would not refuse to consider non-conventional modes of security just because "conventional" modes were still available to the plaintiff.[34]

8.9 On how the principles set out by the General Division applied to the ROC 2021, the Court of Appeal affirmed that the court's discretion to determine the form of security for costs under the ROC 2021 was as wide as it was under the ROC 2014.[35]

26 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [45].
27 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [45].
28 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [46].
29 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [25].
30 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [47].
31 *Hyflux Ltd v Lum Ooi Lin* [2023] SGHC 113 at [47].
32 *Lum Ooi Lin v Hyflux Ltd* [2023] 2 SLR 640.
33 *Lum Ooi Lin v Hyflux Ltd* [2023] 2 SLR 640 at [36].
34 *Lum Ooi Lin v Hyflux Ltd* [2023] 2 SLR 640 at [36].
35 *Lum Ooi Lin v Hyflux Ltd* [2023] 2 SLR 640 at [29].

II. Third party's standing to appeal judgment in principal proceedings

8.10 In *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP*,[36] two separate contracts were central to the dispute. The first contract was a sales agreement for the purchase of a vehicle between the buyer ("Buyer") and the sellers ("Sellers").[37] The second contract was a hire-purchase agreement between one of the Sellers and Auto Lease Pte Ltd ("Auto Lease"), a company in the business of financing vehicle purchases.[38]

8.11 At trial, the Buyer alleged that the Sellers had breached the sales agreement by failing to ensure that all encumbrances over the vehicle were removed, which prevented registration of the ownership transfer.[39] In turn, the Sellers alleged that Auto Lease had breached the hire-purchase agreement by misapplying moneys received from the Buyer and failing to confirm that the vehicle was no longer under financing.[40] The Sellers argued that this prevented the Buyer from registering the transfer of ownership.[41] Accordingly, the Sellers claimed a contribution or indemnity from Auto Lease for all losses which they were held liable to the Buyer for.[42]

8.12 At the conclusion of trial, the District Court found the Sellers in breach of the sales agreement and was thus liable to the Buyer for damages.[43] The District Court also found Auto Lease to be in breach of the hire-purchase agreement and held that Auto Lease had to fully indemnify the Sellers for the damages awarded to the Buyer.[44] Auto Lease subsequently appealed against the whole of the District Court's decision to the General Division.[45]

8.13 The General Division had to consider the novel question of whether Auto Lease, as a non-party to the sales agreement on which the Buyer's claim was based, had *locus standi* to appeal the trial judge's decision in respect of the breach of the sales agreement.[46] Having found

36 [2023] SGHC 141.
37 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [6].
38 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [8].
39 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [7].
40 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [9] and [10].
41 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [9] and [10].
42 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [10].
43 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [11].
44 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [12].
45 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [14].
46 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [23(a)].

the ROC 2014 and local jurisprudence silent on this issue, the General Division proceeded to consider the English and Australian positions.[47]

8.14 In respect of the English position, the General Division gleaned the following principles from *The Millwall*[48] ("*Millwall*") and *Asphalt and Public Works Ltd v Indemnity Guarantee Trust Ltd*[49] ("*Asphalt*"):

> (a) Ordinarily, a third party would not be able to appeal directly against a judgment given in favour of the plaintiff in the principal proceedings, unless leave to do so had been obtained.[50]
>
> (b) However, when the court had made an order that bound a third party to the result of a trial of the action (including any judgment given in favour of the plaintiff), the third party generally had a right to appeal directly against that judgment.[51]
>
> (c) Otherwise, the court had a discretion to grant the third party leave to appeal directly against a judgment in favour of the plaintiff whenever the court thought it was just and convenient to do so.[52]

8.15 On the Australian position, the General Division observed that there was no clear view.[53] One camp thought that the English position was unsatisfactory, while another camp had adopted and applied the principles in *Millwall* and *Asphalt*.[54]

8.16 Ultimately, the General Division applied the principles in *Millwall* and *Asphalt*, preferring the English approach for its clarity and consistency.[55] On the facts, since the deputy registrar had made an order which expressly provided that Auto Lease was to be bound by the result of the trial,[56] Auto Lease had *locus standi* to appeal the District Court's decision in respect of the breach of the sales agreement.[57]

47 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [36].
48 [1905] 1 P 155.
49 (1969) 1 QB 465.
50 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [44(b)].
51 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [44(a)].
52 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [44(c)].
53 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [62].
54 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [62].
55 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [63].
56 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [66].
57 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2023] SGHC 141 at [67].

III. Production of documents referred to in pleadings

8.17 Under O 24 rr 10 and 11 of the ROC 2014, any party could serve a notice to produce documents referred to in pleadings or affidavits for inspection and take copies thereof ("NTP"). However, this procedure has not been expressly provided for under the ROC 2021.

8.18 In *Interactive Digital Finance Ltd v Credit Suisse AG*,[58] the first defendant had, prior to filing their defence, filed and served an NTP (in the form prescribed by the ROC 2014) on the claimants.[59] This was even though the case was governed by the ROC 2021.[60] The assistant registrar then directed the claimants to produce any document referred to in their pleadings that was subject to the claim against the first defendant.[61] The deadline for the first defendant to file its defence was also extended.[62]

8.19 Hearing the claimant's appeal against the assistant registrar's order, the General Division affirmed that the ROC 2021 gave the assistant registrar power to order production of the documents referred to in pleadings. The General Division observed that under O 9 r 9(4) of the ROC 2021, parties seeking production of documents were subject to the Single Application Pending Trial ("SAPT") procedure.[63] This meant that generally, without the court's permission, an application for the production of documents could only be made in the SAPT.[64] Notwithstanding this, the General Division held that the production of documents referred to in pleadings warranted different treatment.[65]

8.20 Although the NTP procedure was removed under the ROC 2021, its underlying principle remained relevant – the requesting party should be conferred the same advantage as if the documents referred to had been fully set out in the pleadings.[66] The General Division explained that reference to documents in pleadings was a form of "disclosure" of the documents forming part of the pleaded case.[67] As the other party was entitled to know the pleaded case against him, it was logical and in the interests of justice that they were entitled to the production of

58 [2023] 5 SLR 1735.
59 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [5].
60 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [20].
61 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [8].
62 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [8].
63 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [40].
64 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [29]; see also Rules of Court 2021 O 9 r 9(7).
65 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [31].
66 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [33].
67 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [33].

such documents before filing a defence or reply.[68] Although it might be possible for a party to justify not producing documents referred to in its pleadings, such instances would be rare and exceptional.[69]

8.21 With this in mind, the General Division held that under O 11 r 4 of the ROC 2021, the assistant registrar had the power to order the production of those documents referred to in the claimant's Statement of Claim ("SOC").[70] The General Division held that O 3 r 2(2) also gave the assistant registrar power to order the production of documents referred to in the claimant's SOC.[71] The order was necessary to ensure justice was done, and was consistent with the "Ideals" under O 3 r 1(2).[72] As such, the first defendant did not need to file an application or seek the court's permission to make an application before the SAPT.[73]

8.22 Nevertheless, the General Division cautioned that this did not mean parties could try to bypass the SAPT procedure by simply writing to the court seeking directions or orders.[74] The SAPT procedure would apply fully to matters set out in O 9 r 9(4) of the ROC 2021 in most cases.[75]

IV. Setting aside registration of foreign judgments

8.23 In *Ramesh Vangal v Indian Overseas Bank*,[76] the Indian Overseas Bank ("the Bank") had obtained a judgment from the Hong Kong Court of First Instance ("HKCFI") ruling that Ramesh Vangal ("Mr Vangal") (and other defendants) were liable to them for sums of money.[77] In February 2018, the defendants filed an appeal to the Hong Kong Court of Appeal ("HKCA").[78]

8.24 In August 2019, the Bank successfully registered the HKCFI judgment in Singapore under the Reciprocal Enforcement of Foreign Judgments Act[79] ("REFJA"). Mr Vangal subsequently applied to the

68 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [33].
69 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [34].
70 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [31].
71 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [37].
72 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [37].
73 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [37].
74 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [40].
75 *Interactive Digital Finance Ltd v Credit Suisse AG* [2023] 5 SLR 1735 at [40].
76 [2023] 2 SLR 261.
77 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [6].
78 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [7].
79 Cap 265, 2001 Rev Ed; *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [8].

HKCFI to stay the execution of the HKCFI judgment pending the determination of the HKCA appeal ("First HK Stay Application").[80] He also filed an application in Singapore to set aside the registration of the HKCFI judgment, and alternatively, that the setting-aside application be adjourned and execution of the HKCFI judgment in Singapore stayed ("Setting-Aside Application").[81]

8.25 In May 2022, the assistant registrar below ordered that the Setting-Aside Application be adjourned until after the determination of the HKCA appeal, and a stay of execution of the HKCFI judgment in Singapore until the appeal was concluded.[82] On appeal, the General Division varied the adjournment to such time that the HKCFI disposed of the First HK Stay Application. The General Division also granted Mr Vangal leave to file a fresh application to adjourn the Setting-Aside Application, albeit indicating that the outcome of any fresh application would include the consideration of partial security for the sums due under the HKCFI judgment.[83]

8.26 In November 2022, the HKCFI dismissed the First HK Stay Application.[84] Mr Vangal then filed a renewed application to the HKCA to stay the execution of the HKCFI judgment ("Second HK Stay Application").[85] Mr Vangal also filed a fresh application in Singapore for further adjournment of the Setting-Aside Application and a stay of execution of the HKCFI judgment in Singapore.[86] The General Division dismissed both the application for adjournment and the Setting-Aside Application.[87]

8.27 On appeal,[88] the Appellate Division of the High Court ("Appellate Division") considered the relevant principles guiding the exercise of the court's discretion under s 6(1) of the REFJA to either set aside the registration of a foreign judgment or adjourn an application for setting aside. Given that this was the first publicised case in which the Singapore courts had to consider this issue, the Appellate Division found it appropriate to consider authorities interpreting the equivalent provision in New Zealand, Hong Kong and England.[89]

80 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [9].
81 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [10]–[13].
82 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [16].
83 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [19].
84 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [20].
85 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [20].
86 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [21].
87 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [22].
88 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261.
89 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [39]–[43].

8.28 Briefly, the Appellate Division observed that while the New Zealand and Hong Kong courts were unwilling to assess the merits of an appeal pending in a foreign jurisdiction, the English courts were open to doing so.[90] The Appellate Division preferred the New Zealand and Hong Kong approaches for two reasons. First, the foreign judgment might come from a civil law jurisdiction, and the Singapore courts would not be sufficiently adept at assessing the merits of an appeal from such jurisdictions.[91] Second, it would be in line with international comity for the Singapore court not to critique the decision of a foreign court, which would be contrary to the principle underlying REFJA to treat foreign judgments as "final and conclusive" despite a pending appeal.[92]

8.29 The Appellate Division proceeded to distil the following principles on how Singapore courts should exercise its discretion under s 6(1) of the REFJA:

(a) The court must balance the judgment creditor's interests in the fruits of its success, against the judgment debtor's interests that the foreign appeal was not rendered nugatory.[93] The court would make the order that best accorded with the interests of justice.[94]

(b) The court should examine whether the judgment creditor would be excessively delayed in enforcing and obtaining its well-earned fruits to litigation, if an adjournment were granted. The time taken for foreign proceedings to conclude was a relevant factor but not determinative,[95] and taking this factor into consideration was not an unwarranted criticism of foreign proceedings.[96]

(c) The court should factor in any offer by the judgment debtor to provide security, as a term of any adjournment sought.[97]

(d) The court should consider how readily the judgment debtor could recover the judgment sums paid over, if the registered judgment was enforced but the foreign appeal was subsequently allowed.[98] The court should consider whether some

90 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [43].
91 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [43].
92 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [43].
93 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [44(a)].
94 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [44(a)].
95 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [44(b)] and [72].
96 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [72].
97 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [44(c)].
98 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [44(d)].

form of irremediable harm would be caused if the registration was not set aside or an adjournment was not granted.[99]

(e) The court should be satisfied that the foreign appeal was *bona fide*, or would be prosecuted with due diligence.[100] However, this factor alone was not determinative.[101]

(f) It was inappropriate for the Singapore court to assess the merits of a pending foreign appeal, especially where foreign law or complex issues of law and fact were involved.[102]

8.30 Applying these principles, the Appellate Division made several key findings in upholding the General Division's decision to dismiss both of Mr Vangal's applications.

8.31 First, the Appellate Division rejected Mr Vangal's argument that by failing to grant the adjournment, the court would be prejudging the HKCA's decision on the Second HK Stay Application (*ie*, by assuming it would fail), and that doing so would be inconsistent with international comity.[103] The Appellate Division explained that this overlooked the fact that the HKCFI had already dismissed the First HK Stay Application, which should be considered in the exercise of the court's discretion.[104]

8.32 Second, because no security was offered by Mr Vangal, the Bank would suffer prejudice if a further adjournment was granted.[105] On the other hand, Mr Vangal would in all likelihood have no difficulty recovering judgment sums paid over if the HKCA appeal succeeded, given that the Bank was a major Indian nationalised bank under the ownership of the Indian Ministry of Finance with branches in Hong Kong.[106] The Appellate Division also considered that the HKCA appeal had been outstanding for almost five years and the Second HK Stay Application might not be heard for quite some time.[107]

8.33 Third, the Appellate Division found it relevant to consider Mr Vangal's assertion that he would suffer irremediable harm and be rendered bankrupt if no adjournment was granted.[108] However,

99 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [44(d)].
100 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [44(e)].
101 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [75].
102 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [44(f)].
103 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [47] and [48].
104 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [49] and [71].
105 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [78].
106 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [78].
107 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [52].
108 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [80].

Mr Vangal bore the burden of proving this, and he had not provided any evidence of his assets or his inability to meet the HKCFI judgment.[109] The Appellate Division therefore rejected Mr Vangal's assertion.[110]

V. Weight to be given to Calderbank offers

8.34 In *The Navigator Aries*,[111] the General Division had apportioned liability for a vessel collision between the appellant and respondent at 70:30 in the respondent's favour.[112] After the appellant filed its appeal against the General Division's decision, the appellant served a Calderbank offer (*ie*, a letter without prejudice to save costs) on the respondent, proposing to settle the issue of liability through a 50:50 apportionment.[113] The respondent did not accept the Calderbank offer and the offer was subsequently revoked.[114]

8.35 On appeal, the Court of Appeal apportioned liability between parties at 50:50.[115] This meant that the appellant only received a judgment as favourable as the Calderbank offer, but not one more favourable.[116] This also meant that the respondent had not obtained anything by coming to court that it could not have obtained, without incurring further costs, through accepting the offer.[117] However, because by coming to court the appellant had expanded judicial time and cost, the Court of Appeal found that it should be able to give due consideration to the Calderbank offer.[118]

8.36 The Court of Appeal held that such a view would also be consistent with how the offer-to-settle regime was structured under O 22A r 9 of the ROC 2014, which centred on whether the judgment was "not less favourable" or "not more favourable" than the offer made.[119]

8.37 However, the Court of Appeal observed that even in the face of a Calderbank offer, the court was not bound to award costs in any particular manner.[120] The court could treat the offer as one of the factors

109 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [80].
110 *Ramesh Vangal v Indian Overseas Bank* [2023] 2 SLR 261 at [80].
111 [2023] 2 SLR 358.
112 *The Navigator Aries* [2023] 2 SLR 358 at [8].
113 *The Navigator Aries* [2023] 2 SLR 358 at [13].
114 *The Navigator Aries* [2023] 2 SLR 358 at [17].
115 *The Navigator Aries* [2023] 2 SLR 358 at [18].
116 *The Navigator Aries* [2023] 2 SLR 358 at [37].
117 *The Navigator Aries* [2023] 2 SLR 358 at [39].
118 *The Navigator Aries* [2023] 2 SLR 358 at [39].
119 *The Navigator Aries* [2023] 2 SLR 358 at [40].
120 *The Navigator Aries* [2023] 2 SLR 358 at [42].

to be considered when exercising its wide discretion as to costs.[121] Some factors that the Court of Appeal found were relevant in determining the weight to be ascribed to a Calderbank offer included: (a) the offer's terms; (b) the reasonableness of the offeree's refusal to accept the offer; (c) the timing of the making of the offer; and (d) the nature and timeliness of the offeree's reaction to the offer.[122]

8.38 On the facts, the Court of Appeal attached moderate weight to the respondent's failure to accept the Calderbank offer.[123] It was in the appellant's favour that the respondent had not provided any reason for not responding to the offer, nor any suggestion that the offer's terms were unreasonable.[124] On the contrary, the offer moderated the respondent's liability down substantially from 80% to 50%. This suggested that the appellant realistically assessed the strength of its case and made a genuine and reasonable attempt to settle.[125] Further, there was no suggestion that the timeframe for accepting the offer was unreasonably short such that the respondent lacked a fair opportunity to properly consider and deal with the offer.[126]

8.39 While the aforementioned reasons justified giving the Calderbank offer due weight, this had to be balanced against two countervailing considerations.[127] First, it was difficult to predict how a court might apportion liability for a collision.[128] Second, the appellant in this case did not obtain a considerably more favourable judgment, only one as favourable as its offer. This reflected how reasonable the terms of the Calderbank offer were.[129] Accordingly, the Court of Appeal found it appropriate to give the Calderbank offer moderate weight.[130]

8.40 Under Appendix G of the Supreme Court Practice Directions 2013 ("SCPD 2013"), the guideline for appeals against a judgment obtained following a trial was $30,000–$150,000. Considering the Calderbank offer together with the evidentially voluminous and technically demanding nature of the case, the Court of Appeal found that the costs of the appeal should be awarded near the middle of the

121 *The Navigator Aries* [2023] 2 SLR 358 at [42].
122 *The Navigator Aries* [2023] 2 SLR 358 at [42].
123 *The Navigator Aries* [2023] 2 SLR 358 at [41].
124 *The Navigator Aries* [2023] 2 SLR 358 at [44] and [45].
125 *The Navigator Aries* [2023] 2 SLR 358 at [45].
126 *The Navigator Aries* [2023] 2 SLR 358 at [46].
127 *The Navigator Aries* [2023] 2 SLR 358 at [48].
128 *The Navigator Aries* [2023] 2 SLR 358 at [48].
129 *The Navigator Aries* [2023] 2 SLR 358 at [48].
130 *The Navigator Aries* [2023] 2 SLR 358 at [49].

$30,000–$150,000 range.[131] Adding the costs of the appeal with the costs of the transfer application, the Court of Appeal eventually awarded costs of $100,000 (inclusive of disbursements).[132]

VI. Non-disclosure in an *ex parte* application for a Mareva injunction

8.41 In *Parastate Labs Inc v Wang Li*,[133] the appellant applied to the General Division for a Mareva injunction worth US$5m against the respondent.[134] The General Division granted the injunction but thought it to be just and convenient to limit its quantum to US$2.5m, further requiring the appellant to fortify its undertaking as to damages by paying US$50,000 into court.[135]

8.42 The General Division ordered so because it was of the view that the appellant's non-disclosures: (a) in relation to its ability to meet its undertaking as to damages; and (b) by deliberately omitting prescribed undertaking, were material.[136] First, the appellant failed to state the assets available to meet its undertaking as to damages and to whom the assets belonged, pursuant to para 73(1)(*f*) of the Supreme Court Practice Directions 2021 ("SCPD 2021"). It was insufficient that the appellant merely undertook to comply with an order for damages and to fortify the said undertaking if necessary.[137] Second, the appellant failed to include in its application the prescribed undertakings provided for in Form 25 of the SCPD 2021, pursuant to O 13 r 1(7) of the ROC 2021 and para 72(2) of the SCPD 2021. It did so without explanation and without bringing these omissions to the General Division's attention.[138]

8.43 On appeal, the Court of Appeal had to consider whether the General Division's exercise of discretion to reduce the quantum of the Mareva injunction from US$5m to US$2.5m was based on principled grounds.[139] In departing from the General Division's decision, the Court of Appeal laid out helpful principles on what amounted to a material non-disclosure in an *ex parte* application for a Mareva injunction.

131 *The Navigator Aries* [2023] 2 SLR 358 at [50] and [62].
132 *The Navigator Aries* [2023] 2 SLR 358 at [62].
133 [2023] 2 SLR 376.
134 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [5].
135 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [5].
136 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [13] and [14].
137 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [13].
138 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [14].
139 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [16].

8.44 Preliminarily, the Court of Appeal confirmed that a Mareva injunction obtained *ex parte* could be set aside due to an applicant's failure to make full and frank disclosure of a material fact.[140] This was because the material non-disclosure might hinder the judge from being "appropriately sensitised to the real merits of the application".[141]

8.45 Crucially, the Court of Appeal found that there were two situations in which non-disclosures could be material and justified a discharge of the Mareva injunction. The first was where the non-disclosure had a bearing on the requirements for granting a Mareva injunction.[142] The second was where the non-disclosure related to the applicant's ability to honour its undertakings as to damages.[143]

8.46 Applying these principles, the Court of Appeal held that there was no material non-disclosure in the present case.[144] Since it was undisputed that the appellant had fulfilled the requirements for the grant of a Mareva injunction, the alleged non-disclosure related to the second situation. On the facts, both instances of the appellant's non-compliance had no impact on its ability to honour its undertaking as to damages.

8.47 First, the appellant's failure to state its available assets, while in violation of the requirements in the SCPD 2021, did not amount to a material non-disclosure. The present case was not one where the appellant had suppressed or failed to disclose facts which cast serious doubt on its ability to honour its undertaking as to damages,[145] unlike in *Block v Nicholson*[146] and *North American Holdings Co Ltd v Androcles Ltd*.[147] Second, the appellant's failure to include the prescribed undertakings was also not material. The omitted undertakings were to: (a) abstain from commencing proceedings against the defendant in any other jurisdiction, or not to use information obtained as a result of an order of the Singapore court for the purpose of proceedings in any other jurisdiction; and (b) not seek to enforce the Mareva injunction in any country outside Singapore without the Singapore court's permission.[148] In any event, these undertakings were ultimately included in the injunction ordered by the General Division.[149]

140 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [23].
141 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [23].
142 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [24].
143 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [24].
144 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [25]–[28].
145 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [28].
146 [1987] CLY 3064.
147 [2015] JMSC Civ 151.
148 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [26].
149 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [26].

8.48 However, the Court of Appeal cautioned that this did not mean that the appellant could get away with causing uncertainty over whether it was good for its undertaking as to damages.[150] Rather, its decision was based on a finding that it would be disproportionate to discharge the Mareva injunction solely because the appellant's undertakings as to damages were unsatisfactory, without first providing the appellant the opportunity to furnish adequate security.[151] Further, reducing the quantum of the Mareva injunction was neither proportionate nor principled. The effect of the reduction was that if the appellant ultimately succeeded in its claim against the respondent, only half the claimed sum would have been enjoined. This in turn meant that any judgment the appellant might eventually obtain against the respondent would potentially be frustrated in so far as half the claim amount was concerned.[152] In the Court of Appeal's view, halving the quantum was "somewhat arbitrary and even punitive in nature".[153]

8.49 Accordingly, the Court of Appeal held that the proportionate and principled response to the unsatisfactory state of evidence provided by the appellant was to order adequate fortification instead.[154] It therefore allowed the appeal and ordered that the injunction granted covered assets of up to US$5m, with the appellant providing additional fortification such that the total amount available would be US$100,000.[155]

VII. Self-representation by an entity

8.50 The case of *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP*[156] arose from an action (the "Main Action") taken out by the liquidators of CST South East Asia Pte Ltd (the "Company"). Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP ("AVPLLP"), Andreas Vogel Pte Ltd ("AVPL") and Andreas Dieter Vogel ("AV") were creditors of the Company.[157]

8.51 In the present case before the General Division, AVPLLP applied for permission to be self-represented by one of its partners, AV, in

150 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [29].
151 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [29].
152 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [30].
153 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [30].
154 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [29].
155 *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [33].
156 [2023] SGHC 208.
157 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [3].

the Main Action.[158] Similarly, AVPL applied for permission to be self-represented by AV, its company secretary.[159] Both applications were taken out under O 4 r 3(3) of the ROC 2021.

8.52 The General Division had to consider the applicable principles concerning O 4 r 3(3) of the ROC 2021 for the first time.[160] Order 4 r 3(3) of the ROC 2021 gives the court power to permit an officer to act on an entity's behalf in proceedings where the entity must be represented by a solicitor.

8.53 The General Division noted that on a plain reading, the provision was meant to be different from its predecessor in the ROC 2014.[161] For example, O 1 r 9(4) of the ROC 2014 detailed the form and content of the supporting affidavit required, which O 4 r 3(3) of the ROC 2021 was silent on.[162] Further, O 4 r 3(3) of the ROC 2021 modified the requirements found under O 1 r 9(2) of the ROC 2014 for permitting an officer of an entity to act on behalf of the entity.[163] Nevertheless, the General Division held that the key authorities discussing the predecessor provision in the ROC 2014 remained relevant, albeit with the appropriate modifications.[164]

8.54 Drawing from the position under the ROC 2014, an application under O 4 r 3(3) of the ROC 2021 must satisfy two requirements.[165] First, as a procedural requirement embodied in O 4 r 3(3)(*a*), the court had to be satisfied that the officer had been duly authorised by the entity concerned to act on its behalf in the matter or proceeding at hand. Second, as a substantive requirement embodied in O 4 r 3(3)(*b*), the court had to either be satisfied that the officer had sufficient executive

158 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [1].
159 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [1].
160 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [16].
161 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [16].
162 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [16].
163 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [16].
164 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [17].
165 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [18].

or administrative capacity, or was a proper person to represent the entity concerned in the matter or proceeding at hand.[166]

8.55 On the procedural requirement under O 4 r 3(3)(*a*) of the ROC 2021, the General Division held that it had a wide discretion to decide how and if this requirement was satisfied. Under the ROC 2021, the focus had shifted to the substance of the application.[167] The ROC 2014 provided for detailed procedural steps that needed to be adhered to, such as the affidavit being "made by any other officer" of the entity concerned[168] in order to "ensure that the application is made objectively with the authority of the company".[169] However, O 4 r 3(3)(*a*) of the ROC 2021 no longer referred to any detailed procedural requirements. Nevertheless, the General Division opined that the old requirements could still be "useful pointers" that it could consider when deciding whether an officer had been duly authorised by the entity concerned.[170]

8.56 In relation to the substantive requirement under O 4 r 3(3)(*b*) of the ROC 2021, the inquiry now centres on whether the officer "has sufficient executive or administrative capacity" or is a "proper person" to represent the entity. Under the ROC 2014, the test was whether leave was "appropriate" to be given in the circumstances.[171] In this regard, certain factors were relevant, such as: (a) whether the application had been properly made pursuant to the ROC 2014; (b) the financial position of the corporate applicant and/or its shareholders; (c) the *bona fides* of the application; (d) the role of the Company in the proceedings; (e) the structure of the Company; (f) the complexity of the factual and legal issues; (g) the merits of the Company; (h) the amount of the claim; (i) the competence and credibility of the proposed representative; and (j) the stage of proceedings.[172]

8.57 The General Division was of the view that under the ROC 2021, certain factors, such as the financial position of the Company, might no longer be relevant, given the shift in focus to the characterisation and abilities of the officer in question.[173] While the General Division did not

166 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [18].
167 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [20].
168 Rules of Court (2014 Rev Ed) O 1 r 9(4)(*c*).
169 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [91].
170 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [22].
171 Rules of Court (2014 Rev Ed) O 1 r 9(2).
172 *Elbow Holdings Pte Ltd v Marina Bay Sands Pte Ltd* [2015] 5 SLR 289 at [7].
173 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [23].

think it was prohibited from considering factors unrelated to the officer's characterisation and abilities, there had to be "very good reason" for a court to consider these now extraneous factors.[174]

8.58 On the facts, the General Division allowed both applications.[175] In relation to AVPLLP's application, the General Division found the procedural requirement to be fulfilled even though the affidavit was made by AV, the very officer appointed to act on behalf of AVPLLP. This was because AV was the only person who could sign off on the affidavit.[176] The substantive requirements for both applications were also satisfied because AV held various master's degrees in the field of law, equipping him with the basic abilities needed to assist the court in the Main Action.[177] Accordingly, the General Division allowed both AVPLLP and AVPL to be self-represented by AV.

VIII. When costs should be regarded as fixed or assessed

8.59 In *Chan Pik Sun v Wan Hoe Keet*,[178] the General Division issued its decision on 14 April 2023, dismissing all the applicant's claims against the respondents. It awarded the respondents "… costs to be assessed, if not agreed. Unless the parties agree on costs, they shall put in their cost submissions … within three weeks".[179] On 11 May 2023, the applicant filed an appeal against the whole decision to the Appellate Division, save for the quantum of costs which had not yet been determined.[180]

8.60 The respondents alleged that the appeal was premature because the time for filing an appeal had not begun to run, given that the General Division had not determined the quantum of costs and parties had not agreed to the same.[181] In turn, the applicant sought to rely on O 19 r 4(2) of the ROC 2021, which stated that "a direction by the lower Court that costs are to be assessed is to be regarded as a determination on the issue of costs".

174 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [25].
175 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [26].
176 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [27].
177 *Lin Yueh Hung v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP* [2023] SGHC 208 at [28].
178 [2023] SGHC(A) 36.
179 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [3].
180 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [4].
181 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [5].

8.61 The issue before the Appellate Division was thus whether the General Division had intended to fix costs at a later date, or whether it had directed for costs to be assessed. This in turn raised the issue of when the time for filing of an appeal started to run, and whether the applicant's filing of the appeal was premature.[182] The Appellate Division took the opportunity to clarify when costs would be fixed or assessed.[183]

8.62 Preliminarily, the Appellate Division emphasised that an assessment of costs did not simply refer to the court evaluating costs following parties' further submissions. Rather, it involved an entirely different process beginning with the submission of a bill of costs, not the fixing of costs.[184] As such, even though a court might order for costs to be "assessed", the entirety of its directions had to be read in context to determine if the court was in fact referring to "assessment" in the technical sense, or merely directing that costs were to be fixed at a later date. For example, if the court made no reference to the process of assessment, such as the submission of a bill of costs, and merely indicated that it would determine costs after further submissions, the court would be directing costs to be fixed at a later date.[185]

8.63 In the present case, although the General Division directed costs "to be assessed", the subsequent sentence directed parties to file their costs submissions without mentioning a bill of costs.[186] This second sentence qualified the first, suggesting that the General Division did not use "assessed" in the technical sense, but was stating that it would evaluate or fix the costs itself. That was why it directed parties to put in their costs submissions without requiring the submission of a bill of costs.[187]

8.64 Accordingly, this meant that there was no determination yet on the issue of costs on 14 April 2023, and the time to file an appeal had not begun to run.[188]

182 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [9].
183 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [9].
184 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [12].
185 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [12].
186 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [13].
187 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [13].
188 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [14].

IX. Court's power to order injunctive relief in default of a notice of intention to contest or not contest

8.65 *Shanmugam Kasiviswanathan v Lee Hsien Yang*[189] concerned the claimants' applications for judgments in default of a notice of intention to contest or not contest ("Notice of Intention"). The claimants had served their claim papers on the defendant, who did not exercise his right to contest the claims.[190]

8.66 The General Division had to consider the novel issue of whether the ROC 2021 allowed a court to enter judgment against a defendant, including granting injunctive relief, solely on the basis of a failure to file a Notice of Intention.[191]

8.67 The General Division observed that the Notice of Intention replaced the memorandum of appearance under the ROC 2014.[192] Its purpose was to give the defendant the option to contest or not to contest and, in the case of multiple claims, to differentiate between the claims that he contested and those he did not.[193] This would "allow the claimant to know whether he should prepare for battle or whether the defendant has surrendered".[194]

8.68 Under the ROC 2014, a plaintiff had to fit his claim squarely within the categories set out in O 13 rr 1–5 before he was entitled to enter judgment in default of appearance.[195] Thus, if the plaintiff's claim did not fit within any of the prescribed categories (*eg*, a claim for injunctive relief), O 13 r 6(1) of the ROC 2014 prevented him from entering judgment in default of appearance. The plaintiff therefore had to proceed with the action as if the defendant had entered an appearance and could only enter default judgment if the defendant persisted in not filing a defence.[196]

8.69 The General Division held that the position under the ROC 2021 was different. Unlike under the ROC 2014, the ROC 2021 made no reference to these prescribed categories and there was hence no need for claims to fit squarely within them.[197] The General Division concluded on a plain reading of O 6 r 6(5) and O 2 r 4 of the ROC 2021, that a claimant

189 [2023] SGHC 331.
190 *Shanmugam Kasiviswanathan v Lee Hsien Yang* [2023] SGHC 331 at [8].
191 *Shanmugam Kasiviswanathan v Lee Hsien Yang* [2023] SGHC 331 at [17].
192 *Shanmugam Kasiviswanathan v Lee Hsien Yang* [2023] SGHC 331 at [11].
193 *Shanmugam Kasiviswanathan v Lee Hsien Yang* [2023] SGHC 331 at [11].
194 *Shanmugam Kasiviswanathan v Lee Hsien Yang* [2023] SGHC 331 at [11].
195 *Shanmugam Kasiviswanathan v Lee Hsien Yang* [2023] SGHC 331 at [18].
196 *Shanmugam Kasiviswanathan v Lee Hsien Yang* [2023] SGHC 331 at [19].
197 *Shanmugam Kasiviswanathan v Lee Hsien Yang* [2023] SGHC 331 at [21].

could now apply for a judgment in default of a Notice of Intention in respect of all types of claims, including one for injunctive relief.[198] Nevertheless, this did not mean that a defendant was without recourse if such a default judgment was entered against him – he could still apply to the court to set aside the default judgment pursuant to O 3 rr 2(8) and 2(9) of the ROC 2021.[199]

8.70 Accordingly, the General Division held that it had power to grant injunctive relief in an application for judgment in default of a Notice of Intention under the ROC 2021 and proceeded to grant the injunctive relief against the defendant.[200]

X. Filing of further affidavits under Order 3 rule 5(6) ROC 2021

8.71 In *CZD v CZE*,[201] the defendant applied to set aside an order which granted the claimant permission to enforce an arbitration award made in Beijing, the People's Republic of China ("PRC").[202] After both parties filed their respective affidavits, the defendant sought permission to file a further affidavit. He argued that the expert opinion contained in the claimant's affidavit raised new issues on PRC law, and he should therefore be permitted to file reply affidavit(s) on these issues so as to present the court with a full picture of the contents of PRC law.[203] The defendant's application was dismissed, and he appealed to the General Division.

8.72 According to O 3 r 5(6) of the ROC 2021, except in a special case, the court would not allow an applicant to file further affidavits after the other party had filed its reply affidavit. Given that O 3 r 5(6) was a provision under the ROC 2021 with no equivalent in the ROC 2014, the General Division helpfully interpreted for the first time what this provision entailed.[204]

8.73 The General Division held that the intention of O 3 r 5(6) of the ROC 2021 was clearly for there to be only one round of affidavits from each party, except in a special case. The term "special case" must be interpreted with the "Ideals" set out in O 3 r 1 of the ROC 2021

198 *Shanmugam Kasiviswanathan v Lee Hsien Yang* [2023] SGHC 331 at [22].
199 *Shanmugam Kasiviswanathan v Lee Hsien Yang* [2023] SGHC 331 at [23].
200 *Shanmugam Kasiviswanathan v Lee Hsien Yang* [2023] SGHC 331 at [24] and [29]–[40].
201 [2023] 5 SLR 806.
202 *CZD v CZE* [2023] 5 SLR 806 at [11] and [12].
203 *CZD v CZE* [2023] 5 SLR 806 at [14]–[16].
204 *CZD v CZE* [2023] 5 SLR 806 at [19].

in mind.[205] For example, for enforcements of an arbitral award, an important Ideal to bear in mind is achieving expeditious proceedings.[206] The term "special case" should also be interpreted bearing in mind O 3 r 5(7) of the ROC 2021, which provided that an affidavit "must contain all necessary evidence in support of or in opposition (as the case may be) to the application".[207]

8.74 A special case might include circumstances where new issues were raised in affidavits filed to contest an application, and these issues could not reasonably have been within the applicant's contemplation when he filed his affidavit.[208] Nevertheless, it was crucial for the applicant to ensure that the affidavit filed in support of his application dealt with all matters that were relevant to his application. It was unacceptable for an applicant to adopt a "wait-and-see" approach.[209]

8.75 On the facts, the General Division found that the issues contended by the defendant were either irrelevant, moot or issues that were not new.[210] In fact, they dealt with the very grounds that the defendant relied on in his application, and he must therefore accept the consequences of failing to include in his affidavit the relevant matters to support his application.[211]

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205 *CZD v CZE* [2023] 5 SLR 806 at [19].
206 *CZD v CZE* [2023] 5 SLR 806 at [19].
207 *CZD v CZE* [2023] 5 SLR 806 at [20].
208 *CZD v CZE* [2023] 5 SLR 806 at [21].
209 *CZD v CZE* [2023] 5 SLR 806 at [21].
210 *CZD v CZE* [2023] 5 SLR 806 at [17] and [22].
211 *CZD v CZE* [2023] 5 SLR 806 at [22].