8. CIVIL PROCEDURE

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I. Validity of service of originating application

8.1 The appeal in *Malayan Banking Bhd v Zhang Zhencheng*[1] concerned a novel scenario relating to the validity of the service of an originating application.[2] The appellant relied on the respondent's solicitors' notice of appointment to effect service on the respondent's solicitors in circumstances where that notice was followed by an application to set aside an earlier order for substituted service.[3] The issue was thus whether the service on the respondent's solicitors was valid.

8.2 On 29 August 2024, the appellant commenced HC/OA 870/2024 ("OA 870") for the enforcement of two mortgages granted by the respondent.[4] The appellant's solicitors wrote to the respondent's solicitors to ask whether they had instructions from the respondent to accept service of the originating process for OA 870.[5] The respondent's solicitors replied that they had no such instruction.[6]

8.3 As it was unknown to the appellant that the respondent had been out of Singapore, it attempted personal service at the respondent's Singapore address. After two failed attempts, the appellant sought and obtained an order for substituted service. This was effected the next day on 10 September 2024.[7]

8.4 On 18 September 2024, the respondent's solicitors filed a notice of appointment of solicitor in OA 870 ("NOAS") to act for the respondent.[8]

1 [2025] 1 SLR 1225.
2 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [1] and [14].
3 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [2].
4 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [3].
5 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [4].
6 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [5].
7 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [6].
8 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [7].

On 27 September 2024, the respondent filed an application to challenge the validity of the substituted service. The respondent's position was that, amongst others, the appellant ought to seek permission for service out of Singapore in order to establish jurisdiction over him as he was not in Singapore.[9] The application was heard on 11 November 2024 by an assistant registrar ("AR") who reserved judgment and adjourned the hearing to 18 November 2024 at 2.30pm.[10]

8.5 On 18 November 2024 at 12.14pm, the AR's written decision to set aside the order for substituted service was released, in which the AR held that the respondent had not submitted to the jurisdiction of the Singapore courts and that the appellant had to first seek permission for service out of jurisdiction before resorting to substituted service as the respondent was not in Singapore. Further, it was directed that the hearing at 2.30pm that day would remain for submissions on costs.[11]

8.6 On the same day at 1.29pm (*ie,* about an hour after the AR's decision and before the costs hearing at 2.30pm), the appellant's solicitors served the originating process and the supporting affidavit for OA 870 on the respondent's solicitors by eLitigation.[12] On 12 December 2024, the respondent applied to set aside the service but the AR dismissed the application.[13] The respondent then appealed against the AR's decision which the judge below allowed.[14] The appellant appealed.

8.7 As service was effected through eLitigation, the requirements for electronic filing service under O 28 r 12 of the Rules of Court 2021 ("ROC 2021") were applicable. It provides that a document requiring personal service may be served *via* eLitigation if: (a) the party to be served is represented by a solicitor who is an authorised or a registered user of eLitigation; and (b) the party agrees to service using the electronic filing service. Such agreement is deemed if he has instructed his solicitor to accept service of a document requiring personal service.[15]

8.8 The Appellate Division of the High Court ("Appellate Division") observed that the validity of the service turned on the following key issue: whether the respondent's solicitors had the respondent's instruction to accept service of the originating process in OA 870 on behalf of the respondent by virtue of the NOAS, in circumstances where the NOAS

9 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [8].
10 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [9].
11 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [10].
12 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [11].
13 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [12].
14 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [13].
15 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [17].

was followed by an application to set aside an earlier order for substituted service on the respondent. If so, the respondent would be deemed to have agreed to service through eLitigation, and the service would be valid.[16]

8.9 The Appellate Division held that service was invalid as the circumstances did not suggest that the respondent's solicitors were instructed by the respondent to accept service of originating process on his behalf.[17] Notably, it clarified some principles relating to O 4 r 8(2) of the ROC 2021, which provides that:

> Unless notice is given according to this Rule, a solicitor who is appointed by a party at any stage of an action is deemed to be acting for the party in the action until the final conclusion of the action in the Court, and his or her business address is deemed to be the address for service of all documents in the action until such conclusion.

8.10 The appellant argued that since O 4 r 8(2) states that the business address of the solicitors is deemed to be the address for "service of all documents in the action", the NOAS meant that the appellant could serve an originating process on the respondent's solicitors after the setting aside of the order for substituted service. According to the appellant, the phrase "all documents" includes originating processes, and the word "service" includes personal service (and not just ordinary service).[18] However, the appellant accepted that this argument was subject to the following qualifications: (a) if the NOAS itself had been qualified in some way; or (b) if the respondent's solicitors had informed the appellant's solicitors that the NOAS was qualified prior to the service of any document pursuant to the NOAS.[19]

8.11 The Appellate Division observed that, even on the appellant's own case that O 4 r 8(2) was applicable and the NOAS should have been qualified, the filing of the application to set aside the prior order for substituted service made it clear that the NOAS was qualified, *ie,* that the NOAS was subject to the outcome in that application. Hence, if the order for substituted service was set aside, the appellant could not rely on the NOAS to effect service of the originating process on the respondent's solicitors. Otherwise, the outcome in the application to set aside the service would be rendered otiose.[20]

16 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [18].
17 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [19].
18 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [21].
19 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [22].
20 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [24].

8.12 The Appellate Division also made some observations regarding the proper scope of O 4 r 8(2). Specifically, it preferred the analysis that "service of all documents in the action" in O 4 r 8(2) was *not* intended to apply to the service of an originating process in the first place but to other subsequent documents (*eg,* pleadings, interlocutory applications, affidavits and written submissions).[21] This is for two reasons.

8.13 First, the word "action" is defined in O 1 r 3(1) of the ROC 2021 as "proceedings commenced by an originating claim or an originating application". As an originating process is a document that initiates the action itself, it gives rise *to* an action, rather than being a document arising "*in* the action" [emphasis in original].[22]

8.14 Second, this reading is consistent with the purpose of O 4 r 8, which is to ensure that the status of a party's legal representation is properly communicated to the court and the other parties, and that any changes *in the course of the proceedings* are accurately reflected on record in the interest of effective communication and service of documents.[23]

8.15 Hence, the Appellate Division opined, without definitively concluding, that O 4 r 8(2) provides for a presumption of ongoing representation and a deemed address for service to preserve continuity and avoid any confusion or disruption caused by unnotified changes in a party's solicitor-client relationship in the midst of the proceedings. In other words, O 4 r 8(2) arguably only contemplates a situation *after* service of an originating process has been validly effected.[24]

II. Permission to file further witness statement in Singapore International Commercial Court

8.16 In *DOI v DOJ*,[25] the Singapore International Commercial Court ("SICC") had to decide the principles applicable to when the court would grant permission for a further witness statement to be filed under O 7 r 4(2) of the Singapore International Commercial Court Rules 2021 ("SICC Rules").

8.17 In SIC/OA 20/2024 ("OA 20"), the claimant applied to set aside an award by a majority in a Singapore-seated arbitration.[26] Its case was

21 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [25].
22 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [25].
23 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [25].
24 *Malayan Banking Bhd v Zhang Zhencheng* [2025] 1 SLR 1225 at [25].
25 [2025] 4 SLR 657.
26 *DOI v DOJ* [2025] 4 SLR 657 at [1].

that the majority did not apply their mind to the evidence and arguments in the arbitration but came to their decision with a closed mind.[27]

8.18 The claimant filed OA 20 on 3 September 2024, accompanied by a witness statement in which the grounds on which they argued the award should be set aside were stated.[28] In accordance with O 23 r 2(2) of the SICC Rules, being a proceeding under the International Arbitration Act 1994[29] ("IAA"), OA 20 was decided on the statements adjudication track as modified by the provisions in O 23.[30] With an extension of 28 days, the defendants filed and served their Defendants' Statement and three witness statements on 26 November 2024. The thrust of the defendants' arguments was that the claimant had not made out any of the grounds to set aside the award but was engaged in a disguised attempt to appeal the award on its merits.[31]

8.19 The hearing of OA 20 was fixed for 25 and 26 February 2025, with written submissions to be exchanged on 11 February 2025. On 10 February 2025, the defendants filed an application for permission to file and adduce into evidence a further witness statement. In an accompanying solicitor's witness statement, it was said that the purpose of the further witness statement was to make additional arguments.[32] The backdrop of this was that the defendants' newly instructed counsel brought to the defendants' attention those new arguments.[33]

8.20 The relevant rule was O 7 r 4(2) of the SICC Rules, which states:

> Subject to Rule 5(2), a further witness statement must not (except with the permission of the Court) be filed after the witness statement or witness statements is or are filed and served by the defendant pursuant to paragraph (1)".

8.21 The issue was thus what the proper approach to granting permission was as the words "except with the permission of the Court" are not qualified and confer a general discretion.[34]

27 *DOI v DOJ* [2025] 4 SLR 657 at [1].
28 *DOI v DOJ* [2025] 4 SLR 657 at [174].
29 2020 Rev Ed.
30 *DOI v DOJ* [2025] 4 SLR 657 at [173].
31 *DOI v DOJ* [2025] 4 SLR 657 at [174].
32 *DOI v DOJ* [2025] 4 SLR 657 at [175].
33 *DOI v DOJ* [2025] 4 SLR 657 at [177].
34 *DOI v DOJ* [2025] 4 SLR 657 at [184].

A. Claimant's arguments

8.22 The claimant argued that it was necessary for the defendants to show a "special case" for permission to file and rely on the further witness statement. It put forward two arguments.[35]

8.23 The claimant's first argument rested on O 6 r 12(6) of the ROC 2021 and the Supreme Court Registrar's Circular No 1 of 2023[36] ("Circular"). The proposition was that the Circular and its reference to a special case were thereby brought into the rules governing IAA applications in the SICC.[37]

8.24 As to O 6 r 12(6), the claimant argued that O 6 is concerned with the commencement of proceedings. Specifically, where the proceedings are commenced by originating application, O 6 r 12(6) provides that "[e]xcept in a special case, no further affidavit may be filed after the defendant files the defendant's affidavit on the merits".[38] As to the Circular, which identifies O 6 r 12 as the basis of the special case requirement, the claimant relied on the part of the Circular that said, after reference to a defendant filing an affidavit, that "[e]xcept with the permission of the court, *which will be granted only in special cases*, no further affidavits may be filed after the defendant files the defendant's affidavit on the merits" [emphasis in original].[39]

8.25 The SICC, however, held that neither O 6 r 12(6) nor the Circular had any application. As to O 6 r 12(6), O 6 of the ROC 2021 applied only to proceedings in the General Division of the High Court ("General Division").[40] As to the Circular, para 1 of the Circular specifically makes it applicable only to matters in the General Division, and O 6 r 12(6) is not a rule applying to IAA proceedings in the SICC.[41]

8.26 While the SICC noted that it was curious that the Circular is referred to on the SICC website when in its terms it applies only to proceedings in the General Division, it nevertheless did not accept that the Circular had any prescriptive force in relation to IAA proceedings in

35 *DOI v DOJ* [2025] 4 SLR 657 at [185].
36 Supreme Court Registrar's Circular No 1 of 2023, "Issue of the Guide for the Conduct of Arbitration Originating Applications" <https://www.judiciary.gov.sg/docs/default-source/circulars/2023/registrar's_circular_no_1_2023_supreme_court.pdf?sfvrsn=d63da9e2_2> (accessed 21 April 2026).
37 *DOI v DOJ* [2025] 4 SLR 657 at [191].
38 *DOI v DOJ* [2025] 4 SLR 657 at [188].
39 *DOI v DOJ* [2025] 4 SLR 657 at [187].
40 *DOI v DOJ* [2025] 4 SLR 657 at [189].
41 *DOI v DOJ* [2025] 4 SLR 657 at [189].

the SICC or that, by the reference to it on the website, O 6 r 12(6) was transposed so as to apply to IAA proceedings in the SICC.[42]

8.27 The claimant's second argument rested on O 1 r 11(3) of the SICC Rules, although also returning to O 6 r 12(6) of the ROC 2021. O 1 r 11(3) of the SICC Rules states:[43]

> Where there is no express provision in these Rules or any other written law on any matter, the Court may do whatever it considers necessary or desirable for the just, expeditious and economical disposal of any proceedings in the Court. In doing so, the Court may apply the domestic Rules of Court with such necessary modifications as the context requires.

8.28 The claimant argued that in the exercise of the discretion to apply the domestic rules, the court should apply O 6 r 12(6) of the ROC 2021 and so bring the special case requirement into OA 20 in the SICC. This was because IAA proceedings could be brought in either the General Division or the SICC or transferred from the General Division to the SICC, and hence, there should be uniformity.[44]

8.29 The SICC similarly rejected this argument because there must first be an absence of express provision on a "matter" before there can be application of a domestic rule on that matter.[45] It held that on the facts, there was no gap to be filled by applying the domestic rule in O 6 r 12(6) of the ROC 2021 stipulating that permission would only be granted in a special case because either O 23 or O 7 r 4(2) of the SICC Rules dealt with the matter. The fact that the discretion in O 7 r 4(2) is not qualified by criteria for its exercise does not mean an absence in the express provision.[46]

B. Singapore International Commercial Court's decision

8.30 Contrary to the claimant's arguments, the SICC held that permission to file the further witness statement was akin to permission to amend to introduce new defences. This was because, on the facts, the point of the further witness statement was to enable the defendants to make their additional arguments, which were entirely new arguments. It was not just evidentiary nor was it just a case of extending the time for an act within the boundaries of an already defined dispute.[47]

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42 *DOI v DOJ* [2025] 4 SLR 657 at [192].
43 *DOI v DOJ* [2025] 4 SLR 657 at [194].
44 *DOI v DOJ* [2025] 4 SLR 657 at [195].
45 *DOI v DOJ* [2025] 4 SLR 657 at [197].
46 *DOI v DOJ* [2025] 4 SLR 657 at [197].
47 *DOI v DOJ* [2025] 4 SLR 657 at [201].

8.31 Accordingly, the SICC drew on the established principles governing amendment, citing *Ng Chee Weng v Lim Jit Ming Bryan*[48] for the following propositions:[49]

> (a) an amendment which would enable the real issues between the parties to be tried should be allowed subject to penalties on costs and adjournment, if necessary, unless the amendment would cause injustice or injury to the opposing party which could not be compensated for by costs or otherwise;
>
> (b) the rationale behind this is that the court should be extremely hesitant to punish litigants for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights;
>
> (c) but all the circumstances must be considered, because justice cannot always be measured in terms of money;
>
> (d) there is a difference between an amendment that merely clarifies an issue in dispute and one that raises a totally different issue at too late a stage; and
>
> (e) procedural justice is an important aspect of "the holistic ideal and concept of justice itself", and there must be fairness in the procedure or manner in which the final outcome is achieved.

8.32 The SICC then granted the permission sought for three main reasons. First, the mere fact that the additional arguments were raised at a late stage by the new counsel was only one factor to be considered. In any case, it is not unknown for new counsel to bring a new approach to or a new matter into existing proceedings.[50] Second, the SICC considered that its decision in OA 20 would not be unduly delayed if the new arguments were brought into the proceedings with the opportunity for the claimant to file a responsive witness statement and supplementary written submissions on a strict timetable.[51] Third, the SICC was not persuaded, as argued by the claimant, that the new grounds were completely without merit. There should be the opportunity for them to be fully developed and determined. Any prejudice to the claimant could be compensated for in costs.[52]

III. Protective writs for derivative actions pending appeal

8.33 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd*[53] presented the General Division with the opportunity to clarify

48 [2012] 1 SLR 457.
49 *DOI v DOJ* [2025] 4 SLR 657 at [202].
50 *DOI v DOJ* [2025] 4 SLR 657 at [208].
51 *DOI v DOJ* [2025] 4 SLR 657 at [209].
52 *DOI v DOJ* [2025] 4 SLR 657 at [209].
53 [2025] 5 SLR 907.

the principles relating to a novel issue regarding limitation periods for derivative actions. Specifically, the issue was what recourse there would be to a claimant whose application to commence a derivative action in the name of a company had been dismissed at first instance but was pending an appeal, and where the limitation period for the company's cause of action would likely expire before such appeal could be heard.[54]

8.34 The claimant applied for the court's permission to bring an action in the name and on behalf of the defendant company ("Company"), pursuant to s 216A of the Companies Act 1967[55] ("Companies Act") in HC/OA 1330/2024 ("OA 1330"). The derivative action primarily concerned a board of directors' resolution dated 24 September 2019 which sanctioned the sale of all the Company's shares in another company ("Disposal of Shares Resolution"). The claimant contended that the Disposal of Shares Resolution was orchestrated by two directors in breach of their duties to the Company. The two directors were thus amongst the potential defendants to the intended derivative action.[56]

8.35 OA 1330 was dismissed on 10 June 2025. The claimant subsequently filed an appeal to the Appellate Division on 7 July 2025.[57] If the claimant succeeded in the appeal, it would then be able to commence the intended derivative action. However, the Company's claim against the directors for breach of their fiduciary duties would be time-barred by 24 September 2025.[58] Hence, on 15 August 2025, the claimant filed HC/SUM 2319/2025 ("SUM 2319") seeking the court's permission to file a protective writ by way of an originating claim on behalf of the Company, subject to the condition that such originating claim would not be served on the potential defendants pending the determination of the appeal.

8.36 The General Division opined that there were two issues: (a) first, whether the General Division even had the power to grant SUM 2319; and (b) second, whether SUM 2319 should be granted.[59]

54 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [1].
55 2020 Rev Ed.
56 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [3].
57 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [2].
58 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [5].
59 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [9].

8.37 As to the first issue, the General Division held that it had the power to grant SUM 2319 pursuant to O 15 r 12(4) of the ROC 2021, which allowed the court to "give such further orders or directions incidental or consequential to any judgment or order that the Court considers appropriate". Order 15 r 12(4) of the ROC 2021 was derived from O 92 r 5 of the 2014 Rules of Court[60] ("ROC 2014"), which in turn has been said to be a manifestation of the court's "residual inherent [powers] even after an order is pronounced, to clarify the terms of the order and/or to give consequential directions".[61] Order 15 r 12(4) thus represents the same residual inherent power under the ROC 2021.[62]

8.38 Having decided that O 15 r 12(4) was intended to confer upon the court a wide discretion to make incidental or consequential orders, the General Division held that it was broad enough to encompass the order sought in SUM 2319.[63]

8.39 Further, the General Division found it unnecessary to assess the merits of the claimant's alternative reliance on O 3 r 2(2) of the ROC 2021 as that provision only applies "[w]here there is no express provision in [the ROC 2021] or any other written law" on the matter. However, the General Division observed that even if it was wrong on its interpretation of O 15 r 12(4), it would still have the inherent powers to grant SUM 2319 pursuant to O 3 r 2(2).[64]

8.40 As to the second issue, the General Division summarised the established principles relating to the exercise of the court's inherent powers:[65]

> (a) An essential touchstone is that of "need", and there must be "reasonably strong or compelling reasons" showing why such inherent powers should be invoked.[66]

60 2014 Rev Ed.

61 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [28], citing *Godfrey Gerald QC v UBS AG* [2004] 4 SLR(R) 411 at [18]–[19].

62 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [28].

63 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [29].

64 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [31].

65 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [34].

66 *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 at [27] and [30].

(b) Such inherent powers should only be exercised in special or exceptional circumstances.[67]

(c) Ultimately, the inquiry is a fact-sensitive one.

8.41 The court retains a degree of flexibility and discretion in the use of its inherent powers and such exercise should not be circumscribed by rigid tests or criteria. The general guideline is that such inherent powers should be exercised judiciously and invoked when it is just and equitable to do so.[68]

8.42 Four non-exhaustive factors were of especial salience in determining whether a party should be granted permission to file a protective writ while a derivative action application is on appeal: (a) whether there was a real need for the protective writ; (b) whether granting permission to file the protective writ struck the right balance between the interests of the parties and avoided any undue prejudice to them; (c) whether there was any inordinate delay caused by the party seeking the protective writ; and (d) whether the appeal was bound to fail.[69]

8.43 Applying the factors to the facts, the General Division held that each of the four factors pointed in favour of granting SUM 2319.[70] First, there was a fair chance that the Company's fiduciary duty claim could become time-barred before the hearing of the appeal or the release of any decision in respect of it. The claimant was thus placed in an invidious position where the intended derivative action was at risk of being rendered ineffectual whilst proceedings seeking permission to bring that very derivative action were still ongoing. Even if the claimant succeeded in the appeal, there was a real risk that it would be a Pyrrhic victory if the fiduciary duty claim became time-barred.[71]

8.44 Second, given that the claimant had a real need to file the protective writ, it followed that the claimant would suffer significant prejudice if it were denied permission to do so.[72] On the contrary, it would

67 *Roberto Building Material Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2003] 2 SLR(R) 353 at [16]–[17].
68 *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 at [27].
69 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [35].
70 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [39].
71 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [42].
72 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [47].

not cause undue prejudice to the potential defendants as the court could grant permission to file the protective writ on the condition that it must not be served on the potential defendants pending the determination of the appeal.[73]

8.45 Third, the General Division looked at the claimant's conduct of the proceedings since the commencement of OA 1330 and concluded that there was no evidence of any inordinate delay caused by it for which it should suffer the consequences.[74]

8.46 As to the fourth factor, the threshold to satisfy it is low.[75] Hence, even though the General Division did not think that the claimant should succeed in OA 1330, it accepted that the claimant's case was not so bereft of merit that it could clearly be said to be bound to fail.[76] Accordingly, the General Division allowed the claimant to file a protective writ pending the resolution of the appeal.[77]

IV. Production of information before action by non-parties

8.47 In *L'Oreal v Shopee Singapore Pte Ltd*,[78] the applicants obtained a pre-action production order under O 11 r 11 of the ROC 2021 against the respondent, an operator of an e-commerce marketplace.[79] The order required the respondent, as a non-party, to produce specified information relating to 18 identified users ("Sellers") who had advertised and offered for sale cosmetic products alleged to be counterfeit goods infringing the applicants' registered trade marks.[80] The information sought included, *inter alia*, each of the Sellers' full names, identification and/or business registration numbers, addresses, contact details and other account information, to enable the applicants to commence infringement

73 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [49].
74 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [52].
75 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [53].
76 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [56].
77 *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] 5 SLR 907 at [57].
78 [2025] SGHCR 2 (this case is partially reported in [2025] 4 SLR 145).
79 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [6] (this case is partially reported in [2025] 4 SLR 145).
80 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [5] (this case is partially reported in [2025] 4 SLR 145).

proceedings in Singapore against the Sellers.[81] The respondent purportedly produced information in compliance with the order to the best of its knowledge and belief, furnishing substantial seller data including geographical addresses, phone numbers and e-mail addresses tied to the relevant seller account.[82]

8.48 Dissatisfied, the applicants alleged that the respondent's disclosure was incomplete, "missing, bogus and/or unreliable",[83] particularly as regards certain names and identification numbers for six of the 18 Sellers.[84] They applied by summons for further relief, seeking:[85]

> (a) a Compliance Order directing the respondent to fully comply with the production order by producing all outstanding information;
>
> (b) an Explanation Order requiring the respondent to state whether any seller information had been obtained through a user verification process involving checks against government-issued documentation ("Verification Process");
>
> (c) a Further Production Order requiring the respondent, where information had not been obtained through the Verification Process, to take steps to obtain verified and updated identity information from the Sellers;
>
> (d) an Ancillary Order detailing all steps taken to obtain verified information and explaining any failure;
>
> (e) a Non-Disclosure Order restraining the respondent and related persons from informing the Sellers of the present proceedings; and
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> (f) a Notification Order permitting the applicants to inform the Ministry of Home Affairs ("MHA") of any failure or inability by the respondent to verify Sellers' identities against government-issued documents (which required the court to consider a lift or modification of the Riddick undertaking).

81 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [6] (this case is partially reported in [2025] 4 SLR 145).

82 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [30] (this case is partially reported in [2025] 4 SLR 145).

83 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [36] (this case is partially reported in [2025] 4 SLR 145).

84 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [10] (this case is partially reported in [2025] 4 SLR 145).

85 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [8] (this case is partially reported in [2025] 4 SLR 145).

8.49 The respondent opposed the application, contending that it had fully complied with the production order by providing all information within its possession or control, accurately reproduced "as-is" from its records.[86] It argued that, as a non-party, it had no incentive to withhold information, and that its affidavit evidence stating that it had "no records" of certain ordered data was conclusive absent proof that it was "plain and obvious" that such information existed, was within its possession or control, or was otherwise information it was bound to obtain.[87]

8.50 The court held that where a non-party is subjected to a production order under O 11 r 11(1) of the ROC 2021, the respondent's affidavits filed in opposition to the application and/or in purported compliance with the production order are, in general, conclusive as to the sufficiency of its disclosure.[88] The court will not "go behind" such affidavits unless it is "plain and obvious" from the documents produced, the respondent's affidavits, or other objective evidence before the court that:[89]

> (a) as to documents not produced, the requested documents must exist or have existed, they must be or have been in the respondent's possession or control, or they are not protected from production; and/or
>
> (b) as to information not disclosed, the information is within the respondent's knowledge and belief, it is information the respondent is bound to obtain, it appears to have been contained in the respondent's disclosure affidavits but in substance has not been disclosed, or it is not protected from production.

8.51 A respondent subjected to an O 11 r 11(1) production order is entitled to rely on the whole of its affidavit in answer to show that its response is sufficient, and the court should not assess each individual answer or item of information in isolation.[90] Rather, it should assess the sufficiency of compliance holistically.

8.52 Applying these principles, the court found that the respondent had adequately complied with the order by producing the ordered

86 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [13] (this case is partially reported in [2025] 4 SLR 145).
87 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [13] (this case is partially reported in [2025] 4 SLR 145).
88 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [45] (this case is partially reported in [2025] 4 SLR 145).
89 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [25] and [45] (this case is partially reported in [2025] 4 SLR 145).
90 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [26] (this case is partially reported in [2025] 4 SLR 145).

information to the best of its knowledge and belief.[91] The applicants had received, in respect of all 18 Sellers, substantial identifying and contact information, including geographical addresses, telephone numbers and e-mail addresses, which would likely suffice for making substituted service of originating processes and pursuing trade mark infringement claims against the Sellers.[92] In this context, the absence of certain specific data points (such as identification numbers for some Sellers) did not in itself demonstrate non-compliance with the order. The prayer for the Compliance Order was therefore dismissed.

8.53 The respondent's statements on affidavit that it had "[n]o records" of certain categories of information ordered to be produced were treated as conclusive in the absence of plain and obvious evidence to the contrary.[93] It was not plain and obvious that the requested but unproduced information was within the respondent's knowledge and belief or comprised information that the respondent was bound to obtain for the purposes of O 11 r 11.[94] Accordingly, the court declined to go behind the respondent's affidavits.

8.54 The court also refused to grant the Explanation Order and Further Production Order. There was no plain and obvious indication that the respondent had provided "missing, bogus and/or unreliable" information in response to the order, or that its disclosure was materially deficient when viewed as a whole.[95]

8.55 In relation to the applicants' attempt to compel the respondent to obtain additional verified information from the Sellers and to explain its verification practices, the court emphasised that such relief would undermine the principle that a non-party respondent to an O 11 r 11 production order is not, as a general rule, obliged to obtain information from anyone other than its own employees or agents.[96] The non-party's obligation is to answer to the best of its knowledge and belief, drawing on information which it personally knows or can reasonably obtain

91 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [35] (this case is partially reported in [2025] 4 SLR 145).
92 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [46] (this case is partially reported in [2025] 4 SLR 145).
93 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [45] (this case is partially reported in [2025] 4 SLR 145).
94 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [32] (this case is partially reported in [2025] 4 SLR 145).
95 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [45] (this case is partially reported in [2025] 4 SLR 145).
96 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [24(b)] and [49] (this case is partially reported in [2025] 4 SLR 145).

from its employees and agents,[97] and not to leverage its commercial relationships with third parties to conduct further investigations to procure further information.[98]

8.56 The court further observed that the Further Production Order sought was unduly intrusive in relation to a non-party and did not accord with the public interest in ensuring that non-parties are not unduly troubled by litigation involving others.[99] Compelling the respondent to undertake extensive verification or investigative steps *vis-à-vis* the Sellers would go beyond what is ordinarily required under O 11 r 11 and would impose disproportionate burdens on a non-party.[100] On this basis as well, the Further Production Order and Ancillary Order (which was designed to police that further production) were refused.

8.57 By extension, since the Non-Disclosure Order was sought in aid of the Further Production Order, and the court declined to grant the Further Production Order, the Non-Disclosure Order fell away and was similarly dismissed.

8.58 By way of *obiter*, the court also affirmed that it has power under O 3 r 2(2) of the ROC 2021 to order a non-party to provide a further answer to a production order under O 11 r 11 where previous answers are insufficient.[101] In considering sufficiency of disclosure under O 11 r 11, the court drew on the law relating to sufficiency of answers to interrogatories under the ROC 2014.[102] The responding party's duty is to answer to the best of his knowledge and belief, giving all information personally known to him from whatever sources, subject to recognised objections such as privilege.[103] If he does not have the information but can obtain it, he must do so, but he is generally not bound to obtain information from persons other than his employees or agents.[104] If information can be

97 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [24(d)] (this case is partially reported in [2025] 4 SLR 145).
98 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [49] (this case is partially reported in [2025] 4 SLR 145).
99 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [49] (this case is partially reported in [2025] 4 SLR 145).
100 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [49] (this case is partially reported in [2025] 4 SLR 145).
101 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [23] (this case is partially reported in [2025] 4 SLR 145).
102 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [24] (this case is partially reported in [2025] 4 SLR 145).
103 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [24(a)] (this case is partially reported in [2025] 4 SLR 145).
104 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [24(b)] (this case is partially reported in [2025] 4 SLR 145).

obtained from documents in his possession or control, he is expected to provide it and must exercise his best efforts to obtain information from current (and, where appropriate, recent former) employees or agents.[105] The sufficiency inquiry focuses on the substance of the answer and not its truthfulness, which was not a live issue in the case.[106] Mere dissatisfaction that the answers are not what the requesting party hoped for does not render them insufficient.[107]

8.59 The court also refused to lift or relax the *Riddick* undertaking to permit notification of the MHA, holding that the alleged non-verification of seller identities did not rise to a level of public interest comparable to serious threats to public safety, and that using the court process to pressure the respondent in this way would be inappropriate.[108]

V. Breach of unless order for production of documents

8.60 In contrast to the premise of the appellant's appeal that the courts must conduct a proportionality analysis when deciding whether to enforce an unless order after it has been breached,[109] the Court of Appeal found that the issue of proportionality should not be revisited when deciding whether to enforce an unless order after it has been breached intentionally.[110] This is because when an unless order is first imposed against a party, that party would have already been in breach of at least one prior order and the court would have already considered whether the stated consequence(s) would be proportionate to the condition(s) imposed by the unless order.[111] While the Court of Appeal had previously referred to "considerations of proportionality in assessing breaches of 'unless orders'" in *Mitora Pte Ltd v Agritrade International (Pte) Ltd*[112] ("*Mitora*"), the Court of Appeal clarified that its references to proportionality in *Mitora* did not stand for the proposition that courts should undertake a *de novo* proportionality analysis in deciding whether

105 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [24(c)] and [24(d)] (this case is partially reported in [2025] 4 SLR 145).
106 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [24(f)] (this case is partially reported in [2025] 4 SLR 145).
107 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [24(g)] (this case is partially reported in [2025] 4 SLR 145).
108 *L'Oreal v Shopee Singapore Pte Ltd* [2025] SGHCR 2 at [56].
109 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [35].
110 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [36].
111 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [36].
112 [2013] 3 SLR 1179.

to enforce the consequences arising from a breach of an unless order.[113] That being said, the Court of Appeal confirmed that following *Mitora*, the courts retain a residual discretion not to enforce an unless order in situations, *eg*, where the party against which an unless order is imposed has substantially complied with the unless order such that it would be entirely disproportionate for the unless order to be enforced strictly.[114]

8.61 However, the present case was not one where the appellant had substantially complied with the unless order. Instead, the appellant had intentionally partially complied with the unless order imposed against it.[115] In arriving at this finding, the court underpinned that to permit a "second look at proportionality" would be to "invite parties to engage in tactical gamesmanship" by selectively not complying with unless orders.[116] This would result in reduced effectiveness of unless orders but also encourage the selective non-compliance that unless orders are intended to prevent.[117] For completeness, the Court of Appeal also addressed the appellant's argument in written submissions that giving effect to the unless order would be comparable to creating a new ground for refusing enforcement which in turn contravenes the exhaustive grounds of challenge under the New York Convention.[118] This was found to be an untenable argument because the recognition and enforcement regime for arbitral awards under the New York Convention are necessarily subject to the rules of procedure of the enforcement jurisdiction.[119] Therefore, courts must retain the power to enforce unless orders even if such enforcement would result in dismissing an application to enforce an arbitral award.[120] The non-enforcement of an arbitral award in such situations would therefore flow from the award creditor's failure to comply with the forum's

113 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [39].
114 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [39].
115 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [40].
116 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [40].
117 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [40].
118 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958), 330 UNTS 38 (entered into force 7 June 1959). *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [43].
119 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [43].
120 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [43].

procedural rules rather than an implied additional ground for refusing enforcement under the New York Convention.[121]

8.62 The appellant refined its position during the hearing by arguing instead that the New York Convention enforcement regime should weaken the force of an unless order where its enforcement would deny the recognition of an arbitral award.[122] The Court of Appeal found that this remained in essence an argument that enforcing an unless order would be disproportionate in light of the New York Convention's pro-enforcement regime. As it had been earlier determined that proportionality assessments had no role in assessing breaches of unless orders, this argument failed as well.[123]

8.63 The Court of Appeal also added that if the appellant took issue with the consequences set out in the unless order, the proper step would have been to appeal against the decision to impose the unless order, which the appellant had chosen not to do.[124]

VI. Challenge to official record of hearing

8.64 In *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)*,[125] there was an application in the General Division to set aside and resist enforcement of an arbitral award. Three hearings were held before the same judge. At the first hearing on 19 July 2024, the judge heard substantive oral arguments and reserved judgment. At the second hearing on 23 July 2024, the judge delivered an oral decision, finding that grounds for setting aside existed but nevertheless ordering remission to the arbitral tribunal instead of setting aside the award. At the third hearing on 31 July 2024, the parties addressed the terms of the order reflecting the judge's decision.

8.65 Both parties filed cross-appeals. The applicant appealed against the order of remission, contending that the judge had no jurisdiction to remit because neither party had requested remission. The applicant also applied for leave to adduce, as further evidence in the appeal, notes

121 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [43].
122 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [45].
123 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [45].
124 *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sàrl* [2025] 2 SLR 383 at [46].
125 [2025] 1 SLR 414.

taken by its solicitors at the hearings on 19 and 23 July 2024, intending to use these notes to challenge the judge's handwritten notes of the 19 July 2024 hearing. The applicant alleged that the judge had wrongly recorded the respondent's counsel as having submitted that, if the court found a breach, the matter should be remitted to the tribunal. The applicant had not, however, raised this alleged error with the judge at any time before filing its application to adduce the notes in the Court of Appeal.

8.66 The Court of Appeal dismissed the application. In doing so, it reaffirmed that there are two statutory regimes for adducing fresh evidence on appeal under ss 59(4) and 59(5) of the Supreme Court of Judicature Act 1969[126] ("SCJA"). Which regime applies depends on whether the further evidence relates to matters occurring before or after the decision appealed against.[127] Where the evidence concerns matters occurring before the decision, the *Ladd v Marshall*[128] framework in s 59(4) of the SCJA (*ie,* non-availability, materiality and reliability) generally applies;[129] where it concerns matters occurring after the decision, the modified *Ladd v Marshall* test under s 59(5) of the SCJA applies.[130] The court, however, retains an overarching discretion to admit fresh evidence if refusing leave would affront common sense or justice.[131]

8.67 As a matter of substance, the modified *Ladd v Marshall* test applied in this case because the non-availability limb of the ordinary *Ladd v Marshall* test could not meaningfully apply to the solicitors' notes, which, like the judge's notes, only came into existence after the respective hearings.[132] The real question therefore turned on materiality and reliability.[133]

8.68 The court found that the applicant's solicitors' notes of the 23 July 2024 hearing were immaterial because the applicant took no issue with the judge's notes of that hearing and alleged no inconsistency

126 2020 Rev Ed. *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [16].
127 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [16].
128 [1954] 1 WLR 1489
129 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [16].
130 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [16].
131 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [17].
132 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [18]–[20].
133 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [18]–[20].

between them. Therefore, those notes added nothing to the appeal.[134] The solicitors' notes of the 19 July 2024 hearing were also found to be immaterial for two reasons: (a) the applicant was not entitled to challenge the judge's notes of the hearing in the appeal at all, having failed to follow the proper procedure for contesting the official record; and (b) even if an error in the judge's notes were assumed, it would not affect the outcome of the appeal, given the applicant's primary and alternative arguments on remission and the existence of another recorded submission of identical substance which the applicant did not dispute.[135]

8.69 The Court of Appeal set out the proper procedure for challenging the official record of a hearing. The court must maintain an official record of every hearing; where no approved audio recording system is used, the judge's notes constitute the official record under O 15 r 11 of the ROC 2021.[136] Any party who believes that the official record is inaccurate or incomplete must raise the issue at the earliest possible opportunity with both the other party and the trial judge, supplying whatever supporting material (such as counsel's own notes) that is relied on. The opposing party should be invited to take a position, and, once positions are known, the judge decides whether he or she agrees that the record is erroneous or incomplete and, if so minded, may correct the record.[137]

8.70 A party who delays in raising such a challenge does so at its own peril.[138] Delay increases the risk that the other party and the judge will no longer recall what occurred, hindering meaningful engagement with the alleged error.[139] Where a party ignores this procedure and instead attempts to mount a challenge to the official record for the first time in the appellate court, the appellate court should generally refuse to entertain the challenge.[140] This is because: (a) the judge presiding over the hearing below is better placed than an appellate court to resolve factual disputes about what was said at that hearing; and (b) a challenge to the official record, where that record consists of the judge's notes, may carry the

134 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [22].
135 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [23]–[31].
136 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [32].
137 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [41].
138 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [38]–[39].
139 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [38]–[39].
140 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [42].

connotation of an allegation against the judge of breach of natural justice, such that fairness requires that the judge be given the first opportunity to address the issue.[141]

8.71 Applying these principles, the Court of Appeal held that the applicant had not followed the proper challenge procedure.[142] It had never raised its complaint about the judge's notes with the judge despite the lapse of more than six months since the delivery of the decision. It therefore could not rely on its solicitors' notes to challenge the official record in the appeal. In any event, the alleged error would not influence the outcome of the appeal, and the further evidence did not satisfy the materiality requirement.[143] Leave to adduce the solicitors' notes was accordingly refused.

VII. Service on parties who have an interest in an appeal

8.72 The claimant in *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills*[144] commenced HC/ADM 50/2022 ("ADM 50") as a limitation action arising out of an allision in Indonesia between its vessel and a trestle bridge/jetty owned or operated by the defendant. After ADM 50 was commenced, the defendant initially filed a Notice of Intention to Contest ("NITC"), but subsequently withdrew it, and commenced proceedings in Indonesia.

8.73 The claimant later applied in Singapore for an anti-suit injunction ("ASI") to restrain the defendant from continuing the Indonesian proceedings. The ASI application was initially dismissed. The claimant successfully sought permission to appeal to the Court of Appeal in CA/OA 7/2024 ("OA 7"), and its appeal in CA/CA 29/2024 ("CA 29") was also successful. An ASI (CA/ORC 34/2024) was therefore granted against the defendant.

8.74 However, the claimant did not serve the court papers for OA 7 and CA 29 ("Appeal Papers") on the defendant. The claimant had informed the defendant only via an e-mail to the Singapore Arbitration Centre, on which the defendant was copied, that CA 29 was pending and later that ASI had been granted. The defendant then entered an appearance

141 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [42].
142 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [48].
143 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 1 SLR 414 at [48].
144 [2026] 3 SLR 850.

in ADM 50 and filed: (a) an application to stay the ASI; and (b) an application to discharge, revoke, set aside, or, alternatively, vary the ASI. The defendant argued that the ASI was procedurally defective because the claimant had failed to serve the Appeal Papers on "all parties who have an interest in the appeal" [emphasis in original omitted] as required by O 18 rr 27(1) and 29(1) of the ROC 2021, and that OA 7 and CA 29 should be treated as *ex parte* with the attendant consequences, including alleged non-disclosure.[145]

8.75 The claimant contended that the defendant no longer had an "interest in the appeal" once it withdrew its NITC[146] and that, in any event, any service defect could and should be cured.

8.76 The High Court affirmed that O 18 rr 27(1) and 29(1) of the ROC 2021 require a party intending to appeal or to seek permission to appeal to "file and serve" the relevant documents "on all parties who have an interest in the appeal".[147] The court noted that the concept of a "party" remains anchored in the formal status of being a named party to the underlying action, as defined by the originating process.[148] Thus, a person named as a party remains a party unless and until removed under O 9 r 10 of the ROC 2021.[149] In this case, the defendant was a named defendant in ADM 50 and had been deemed served with the originating claim. Its subsequent withdrawal of the NITC did not strip it of that formal status.[150] Accordingly, the defendant remained a "party" for the purposes of O 18 rr 27 and 29.

8.77 The court considered the meaning of "interest in the appeal", a phrase not expressly defined in the ROC 2021. It referred to academic commentary[151] that stated that "interest in the appeal" is broader than the earlier ROC 2014 phrase "directly affected by the appeal", and that a party with a stake in, or who may be affected by, the outcome should generally

145 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [9]–[10].
146 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [19].
147 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [52].
148 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [52].
149 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [52].
150 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [52].
151 *Singapore Rules of Court: A Practice Guide* (Chua Lee Ming ed-in-chief; Paul Quan gen ed) (Academy Publishing, 2023).

be served.[152] At the same time, the court noted that "interest" cannot be reduced to subjective notions of enthusiasm or passivity. "Interest" is not determined by whether the party appears keen or has taken steps to "find out more" about the appeal.[153] Reliance on subjective "lack of interest" would introduce uncertainty and invite abuse by allowing appellants to unilaterally characterise counterparties as "uninterested" to avoid service.[154]

8.78 Where a party has filed a NITC but then withdraws that before any appeal is brought, that party has, by its own formal act, signalled an intention to cease participation in the action and its further proceedings.[155] In such a case, the party no longer has an "interest in the appeal" for the purposes of O 18 rr 27 and 29 since it has given up its right of audience and elected not to contest or defend the action or any related applications.[156] Applying this, the court found that by withdrawing its NITC before OA 7 and CA 29 were filed, the defendant lost its "interest in the appeal" (even though it remained a named party) and therefore fell outside the class of "parties who have an interest in the appeal" to be served with the Appeal Papers.[157] By extension, the claimant was not obliged to serve the Appeal Papers on the defendant.[158]

8.79 In any event, even if the claimant had been required to serve the Appeal Papers, any failure to do so was a curable procedural irregularity under O 3 r 2(4) of the ROC 2021 and ought to be cured.[159] In deciding whether to cure the irregularity, the court considered: (a) the nature of the breach; (b) its impact on the Ideals in O 3 r 1, particularly that of fair access to justice; and (c) whether any real prejudice was suffered by the defendant.[160] The defendant was aware of CA 29 via the claimant's e-mail to the Singapore International Arbitration Centre (which was copied to

152 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [56].
153 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [60].
154 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [60].
155 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [73].
156 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [73].
157 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [73].
158 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [80].
159 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [80].
160 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [68]–[73].

the defendant) that identified the appeal and its subject matter; yet, the defendant chose not to come forward or take any steps while the appeal was pending.[161] When asked what it would have done if the Appeal Papers had been served, the defendant could not identify any concrete course of action or prejudice and its case rested solely on the procedural argument that failure to serve should invalidate the ASI.[162]

8.80 Citing *Family Food Court v Seah Boon Lock*,[163] the court observed that a party who has notice of proceedings but chooses to "stand by and see his battle fought by somebody else in the same interest" will generally be bound by the result and cannot later complain of lack of service or seek to reopen the matter.[164] The combination of the defendant's withdrawal of its NITC, its knowledge of CA 29 from the e-mail and its decision not to act until after the ASI was granted strongly indicated that any complaint was not grounded in genuine prejudice. Therefore, the court held that there was no material prejudice and that curing the irregularity would not offend the Ideal of fair access to justice.[165]

8.81 On that basis, the court also held that there was no fundamental procedural defect rendering the ASI a nullity and declined to discharge, revoke, or set it aside.[166] However, the court varied the ASI to take into account a subsequent Indonesian judgment and to impose a time-bar waiver condition on the claimant, having regard to the justice of the case.[167]

VIII. Conditional stay of enforcement is an interlocutory order

8.82 In *Purwadi v MBF Northern Securities Sdn Bhd*,[168] the respondent, a Malaysian company in liquidation, obtained a Malaysian judgment against the appellant. The respondent then commenced proceedings in Singapore to enforce that Malaysian judgment as a foreign

161 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [75].
162 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [73].
163 [2008] 4 SLR(R) 272 at [65].
164 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [77].
165 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [79].
166 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [123].
167 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2026] 3 SLR 850 at [123].
168 [2025] 2 SLR 485.

judgment. The General Division granted the respondent summary judgment for the full judgment sum and ordered a stay of execution of the Singapore judgment on conditions, principally that the respondent provide security to preserve the appellant's position pending a possible appeal in Malaysia.

8.83 The appellant appealed to the Appellate Division, challenging both the enforcement judgment and the terms of the conditional stay of enforcement. The respondent raised the preliminary point that permission to appeal should have been obtained by the appellant. This in turn raised the issue as to whether an application to stay the enforcement of an order is an interlocutory application for a "stay of proceedings" for which no permission to appeal is required under the SCJA.

8.84 The Appellate Division held, *inter alia*, that the conditional stay of enforcement was interlocutory in nature.[169] The court reaffirmed that the characterisation of an order as "final" or "interlocutory" turns on the nature and effect of the order,[170] not on labels or the procedural stage at which it is made. An order is final if it determines the parties' substantive rights in the action; it is interlocutory if it regulates the position of the parties or the conduct of proceedings without finally deciding the merits.[171]

8.85 A stay of enforcement, whether unconditional or conditional, does not determine the parties' underlying rights under the judgment.[172] It merely suspends or regulates the ability of the judgment creditor to execute on the judgment for a period, or on specified terms.[173] The conditional stay therefore operates as a case-management and protective measure pending further events (such as appeals or other proceedings), and does not affect the existence or validity of the judgment itself. On this basis, the conditional stay order is properly characterised as interlocutory.

8.86 The fact that the stay order was imposed after summary judgment enforcing a foreign judgment did not convert it into a final order. Instead, the Singapore judgment in favour of the respondent was the final determination of the enforcement claim. The superadded decision to grant a stay (and to attach conditions such as the provision of security) concerned only the mode and timing of the enforcement of that final judgment. It therefore fell into the same category as other

169 *Purwadi v MBF Northern Securities Sdn Bhd* [2025] 2 SLR 485 at [30].
170 *Purwadi v MBF Northern Securities Sdn Bhd* [2025] 2 SLR 485 at [30].
171 *Purwadi v MBF Northern Securities Sdn Bhd* [2025] 2 SLR 485 at [32].
172 *Purwadi v MBF Northern Securities Sdn Bhd* [2025] 2 SLR 485 at [36].
173 *Purwadi v MBF Northern Securities Sdn Bhd* [2025] 2 SLR 485 at [36].

ancillary enforcement orders (*eg,* garnishee orders *nisi*, charging orders or variations of instalment orders), which are well understood to be interlocutory.[174]

8.87 In reaching this conclusion, the court applied and harmonised existing Singapore authorities on the distinction between "final" and "interlocutory", including decisions that focused on whether the order "dispose[s] of the rights of the parties"[175] or merely regulates the working out of those rights. The conditional stay was analogous to interim relief granted to preserve the party's position pending appeal or other proceedings. Such orders are generally treated as interlocutory because they are inherently provisional and subject to variation or discharge as circumstances change.

8.88 The court further noted that treating conditional stays of enforcement as interlocutory is consistent with the appeals framework under the SCJA and the ROC 2021, which differentiates between appeals as of right and those requiring permission depending on whether the appealed order is final or interlocutory.[176] A contrary view (treating the stay as final) would unduly complicate appellate practice by allowing parties to characterise essentially procedural or protective enforcement decisions as "final" orders, thereby bypassing the statutory controls applicable to interlocutory appeals.

8.89 On determining a stay of enforcement of a foreign judgment (as discussed in the General Division[177] and noted in the commentary[178]):[179]

(a) an appeal does not, by itself, operate as a stay;

(b) the successful litigant should not be deprived of the fruits of judgment;

(c) special circumstances must be shown; and

(d) the "nugatory" principle (*ie*, whether the appeal would be rendered nugatory without a stay) remains relevant.

8.90 In the respondent's case, its liquidation status, the risk of the judgment sum being irrecoverable, if the Malaysian appeal succeeded, and the balance of prejudice justified a conditional stay (rather than no

174 *Purwadi v MBF Northern Securities Sdn Bhd* [2025] 2 SLR 485 at [44].
175 *Purwadi v MBF Northern Securities Sdn Bhd* [2025] 2 SLR 485 at [32].
176 *Purwadi v MBF Northern Securities Sdn Bhd* [2025] 2 SLR 485 at [1].
177 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184.
178 *Singapore Rules of Court: A Practice Guide* (Chua Lee Ming ed-in-chief; Paul Quan gen ed) (Academy Publishing, 2023).
179 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [28].

stay or an unconditional stay), underlining the interlocutory, protective character of the order.

8.91 The Appellate Division therefore treated the appeal against the conditional stay of enforcement as an appeal against an interlocutory order, and applied the appropriate jurisdictional and permission rules for such appeals. The court proceeded on the basis that the stay order was not a final determination of any substantive right but was instead an interim regulation of enforcement pending further developments.

IX. Declarations for permission to appeal

8.92 In *Avra International DMCC v Dava Pte Ltd,*[180] the Court of Appeal observed that there are still cases where parties continue to misapprehend the extent of their right of appeal or, for some other reason, seek an order of the court to insulate themselves from being challenged. As a result, they may either fail to seek and obtain permission where it is necessary or seek permission to appeal unnecessarily.[181] Accordingly, the Court of Appeal took the opportunity to clarify: (a) when it would be appropriate for a party to apply for a declaration that permission to appeal is not required; and (b) the proper procedure to follow in filing such a declaration.[182]

8.93 The appeal, CA/OA 22/2025 ("OA 22"), arose in the context of a planned shipment of Indonesian steam coal ("Cargo") from Indonesia to Bangladesh via the vessel *MV Milos* ("Vessel"). Dava Pte Ltd ("Dava") had voyage-chartered the Vessel to DZA Shipping LLC ("DZA"). The relevant charterparty incorporated a dispute resolution clause providing for arbitration in London. Avra International DMCC ("Avra") was stated in the charterparty to be the supplier/shipper although it was not a party to the charterparty. After the Vessel was loaded with the Cargo, complications arose and the Vessel eventually sailed from Indonesia to Singapore instead.[183]

8.94 While the Vessel was in Singapore, Dava made an *ex parte* application in HC/OA 451/2025 ("OA 451") against DZA seeking an order for the sale of the Cargo and for the net proceeds of sale to be paid into court pending the commencement of arbitration proceedings

180 [2025] 2 SLR 421.
181 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [4].
182 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [6].
183 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [7].

against DZA. A judge of the General Division granted an order-in-terms with minor amendments in HC/ORC 2458/2025 ("ORC 2458").[184]

8.95 Shortly after, Avra commenced an action against Dava in HC/OC 366/2025, in which it sought damages for conversion of the Cargo. Avra subsequently became aware of OA 451 and the order made in ORC 2458 and consequently applied for various orders including to vary and/or set aside ORC 2458 *vide* HC/SUM 1742/2025 ("SUM 1742"). OA 451 and SUM 1742 were thus related and pertained to the same ultimate relief, which was whether an order should be made for the sale of the Cargo and for the payment of the proceeds into court pending the intended arbitration proceedings.[185]

8.96 The judge dismissed the application in SUM 1742.[186] In OA 22, Avra thus applied to the Court of Appeal for the following: [187]

> (a) a declaration that Avra did not require permission to appeal against the judge's decision to dismiss Avra's application in SUM 1742 to vary and/or set aside ORC 2458 ("Declaration Prayer");
>
> (b) if the Declaration Prayer was granted, that Avra be granted an extension of time of 14 days from the date of this court's order to file and serve its notice of appeal ("EOT Prayer"); and
>
> (c) if permission to appeal was required, that permission be granted ("Permission Prayer").

A. Whether a declaration was justified

8.97 The Court of Appeal began by stating the general principles relating to declarations:

> (a) A declaration should only be sought where there was genuine uncertainty as to whether permission to appeal is required.[188]

184 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [8].
185 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [9].
186 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [9].
187 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [5] and [10].
188 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [12], following *The Xin Chang Shu* [2016] 3 SLR 1195 and *Commodities Intelligence Centre Pte Ltd v Hoi Suen Logistics (HK) Ltd* [2022] 1 SLR 845.

(b) Whether there is genuine uncertainty is a matter of objective interpretation.[189]

(c) In most cases, there will be no genuine uncertainty.[190] It would be inappropriate to ask the court for a declaration where it is plain and obvious that permission to appeal is not required.[191]

(d) Where an incorrect course of action is taken due to a misunderstanding of the law, the litigant will have to bear the consequences and seek its remedies accordingly.[192]

(e) It would be an abuse of the court's process to seek a negative declaration that permission is not required in circumstances when the applicant had already been advised by his solicitors that permission is not required. This would be tantamount to seeking insurance from the court, which is not its role.[193]

8.98 The court reviewed past cases that exemplified scenarios where (a) it was patently obvious that leave was not required;[194] and (b) there was genuine uncertainty as to whether permission to appeal was required.[195] The court then opined on when genuine uncertainty may exist. Specifically, it may exist where:[196]

(a) the argument that permission is not needed hinges on the court accepting a novel proposition of law surrounding the requirement of permission;

(b) the argument that permission is not needed requires the court to make a significant clarification surrounding the prevailing legal position; or

(c) there is ambiguity in the law concerning the requirement of permission stemming from inconsistent decisions.

8.99 On the facts of the case, Avra would require permission to appeal if the judge's decision to dismiss SUM 1742 was an order made

189 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [12].
190 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [13].
191 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [14].
192 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [13].
193 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [14] and [32].
194 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [15], citing *Commodities Intelligence Centre Pte Ltd v Hoi Suen Logistics (HK) Ltd* [2022] 1 SLR 845 and *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554.
195 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [17], citing *Lin Jianwei v Tung Yu-Lien Margaret* [2021] 2 SLR 683 and *Taylor, Joshua James v Sinfeng Marine Services Pte Ltd* [2019] SGHC 248.
196 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [20].

at the hearing of an interlocutory application, pursuant to s 29A(1)(*c*) read with para 3(*l*) of the Fifth Schedule to the SCJA.[197] Paragraph 3(*l*) of the Fifth Schedule in turn specifies that permission to appeal will be required in respect of an interlocutory order made at the hearing of an interlocutory application.[198]

8.100 The Court of Appeal then reiterated guidance laid down in previous decisions as to what constitutes an "interlocutory application" and an "interlocutory order". As to the former, it would clearly not be an interlocutory application if it is one that is entirely self-contained and complete in itself, in the sense that there are no pending proceedings in which the application may be said to have been made. As to the latter, an order would not be an interlocutory order if it finally disposes of the rights of the parties.[199]

8.101 Viewed in this light, the Court of Appeal held that SUM 1742 was not an interlocutory application in the first place. OA 451 was only concerned with the sale of the Cargo in aid of arbitration proceedings in London. It followed that SUM 1742, the sole and entire purpose of which was to vary and/or set aside ORC 2458, was a self-contained application. Once SUM 1742 was determined, the entire subject matter of OA 451 and SUM 1742 was spent.[200]

8.102 Accordingly, the Court of Appeal concluded that there was no genuine uncertainty as to whether Avra required permission to appeal[201] as this was a case which involved a straightforward application of the legal principles.[202] Hence, it declined to grant the Declaration Prayer.[203]

B. Proper procedure as to filing of notice of appeal

8.103 Avra's application in OA 22 contained both the Declaration Prayer and the Permission Prayer in the alternative ("Composite Application"). Notably, Avra did not file a notice of appeal concurrently with its Composite Application; instead, it sought an extension of time to file and serve its notice of appeal if the Declaration Prayer was granted (*ie,* the EOT Prayer).[204]

197 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [21].
198 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [23].
199 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [23].
200 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [24].
201 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [21].
202 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [29].
203 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [29].
204 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [11].

8.104 The consequence of Avra's decision was that Avra would ordinarily be out of time to file and serve its notice of appeal even if the Court of Appeal decided that it did not require permission to appeal. The issue here is thus whether Avra could justify the delay.[205]

8.105 The Court of Appeal acknowledged that the *dicta* in a previous decision, *The Chem Orchid*,[206] may be read to suggest that a notice of appeal should only be lodged after the application for a declaration that permission to appeal is not required has been resolved.[207] Hence, the Court of Appeal took the opportunity to clarify the appropriate procedures to follow:[208]

> (a) Where a party reasonably harbours genuine uncertainty as to the requirement of permission to appeal, it should file its notice of appeal and a composite application (*ie*, a prayer for a declaration that permission is not necessary, with an alternative prayer for permission to appeal to be granted) concurrently. If the court holds that permission is required and grants such permission, the appeal would be deemed to have been filed within time on the strength of the notice of appeal. Conversely, if permission is refused, the court may issue a consequential order to strike out the notice of appeal which was filed without permission.
>
> (b) The observation above follows from the Court of Appeal's remark in *Commodities Intelligence Centre Pte Ltd v Hoi Suen Logistics (HK) Ltd*[209] at [36], where it stated that an applicant may simply withdraw the notice of appeal if the court holds that leave to appeal is required.[210] The Court of Appeal then supplemented that remark to clarify that an applicant may withdraw its notice of appeal should the court hold that permission is required and denied.
>
> (c) If there is no genuine uncertainty as to the requirement of permission, the usual timelines would apply. In such a case, it would be plainly inappropriate to file a composite application to seek a declaration that permission is not required, as that would amount to an abuse of the court's process by seeking "insurance" from the court.

205 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [30].
206 [2016] 2 SLR 50.
207 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [36].
208 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [37].
209 [2022] 1 SLR 845.
210 [2022] 1 SLR 845.

8.106 Given the uncertainty in *The Chem Orchid*,[211] Avra was thus granted an extension of time to file and serve its notice of appeal against the judge's decision in SUM 1742.[212]

X. Erinford injunctions

8.107 In *DJY v DJZ*,[213] the General Division expanded on the then prevailing test on Erinford injunctions. The applicant applied for an injunction to restrain the respondent from demanding payment and/or receiving moneys under an irrevocable standby letter of credit.[214] After hearing counsel's submissions, the General Division dismissed the application. The applicant then applied for an interim injunction pending the appeal, also known as an Erinford injunction.[215]

8.108 The General Division began by laying down the principles relating to Erinford injunctions as established in *SH Design & Build Pte Ltd v BD Cranetech Pte Ltd*[216] at [93].[217] Specifically, there are two primary factors a court will consider in deciding whether to grant an Erinford injunction: (a) whether there is a likelihood that the appeal will succeed; and (b) whether the appeal will be rendered nugatory if a stay was not granted.[218]

8.109 Next, the General Division dealt with the preliminary issue as to the distinction between an Erinford injunction (*ie,* an injunction pending appeal) and a stay of execution pending appeal. It noted that they are two sides of the same coin. Generally, the former applies where a defendant seeks to restrain a successful claimant from enjoying the fruits of his litigation pending an appeal, and the latter applies where a claimant seeks to do the same to a successful defendant. Hence, the same principles would apply to both.[219]

8.110 The pertinent issue was whether the test for the grant of an Erinford injunction also involves a balancing of prejudice and the

211 [2016] 2 SLR 50.
212 *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [38].
213 [2025] SGHC 59 (this case is partially reported in [2025] 3 SLR 1561).
214 *DJY v DJZ* [2025] SGHC 59 at [1] (this case is partially reported in [2025] 3 SLR 1561).
215 *DJY v DJZ* [2025] SGHC 59 at [2] (this case is partially reported in [2025] 3 SLR 1561).
216 [2018] SGHC 133.
217 *DJY v DJZ* [2025] SGHC 59 at [17] (this case is partially reported in [2025] 3 SLR 1561).
218 *DJY v DJZ* [2025] SGHC 59 at [17] (this case is partially reported in [2025] 3 SLR 1561).
219 *DJY v DJZ* [2025] SGHC 59 at [22] (this case is partially reported in [2025] 3 SLR 1561).

comparative effects of granting or not granting the injunction.[220] The General Division concluded in the affirmative. In coming to its decision, three main points were made.

8.111 First, the General Division observed that such a position was supported by a plain reading of the decision by Megarry J in *Erinford Properties v Cheshire County Council*[221] and academic commentary.[222] Second, past local decisions did not preclude a balancing exercise.[223] Third, given the General Division's earlier observation that the principles governing a stay of execution pending appeal would apply to Erinford injunctions, the fact that the former involves a balancing exercise lends further support to adopting such a position for Erinford injunctions.[224]

8.112 Pulling the threads together and drawing inspiration from the English Court of Appeal decision of *Novartis AG v Hospira UK Ltd*,[225] the General Division reformulated the test for Erinford injunctions as follows:

> (a) The first part of the test relates to the likelihood of a successful appeal.[226] It does not require that the applicant meet such a high standard such that they must establish that they are likely to succeed in the appeal. Rather, all that is required is that the applicant should be ready to state with sufficiently detailed particulars the reasons why its arguments on appeal will succeed based on a fair and objective standard, as opposed to providing just a bare statement or denial.[227]
>
> (b) The second part of the test requires a balancing exercise of the effects of granting or not granting the injunction on the parties. The issue of whether the appeal is rendered nugatory is part of the latter half of the test, representing an extreme end of a spectrum of possible factual situations. However, where it

220 *DJY v DJZ* [2025] SGHC 59 at [23] (this case is partially reported in [2025] 3 SLR 1561).
221 [1974] 2 WLR 749.
222 *DJY v DJZ* [2025] SGHC 59 at [24]–[28] (this case is partially reported in [2025] 3 SLR 1561).
223 *DJY v DJZ* [2025] SGHC 59 at [35] (this case is partially reported in [2025] 3 SLR 1561).
224 *DJY v DJZ* [2025] 3 SLR 1561 at [38] (this case is partially reported in [2025] 3 SLR 1561).
225 [2014] 1 WLR 1264.
226 *DJY v DJZ* [2025] SGHC 59 at [42] (this case is partially reported in [2025] 3 SLR 1561).
227 *DJY v DJZ* [2025] SGHC 59 at [44] (this case is partially reported in [2025] 3 SLR 1561).

is clear that an appeal would be rendered nugatory, then the injunction should be granted.[228]

8.113 Applying the above principles to the facts, the General Division granted the Erinford injunction. As to the first part of the test, the General Division held that there was a reasonable likelihood of success on appeal; just because the applicant was restating its case did not mean that it did not have a likelihood of succeeding on appeal.[229]

8.114 As to the second part of the test, the General Division held that the balance laid in favour of granting the injunction. The benefit of granting it would be to preserve the financial status quo that had been present for over 15 years.[230] On the other hand, the prejudicial effect of granting it on the respondent would only be for a short period of time (ie, a few months) until the appeal is heard. In any case, such prejudice could be remedied by a payment of damages, which the applicant undertook to do.[231]

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228 *DJY v DJZ* [2025] SGHC 59 at [42] (this case is partially reported in [2025] 3 SLR 1561).

229 *DJY v DJZ* [2025] SGHC 59 at [47] (this case is partially reported in [2025] 3 SLR 1561).

230 DJY v DJZ [2025] SGHC 59 at [60] (this case is partially reported in [2025] 3 SLR 1561).

231 *DJY v DJZ* [2025] SGHC 59 at [62] (this case is partially reported in [2025] 3 SLR 1561).