IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHCR 7

Originating Summons No 245 of 2022

Between

Maybank Singapore Limited

… *Plaintiff*

And

The Personal Representatives
of Christina Khoo Gek Hwa
(Deceased)

… *Defendant*

JUDGMENT

[Civil Procedure — Parties]

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v
Personal representatives of the estate of Khoo Gek Hwa Christina, deceased

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General Division of the High Court — Originating Summons No 245 of 2022
AR Randeep Singh Koonar
20 April, 11 May, 8 June 2022

24 June 2022 Judgment reserved

AR Randeep Singh Koonar:

Introduction

1 Originating Summons 245 of 2022 ("OS 245") raises fundamental questions concerning the proper representation of a deceased's estate in legal proceedings where no grant of probate or administration has been made.

2 In such cases, O 15 r 6A(4)(*a*) of the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("the ROC") requires the plaintiff to apply to the Court for an order appointing a person to *represent* the estate for the purpose of the proceedings and for an order that the proceedings be *carried on* against that person.

3 This rule serves two main purposes. It protects the plaintiff by allowing the plaintiff to commence an action against an estate even if no grant of probate

or administration has been made. It also protects the estate by ensuring that the estate is properly represented in the proceedings.

4 O 15 r 6A(6) envisages the Public Trustee ("the PT") being appointed to represent an estate in certain cases. But where the PT is appointed, the PT's appointment is limited to accepting service of the originating process by which the action was begun, unless the PT consents to taking further steps in the proceedings and the Court so directs.

5 OS 245 is a mortgagee's action by a bank against a deceased's estate. The bank seeks, among other orders, delivery of vacant possession of a mortgaged property and payment of outstanding sums secured by the mortgage.

6 After commencing the action, the bank obtained an order appointing the PT to represent the Estate in OS 245. The appointment was made on the condition that it was limited to the PT accepting service of the originating summons and affidavits filed in the proceedings. The PT did not consent to taking further steps in the proceedings.

7 Having effected service on the PT, the bank contends that it can proceed with OS 245 and obtain the orders it seeks without first taking out an application under O 15 r 6A(4)(*a*) of the ROC to appoint a person to represent the Estate in the proceedings. This is although: (a) the bank knows of the existence of persons who may appropriately represent the estate but has not taken any steps to have them appointed; and (b) the consequence of the bank's contention is that the estate would be unrepresented and the proceedings would be uncontested.

8 The question before me is whether the bank's proposed course of action comports with O 15 r 6A of the ROC and basic procedural fairness.

Facts

Parties

9 The plaintiff, Maybank Singapore Limited ("Maybank"), is a bank carrying on business in Singapore.

10 The defendant is the estate of Christina Khoo Gek Hwa ("the Estate"). Ms Khoo passed away on 3 January 2020. Based on the evidence, Ms Khoo appears to have died intestate.

The loan facilities and the mortgage

11 Maybank granted a home loan and a bridging loan to Ms Khoo ("the Facilities"). The Facilities were secured by a mortgage ("the Mortgage") over a property registered in Ms Khoo's sole name ("the Property").

12 On 2 April 2020, Maybank's solicitors, Rajah & Tann Singapore LLP ("R&T"), received a letter from Just Law LLC ("JL"). JL were solicitors acting for Ms Khoo's mother and brother ("the Mother" and "the Brother"). JL informed R&T that: (a) Ms Khoo had passed away on 3 January 2020; (b) and they had instructions from the Mother and Brother to obtain letters of administration for Ms Khoo's estate.

13 Although this was not stated on affidavit, counsel for Maybank, Mr Foung Han Peow ("Mr Foung"), explained at a hearing that after Ms Khoo passed away, the monthly instalments due under the Facilities were paid for a few months, but these payments later ceased.

14 On 6 May 2021, R&T wrote to JL, demanding that the Estate pay the monthly instalments due under the Facilities (which were then in arrears) in the

sum of $37,057.43 plus further interest and legal costs. R&T also asked JL to confirm whether they had instructions to accept service of process on behalf of the Estate. This demand was not complied with.

15 On 9 November 2021, R&T wrote to JL again, demanding that the Estate pay the full sum of $454,882.32 due under the recalled Facilities plus further interest and legal costs. R&T again asked JL to confirm whether they had instructions to accept service of process of behalf of the Estate. This demand was also not complied with.

16 On 16 December 2021, R&T issued a "notice to quit" to the Estate by way of a letter to JL. R&T informed that Maybank would exercise its right to take possession of the Property upon the expiry of one month from the date of service of their letter. A similar letter addressed to "the occupiers" of the Property was sent by registered post and certificate of posting to the Property on the same day. The Estate did not deliver vacant possession of the Property to Maybank within the stipulated one-month period.

17 I pause here to note that while it is clear that the Estate did not comply with the letters of demand or the notices to quit, the extent of R&T's correspondence with JL is less clear. The affidavit of Maybank's representative, Mr Lim Chow Yang ("Mr Lim"), filed on 28 March 2022, suggests Maybank did not receive any response to the letters of demand and the notices to quit. At the hearing of OS 245, however, Mr Foung informed me that there was further correspondence between R&T and JL after JL's letter to R&T dated 2 April 2020. Mr Foung further informed that the last letter from JL to R&T was sent on 20 January 2022. However, Mr Foung could not disclose the correspondence with JL as it was marked "without prejudice".

Proceedings in OS 245

18 Maybank commenced OS 245 on 14 March 2022. A probate search conducted on 8 March 2022 showed that no grant of probate or administration had been made as of that date and there were no pending applications. OS 245 was thus commenced against the Estate.

19 Maybank's principal claim against the Estate is for delivery of vacant possession of the Property and for payment of outstanding sums owing under the Facilities and secured by the Mortgage, together with further default interest and costs on an indemnity basis.

20 On 28 March 2022, Maybank filed Summons No 1212 of 2022 ("SUM 1212"), seeking an order under O 15 r 6A(4)(*a*) and (6) of the ROC for the PT to be appointed to represent the Estate "for the purpose of accepting service of the originating summons and the supporting affidavit in OS 245, and all subsequent affidavits and orders of courts in respect thereof".

21 At the first hearing of SUM 1212 on 13 April 2022, Maybank was still awaiting the PT's consent to the appointment. Notably, the assistant registrar presiding over the hearing highlighted to Mr Foung that even if the PT accepted service of the originating process, Maybank may still need to appoint someone to represent the Estate. Mr Foung asked for an adjournment to take instructions.

22 SUM 1212 next came up for hearing before me on 11 May 2022. At this hearing, Mr Foung informed me that the PT consented to being appointed to represent the Estate in OS 245 on the terms at [20] above, but subject to the additional condition that the PT did not agree to take any further step in OS 245 or SUM 1212.

23 It seemed to me then that even if the PT was appointed for the limited purpose envisaged in SUM 1212, O 15 r 6A(4)(*a*) of the ROC required Maybank to apply to appoint some other person to represent the Estate, so that the proceedings could be carried on against that person. I further queried Mr Foung on the necessity of SUM 1212 and whether Maybank should have applied to appoint some other appropriate person to represent the Estate, such as the Mother and/or the Brother, instead of appointing the PT in the first instance.

24 Mr Foung's position was that as long as the PT was served with the originating process, having been appointed for this purpose, Maybank could carry on proceedings in OS 245 with the Estate unrepresented. I had considerable difficulty with Mr Foung's position. But since his firm instructions were to proceed with SUM 1212, I made an order in terms of the application, subject to the additional conditions imposed by the PT. However, I did so on the basis that Maybank's right to carry on proceedings in OS 245 would be determined at the next hearing as a preliminary issue ("the Preliminary Issue"), after Maybank filed written submissions. The costs of SUM 1212 were also reserved in the meantime.

25 The originating summons and supporting affidavit in OS 245 were served on the PT on 20 May 2022. Maybank filed its written submissions on the Preliminary Issue on 1 June 2022. After hearing oral submissions on the Preliminary Issue at a further hearing on 8 June 2022, I reserved judgment.

The Preliminary Issue

26 The Preliminary Issue is whether Maybank can carry on the proceedings in OS 245 and obtain the orders sought although the Estate is unrepresented in

the proceedings and Maybank does not wish to take out an application under O 15 r 6A(4)(*a*) of the ROC to appoint a person to represent the Estate in the proceedings.

27 Maybank submits that it can proceed in this manner for two main reasons:

(a) The PT was appointed to represent the Estate for the purpose of accepting service of the originating process and the PT has been duly served.

(b) Maybank is unable to appoint any other person, apart from the PT, to represent the Estate in OS 245. This is purportedly because:

(i) no letters of administration for the Estate have been extracted to date; and/or

(ii) the Mother and the Brother have not given their consent to represent the Estate.

My Decision

The statutory framework

28 Before considering Maybank's arguments, I first: (a) set out O 15 r 6A of the ROC; (b) highlight the key features of the provision; and (c) consider its underlying statutory purpose.

29 O 15 r 6A of the ROC reads:

> **Proceedings against estates (O. 15, r. 6A)**
>
> **6A.**—(1) Where any person against whom an action would have lain has died but the cause of action survives, the action may,

> *if no grant of probate or administration has been made*, be brought against the estate of the deceased.
>
> (2) Without prejudice to the generality of paragraph (1), an action brought against "the personal representatives of A.B. deceased" shall be treated, for the purposes of that paragraph, as having been brought against his estate.
>
> (3) *An action purporting to have been commenced against a person shall be treated, if he was dead at its commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement.*
>
> (4) In any such action as is referred to in paragraph (1) or (3) —
>
> > (a) the *plaintiff shall*, during the period of validity for service of the writ or originating summons, apply to the Court for an order *appointing a person to represent the deceased's estate* for the purpose of the proceedings or, *if a grant of probate or administration has been made for an order that the personal representative of the deceased be made a party to the proceedings*, and *in either case for an order that the proceedings be carried on against the person appointed or, as the case may be, against the personal representative*, as if he had been substituted for the estate; and
> >
> > (b) the Court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in sub-paragraph (a) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.
>
> (5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.
>
> (6) Where an order is made under paragraph (4) appointing the Public Trustee to represent the deceased's estate, the appointment shall be limited to his accepting service of the writ or originating summons by which the action was begun unless, either on making such an order or on a subsequent application, the Court, with the consent of the Public Trustee, directs that the appointment shall extend to taking further steps in the proceedings.

> (7) Where an order is made under paragraph (4), Rules 7(4) and 8(3) and (4) shall apply as if the order had been made under Rule 7 on the application of the plaintiff.
>
> (8) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.
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> [emphasis added]

30 The following features of O 15 r 6A are of note:

(a) Order 15 r 6A applies where the putative defendant is deceased at the time the action is commenced but the cause of action against him or her survives.

(b) Order 15 r 6A will commonly involve three broad scenarios:

(i) The first is where the plaintiff knows that the putative defendant is deceased at the time the action is commenced and no grant of probate or administration has been made. In that case, O 15 r 6A allows the plaintiff to bring the action against the deceased's estate (see O 15 r 6A(1)). Conversely, if the plaintiff knows that a grant of probate or administration has been made, with an executor or administrator (i.e. "a personal representative") appointed, the action should be brought against the personal representative *directly* (see Cavinder Bull SC (gen ed), *Singapore Civil Procedure 2021* (Sweet & Maxwell, 2021) ("*Singapore Civil Procedure*") at 15/6A/3).

(ii) The second is where the plaintiff does not know that the putative defendant is deceased at the time the action is commenced. In that scenario, O 15 r 6A(3) deems an action commenced against the putative defendant as having been

commenced against the putative defendant's estate whether or not a grant of probate or administration has been made before the action's commencement (see *Singapore Civil Procedure* at 15/6A/2). This has the effect of saving an otherwise invalid action.

(iii) The third is where the plaintiff knows that the putative defendant is deceased at the time the action is commenced but is unaware that personal representatives have been appointed. If the plaintiff commences proceedings against the estate, the proceedings will be treated as being duly commenced (see O 15 r 6A(3)) and the Court can substitute the personal representative as the defendant to validate the action (see O 15 r 6A(3) and (4)(*a*) and *Singapore Civil Procedure* at 15/6A/2).

(c) Regardless of whether O 15 r 6A(1) or O 15 r 6A(3) applies, O 15 r 6A(4)(*a*) requires the plaintiff to apply to the Court for an order appointing a person to *represent* the deceased's estate *for the purpose of the proceedings*. The order must further be for the proceedings to be *carried on* against the person appointed *or* the personal representative, *as if he or she has been substituted for the estate*.

(d) Order 15 r 6A protects two interests. First, it prevents prejudice to a plaintiff who intends to commence an action against a putative defendant who has died but where no grant of probate or administration has been made (see *Singapore Civil Procedure* at 15/6A/2 and 15/6A/3). If an estate can only be sued through a personal representative, this can prejudice the plaintiff if there is delay in obtaining a grant or where a limitation period is running out. Second, it prevents prejudice to the

deceased's estate by ensuring that the estate is properly represented in the proceedings (see *Singapore Civil Procedure* at 15/6A/5).

Mere service of the originating process on the PT does not entitle Maybank to carry on the proceedings against the Estate

31 I turn to consider Maybank's submissions. Maybank's first submission is that because the PT was appointed to accept service of the originating process and because the originating process has been served on the PT, Maybank can carry on the proceedings against the Estate, even though the Estate is unrepresented.

32 I disagree.

33 First, it ought to be apparent to Maybank that the making of the order appointing the PT in SUM 1212 cannot be treated as the Court's endorsement of Maybank carrying on the proceedings in OS 245 once the PT is served. As I explained at [24] above, that order was made on the basis that the Preliminary Issue would be ventilated later.

34 Second, the very question to be determined in respect of the Preliminary Issue is whether Maybank can carry on the proceedings in OS 245 after the PT is served with the originating process. It is question begging to argue that Maybank can proceed in the manner proposed simply because such service has been effected.

35 Third, I disagree with Maybank's submission that O 15 r 6A of the ROC gives Maybank an (unfettered) option between appointing the PT or some other person (such as the Mother or Brother) to represent the Estate.

36 To begin, O 15 r 6A(6) establishes a default rule that where the PT is appointed to represent an estate, the PT's appointment is limited to his accepting service of the originating process. The default rule can only be displaced if the PT consents to taking further steps and the Court so directs. In the present case, the PT expressly withheld his consent to taking such further steps. This has two consequences. The first is that no order was made under O 15 r 6A(4)(*a*) that the proceedings be "carried on" against the PT. Second, having fulfilled the terms of its appointment, the PT is no longer participating in the proceedings. This means that the Estate is currently unrepresented and there is no person against whom the proceedings can be carried on.

37 Moreover, I do not think that O 15 r 6A(4)(*a*) and (6) were intended to provide plaintiffs with an "option" in the nature Maybank suggests. Order 15 r 6A(4)(*a*) requires the appointment of a person to "represent" the Estate in the proceedings and for the proceedings to then be "carried on" against that person. It does violence to the language of O 15 r 6A(4)(*a*) and its objective of ensuring the proper representation of estates in legal proceedings if a plaintiff can simply appoint the PT to accept service of the originating process and then proceed against an unrepresented estate on an uncontested basis. I have little doubt that a plaintiff given such an option would adopt that course of action, rather than take steps to identify and appoint an appropriate person to represent the estate. While the option Maybank suggests would undoubtedly be of great convenience to plaintiffs, it renders the procedural safeguards under O 15 r 6A meaningless.

38 Fourth, Maybank's submission is not supported by the case authorities.

39 *In re Amirteymour, decd* [1979] 1 WLR 63, the plaintiff commenced an action against a deceased's estate and obtained an order appointing the Official Solicitor (the English equivalent of the PT) to represent the estate for the limited

purpose of accepting service of the writ. Thereafter, the plaintiff did not apply to have some other person appointed to represent the estate. Instead, the plaintiff applied for and obtained judgment in default of appearance.

40 The English Court of Appeal held that that the default judgment was a nullity because the Official Solicitor was *functus officio* upon accepting service of the writ and the action could not be carried on as there was no other person appointed in the action against whom steps could be taken. The Court observed (at 66):

> The writ was then served on the Official Solicitor and his acceptance of service was indorsed on it. *Under the court's order he thereupon became functus officio. No longer was there any person appointed to represent the estate of the deceased by or against whom any steps in the proceedings could be carried on.*…
>
> …
>
> We agree with the master that the [default judgment] was a nullity. It has already been pointed out that proceedings against the estate of a deceased person that are authorised by…Ord. 15, r. 6A take the form of actions in personam…As in all actions in personam there must be in existence some person, natural or artificial and recognised by law, as a defendant against whom steps in the action can be taken. *If and so long as there is no such person the action, though it may not abate, cannot be continued…*
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> [emphasis added]

41 This aspect of the decision in *In re Amirteymour, decd* was endorsed by the Singapore High Court in *Tan Chwee Chye and others v P V R M Kulandayan Chettiar* [2006] 1 SLR(R) 229 ("*Tan Chwee Chye*") at [17]. The plaintiffs there obtained a default order against the defendant under an originating summons. In doing so, the plaintiffs were unaware that the defendant had passed away many years earlier. The defendant's son, who was the executor of the estate, later applied to set aside the default order.

42 In *Tan Chwee Chye*, Belinda Ang Saw Ean J (as she then was) held that the default order was a nullity and set it aside. On the one hand, Ang J accepted (at [16]) that O 15 r 6A(3) of the ROC meant that proceedings commenced against a person who had died were to be taken as having been commenced against the estate. However, Ang J found (at [17]) that a distinction was drawn under O 15 r 6A(3) and (4) between *commencing* an originating summons and *continuing* with it after it was commenced. Ang J observed that after the originating summons was commenced, it could not continue because there was no defendant having legal personality and capable of identification. In particular, Ang J reasoned that the estate lacked legal personality of its own, and since a grant of probate had been made, the action must have continued against the executor. Ang J thus concluded (at [17]) that:

> [I]t is not enough that the action was properly commenced. *There has to be an effective party against whom the dispute can be determined.* The estate of a deceased person is not such an effective party. Consequently, the default order in the present case could not stand for the same reason. There was no legal persona in existence against whom a default order could be entered…The default order was fundamentally defective and thus a nullity…
>
> [emphasis added]

43 *In re Amirteymour, decd* and *Tan Chwee Chye* underscore the need for there to be an effective party representing the estate, before any proceedings can be continued against an estate. *In re Amirteymour, decd* further establishes that where the PT is appointed to only accept service, the PT is *functus officio* once he accepts service. Thereafter, the action cannot proceed unless someone else is appointed to represent the estate. These cases severely undermine Maybank's contention that O 15 r 6A allows it to proceed against an unrepresented estate after the PT is served. It also came as some surprise to me that Maybank made no mention of these cases in its written submissions, although it was apparent

from Maybank's oral submissions, that Maybank was aware of the decision in *In re Amirteymour decd* at the very least.

44 Maybank relies heavily on the Singapore High Court's decision in *Singapore Gems Co v Personal representatives of the estate of Akber Ali Mohamed Bukardeem, deceased* [1992] 1 SLR(R) 362 ("*Singapore Gems*") to argue that it can carry on the proceedings in OS 245 after service of the originating process on the PT.

45 In *Singapore Gems*, the plaintiff commenced proceedings against the deceased's estate to recover a debt incurred by the deceased during his lifetime. The deceased had died intestate. Although a grant of administration was made to the deceased's wife and a relative, the grant was not extracted.

46 The procedural history of *Singapore Gems* merits mention. Notably, the plaintiff had commenced an earlier action against the deceased's wife and the relative in their capacity as administratrix and co-administrator of the estate. However, the deceased's wife and relative successfully applied to set aside the writ on the ground that they had not extracted the grant of administration and therefore could not be sued in a representative capacity. Thereafter, the plaintiff commenced a fresh action against the deceased's estate. The plaintiff further sought the deceased's wife and relative's consent to represent the estate in the proceedings but did not receive a response. Consequently, the Court granted the plaintiff's application for the PT to be appointed to represent the estate in accepting service of the writ. As no appearance was entered on behalf of the estate after service, default judgment was entered in the plaintiff's favour.

47 After default judgment was entered, the deceased's wife and relative applied to set aside the judgment. Rather disingenuously, one of their principal

grounds for setting aside was that they should have been sued in their representative capacities as administratrix and co-administrator instead. As such, they contended that the PT should not have been appointed to accept service of the writ under O 15 r 6A(4)(*a*). It will be obvious that this was diametrically opposite to their position in the earlier proceedings.

48 The setting-aside application was dismissed by the Deputy Registrar at first instance. The appeal against the Deputy Registrar's decision was dismissed by Chao Hick Tin J (as he then was).

49 The main ruling in *Singapore Gems* at [19] is that a person to whom a grant of administration is made does not clothe himself with the status of an administrator until the grant is extracted. Put differently, such a person cannot sue or be sued in a representative capacity until that time. This aspect of *Singapore Gems* is uncontroversial. It was endorsed by Judith Prakash J (as she then was) in *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1995] 3 SLR(R) 822 at [8]–[9]; and more recently by the Court of Appeal in *Teo Gim Tiong v Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai, deceased)* [2014] 4 SLR 15 ("*Teo Gim Tiong*") at [21] and [55].

50 On the facts of *Singapore Gems*, because the deceased's wife and relative had not extracted the grant of administration and could not be sued in a representative capacity, Chao J found (at [20]) that the Plaintiffs were entitled to apply under O 15 r 6A(4)(*a*) for the PT to be appointed to represent the estate to accept service of the writ.

51 The other notable aspect of *Singapore Gems* is Chao J's evident disapproval of deceased's wife's and relative's conduct. Chao J observed (at [12]–[13] and [20]) that:

> 12 Let me first say that *I find that the conduct of the applicants leaves much to be desired*. As I have indicated above, in Suit No 146 of 1989, the plaintiffs had sued Haseena and Sahabudeen as the administratrix and co-administrator of Akber's estate. But on their application, that writ served upon them was set aside on the ground that they should not be sued in their representative capacity as they had yet to extract the letters of administration. In those proceedings, they contended that it was the grant under seal, and not the order of court that grant should issue, which conferred status. *However, in this application, the applicants took just the opposite stand.* Counsel for the applicants told me that the stand they took in Suit No 146 of 1989 might well be wrong because they were not aware of the case of *Chia Foon Sian v Lam Chew Fah* [1955] MLJ 203. When writing these grounds, I called for the file in that suit and from the notes it was clear that the applicants herein had then relied on *Govindasamy Pillay & Sons Ltd v Lok Seng Chai* [1961] MLJ 89. In *Govindasamy Pillay*, the case of *Chia Foon Sian* was extensively discussed. So there was no question then of the applicants not being aware of *Chia Foon Sian*.
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> 13 *That was not all*. As I have mentioned above, in the instant case, before the plaintiffs applied to the court to appoint the Official Assignee to represent the estate, *they first approached the applicants who showed no interest*. They did not bother to respond. Now they complain and wish to represent the estate. *They seem to behave as if the legal process is at their beck and call. This comes close to abusing the process of the court*.
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> …
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> 20 In my judgment*, in view of the fact that* the applicants had failed to give their consent to represent the Akber estate when requested, the plaintiffs were entitled to apply to court, pursuant to O 15 r 6A(4)(a), to appoint the Official Assignee to represent the estate. The order which the plaintiffs obtained, appointing the Official Assignee to represent the estate for the limited purpose of accepting service of the writ, was therefore in order. So was the judgment obtained by the plaintiffs by default of appearance.
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> [emphasis added]

52 In my judgment, *Singapore Gems* does not establish that a plaintiff can carry on proceedings against an estate as long as the PT has been appointed to accept service of the originating process and has been served. Instead, the decision appears to have turned on its exceptional facts, arising from the deceased's wife's and relative's conduct, which led Chao J to conclude that it was appropriate for the plaintiff to have carried on the proceedings and obtained the default judgment. To be fair, when I pointed this out to Mr Foung at the hearing, he accepted that there were unique facts in *Singapore Gems* which are not present in the present case.

53 I pause here to observe that there appears to be inconsistency between the decisions in *In re Amirteymour, decd* and *Tan Chwee Chye* on the one hand, and *Singapore Gems* on the other. The former suggests that a plaintiff cannot carry on proceedings against an unrepresented estate under any circumstances. The latter on the other hand, appears to permit this, at least in certain circumstances. But there is no need to detain myself with attempting to reconcile the authorities. As I discussed at [52] above, *Singapore Gems* does not stand for the general rule that Maybank has cited it for. Moreover, as I discuss at [55]–[93] below, the circumstances here are not such that Maybank should be allowed to proceed. On the contrary, it is plainly inappropriate to allow Maybank to carry on proceedings with the Estate unrepresented.

54 To conclude on Maybank's first submission, I find that the mere fact that the originating process was served on the PT pursuant to the order made in SUM 1212 does not entitle Maybank to carry on the proceedings against the unrepresented Estate.

Maybank is not unable to appoint a person apart from the PT to represent the Estate

55 Maybank next submits that it should be permitted to carry on proceedings against the unrepresented Estate because it is unable to appoint any person, apart from the PT, to represent the estate. There are two prongs to this submission. The first is that because no grant of administration has been extracted in respect of the Estate, there is no person who can be appointed to represent the Estate under O 15 r 6A(4)(*a*) of the ROC other than the PT. The second is that neither the Mother nor the Brother have consented to representing the estate. Maybank cites *Singapore Gems* as authority for both these propositions.

56 In my judgment, both prongs of Maybank's submissions are misconceived. Before examining them in turn, I note at the outset that each is inconsistent with the other. If no person can be appointed to represent the estate under O 15 r 6A(4)(*a*) because a grant of administration has not been extracted, it is unclear how this can be cured simply by obtaining the consent of the person to be appointed. As will be seen, Maybank's submissions are premised on a profound misunderstanding of *Singapore Gems*. I explain.

A grant of probate or administration is not a precondition to an appointment under O 15 r 6A(4)(a) of the ROC

57 While *Singapore Gems* held that a to be administrator lacks capacity to sue or be sued until the grant of administration is extracted, it did not decide that only a duly appointed personal representative (i.e. an executor or administrator) can be appointed under O 15 r 6A(4)(*a*) of the ROC to represent an estate, or that the PT ought to represent an estate in the absence of a personal representative.

58 The meaning Maybank seeks to give O 15 r 6A is inconsistent with its plain language. O 15 r 6A(1) provides that proceedings may be brought against an estate where "no grant of probate or administration has been made". Hence, it is *precisely where no grant of probate or administration has been made* that O 15 r 6A assumes importance, by allowing an action to be brought against the estate. It cannot be correct that only a personal representative can be appointed to represent the estate under O 15 r 6A(4)(*a*). Such a reading strikes at the heart of O 15 r 6A.

59 This is reinforced by O 15 r 6A(4)(*a*) which makes clear that except where a grant of probate or administrator has been made, in which case it is the personal representative who is to be made party to the proceedings, the Court may appoint "a person" to represent the estate. There is no limitation on who may be appointed, or any support for Maybank's submission that only the PT can or ought to be appointed where no grant of probate or administration has been made. If the drafters had intended such an outcome, they would not have used the general words "a person" under O 15 r 6A(4)(*a*) or created a separate subsection under O 15 r 6A(6) to deal with the *specific scenario* where the PT is to be appointed.

60 Mr Foung's interpretation of O 15 r 6A is also inconsistent with authority. As the authors of *Singapore Civil Procedure* explain (at 15/6A/2, 15/6A/3 and 15/6A/6), O 15 r 6A's very purpose is to allow a plaintiff to sue a deceased's estate where no grant of probate or administration has been made:

> 15/6A/2
>
> **Effect of rule —** This rule provides the machinery for overcoming the difficulties of bringing proceedings *where the person against whom the action would have been brought has died without a grant of probate or administration being made to his estate* or where an action has been brought against a person who is already dead, *first by enabling an action to be brought*

against the estate of the deceased where, where the cause of action survives, even though no grant of probate has been made (para. (1); and secondly by requiring that an action which has been brought against a defendant who has died where the cause of action survives to be treated as having been brought against his estate, even though no grant of probate or administration has been made (para.(3))…

15/6A/3

Action against estate without grant — If, before an action is commenced against the estate of a deceased person, a grant of probate or administration has been made, the action should of course be brought against the personal representatives to whom the grant has been made…

On the other hand, *if no grant or probate or administration has been made, the rule nevertheless enables the action which would have lain against the estate to be brought against the estate of the deceased (para.(1)*)…

15/6A/6

Order to carry on proceedings — In an action within the rule, the court may make an order to carry on the proceedings in one of two forms:

> (1) *Where no grant of probate or administration has been made*, the order should be for the appointment of a person to represent the estate of the deceased for the purpose of the proceedings and that the proceedings be carried on against the person so appointed.
>
> (2) Where a grant of probate or administration has been made since the commencement of the proceedings, the order should be for the appointment of the personal representatives of the deceased to be made party to the proceedings and that the proceedings be carried on as against personal representatives.

The effect of an order to carry on the proceedings where there is no grant or probate or administration is to constitute the person appointed to represent the estate of the deceased for the purposes of the proceedings, to make him in effect defendant ad litem.

[emphasis added]

61 The same position is taken in G Raman, *Probate and Administration in Singapore and Malaysia* (LexisNexis, 4th Ed, 2018), which is an authority Maybank itself cited. The author explains (at [2.04] and [2.05]):

> [2.04] Where a person dies, his legal persona ceases. A dead man cannot carry out any act. In intestacies his affairs come to a standstill. This is because unless letters or administration have been applied for an obtained, there is no one who has the power or authority to act on behalf of the deceased. The authority of an administrator is acquired from the grant of letters of administration. *The extract of the grant will have to be produced as proof of the grant. This is necessary where an administrator is being sued for a claim against a deceased.*
>
> [2.05] *There is an exception to this requirement as the Rules of Court provide for proceedings to be brought against a deceased's estate in which no grant has been extracted.*
>
> [emphasis added]

62 Any doubts concerning whether a person other than a personal representative or the PT can be appointed under O 15 r 6A(4)(*a*) are laid to rest by the Court of Appeal's observation in *Teo Gim Tiong* (at [56]) that "the position in relation to proceedings against estates (*ie*, where the estate is a party as a defendant) is clear; under O 15 r 6A(4)(*a*) the court may order *a person other than a personal representative to represent the estate for the purposes of the proceedings* [emphasis added]".

63 Hence, there is no merit in Maybank's submissions that: (a) only a personal representative can be appointed to represent an estate under O 15 r 6A(4)(*a*); and (b) where there is no personal representative, only the PT can or ought to be appointed. If so, the provision would be rendered largely otiose. The first submission conflates the distinct issues of when a person can be *sued directly* in a representative capacity as the administrator of an estate and when a person can be *appointed by the Court* to represent an estate under O 15 r 6A(4)(*a*). While an extracted grant of administration is a pre-condition under

the former, it does not limit the Court's power under the former. The second submission seeks to read limiting words into O 15 r 6A(4)(*a*), which do not exist and which are contrary to its legislative purpose.

The consent of the person to be appointed is not a precondition to an appointment

64 Maybank further submits that that Maybank can only appoint the PT to represent the Estate because the Mother and Brother did not consent to being appointed under O 15 r 6A(4)(*a*) of the ROC. I disagree.

65 Implicit in Maybank's contention that the Mother and Brother did not consent to being appointed under O 15 r 6A(4)(*a*) must be that Maybank had sought such consent in the first place. On the evidence, I find that Maybank did not do so.

66 Maybank claims that it sought the Mother and Brother's consent by way of R&T's letters to JL dated 6 May, 9 November and 16 December 2021. However, these letters merely sought JL's confirmation on whether JL had instructions *to accept service on behalf of the Estate*. At no time was the Mother and/or Brother's consent sought to be appointed to represent the Estate in OS 245 pursuant to O 15 r 6A(4)(*a*). Moreover, since it is Maybank's own position in these proceedings that the Mother and Brother cannot represent the Estate in the absence of a perfected grant of administration, Maybank could not have been seeking their consent to be appointed under O 15 r 6A(4)(*a*). It is also curious for R&T to have asked whether JL had instructions to accept service on behalf *of the Estate* in these circumstances. When I pointed this out at the hearing, Mr Foung's explanation was that these paragraphs were inserted as a "safeguard" as R&T did not know whether a grant of probate or administration had been made and could not be expected to constantly conduct probate searches. If so,

then by the said letters, R&T was clearly not seeking the relevant consent from the Mother and Brother to be appointed to represent the estate under O 15 r 6A(4)(*a*).

67 Further, and as a matter of law, I am of the view that consent is not a *precondition* to a person being appointed to represent an estate under O 15 r6A(4)(*a*), much less to the taking out of an *application* to appoint the appropriate person to represent the estate. Instead, the proposed appointee's consent is one of several factors which the Court should consider in deciding whether an appointment is appropriate.

68 Maybank cites *Singapore Gems* for the proposition that a lack of consent prevents a person from being appointed under O 15 r 6A(4)(*a*) to represent an estate. As discussed at [51] above, the deceased's wife's and relative's lack of consent was something Chao J considered in deciding that the PT was validly appointed and that the default judgment was regular (see *Singapore Gems* at [20]). In oral submissions, Mr Foung's initial position was that consent is a *precondition* to a person being appointed under O 15 r 6A(4)(*a*). However, Mr Foung then changed his mind and submitted that consent was *a factor* which the Court should consider, and not a precondition to an appointment. In my view, Mr Foung's concession was fair since there is nothing in *Singapore Gems* suggesting Chao J intended to lay down a *rule* that consent is a *precondition* to an appointment.

69 I note, however, that there is District Court authority holding that a person's consent is a precondition to an appointment under O 15 r 6A(4)(*a*). While Maybank did not address these cases in its submissions, I will nevertheless consider them for completeness.

70 In *Ratan Tuzul Islam Mazumder v Ergo Insurance Pte Ltd (personal representative of the estate of Fang Wee Shyong, deceased) and another* [2019] SGDC 265 ("*Ratan Tuzul Islam Mazumder*"), Deputy Registrar Lim Wen Juin set aside an order appointing the deceased's insurers to represent the estate. The original order was made in the absence of the deceased's insurers, who later applied to set aside the order on the ground that their consent was a precondition to an appointment and they did not consent.

71 DR Lim agreed with the insurer and set aside the earlier order. In doing so, DR Lim considered three decisions from the United Kingdom ("the UK") which were cited to him in argument.

72 The first is the English Court of Appeal's decision in *Pratt v London Passenger Transport Board; Green v Vandekar* [1937] 1 All ER 473 ("*Pratt*"). *Pratt* concerned two appeals where the plaintiff had obtained an order appointing the Official Solicitor to represent a deceased's estate pursuant to O 16 r 46 of the Rules of the Supreme Court (UK) ("the UK RSC") (which is substantially identical to O 15 r 15 of the ROC), which allowed the Court to appoint a person to represent an estate for the purposes of proceedings where the deceased person was interested in the matter in question and had no personal representatives. In both cases, the Official Solicitor's consent was not obtained.

73 The English Court of Appeal unanimously held that O 16 r 46 did not apply unless the person put forward consented to the appointment. In arriving at this conclusion, Greer LJ's principal concern (at 476) was that the person appointed would necessarily incur costs in carrying on the litigation and should not be required to do so without his consent. Slesser LJ made the point using more forceful language, reasoning (at 477) that "it would be contrary to all principles of justice" for a person to be appointed without his consent.

74 *Pratt* was followed by the High Court of Justice of Northern Ireland in *Firth Finance and General v McNarry* [1987] 1 WLUK 149 ("*Firth Finance*"). In *Firth Finance*, the plaintiff had a substantial claim against the deceased's estate but the deceased's wife refused to take steps to obtain a grant to the estate. The plaintiff first applied to have the Official Solicitor appointed to represent the estate but the Official Solicitor only provided his consent to accept service of the writ and not to take further steps. The plaintiff thus applied to have the deceased's wife substituted to represent the estate in the action pursuant to O 15 r 16 of the Rules of the Supreme Court (NI) ("NI RSC") (which is substantially identical to O 15 r 6A of the ROC) despite her refusing to consent to the appointment. The order was made by a master at first instance but set aside by Murray J on appeal.

75 Applying *Pratt*, Murray J held that a person who did not consent could not be appointed to represent an estate under O 15 r 16 of the NI RSC. This was because such an appointment would at least expose the appointee to the risk of incurring costs and would be objectionable. Murray J further considered that such a rule would not leave a plaintiff without a remedy. Murray J reasoned that a plaintiff could apply to have his own nominee appointed by the court. Further, if the plaintiff obtained judgment, the plaintiff would then have the necessary *locus standi* to make an application for a grant of administration in respect of the deceased's estate.

76 A different approach was taken by the High Court of Justice of Northern Ireland in *Steven Turner and Carol Turner v Patrick Kearney* [2010] NIMaster 10 ("*Turner*"). The facts in *Turner* were similar to *Firth Finance*. The plaintiffs applied to appoint the deceased's wife to represent the estate under O 15 r 16 of the NI RSC. The deceased's wife did not to consent to the appointment.

77 Having considered *Pratt* and *Firth Finance*, Master Bell accepted the plaintiff's argument that these cases ought to be reconsidered through the prism of the Human Rights Act 1998 (UK) and the European Convention on Human Rights ("the ECHR"). Specifically, Master Bell held that an *absolute prohibition* against the appointment of a person who does not consent would deny the plaintiff effective access to court, as guaranteed by Art 6(1) of the ECHR. Master Bell reasoned as follows (at [28]–[29]):

> [28] …The guiding principle must now be understood to be that, *while a court will be slow to appoint a personal representative who does not consent, each case must be looked at on its own facts* and such an approach will not be justified if it has the effect of breaching a plaintiff's Article 6 rights. *An important issue therefore is whether there is an alternative remedy for the plaintiffs if I were to refuse their application.*
>
> [29] The plaintiffs have found themselves unable to gain the consent of a responsible, professional person to be appointed personal representative of the estate of Mr Kearney. I accept Mr Lunny's submission that the plaintiff could probably gain the consent of someone to act as, in his description, "a puppet of the plaintiff". There appears to be no case law on the issue of whether, if the plaintiff could find a "puppet" to act as the personal representative, that person would have to robustly defend the proceedings to the best of his ability or whether that person could deliberately chose [sic] to allow the action to be lost by default. *I agree with Mr Lunny's submission that, if the plaintiffs were to appoint a "puppet" as personal representative who would then deliberately agree to allow the action to be lost by default, this would make a mockery of what is supposed to be an adversarial litigation process and would not amount to a fair trial of the issues between the parties.*
>
> [emphasis added]

78 Master Bell therefore allowed the plaintiff's application to appoint the deceased's wife to represent the estate but limited the appointment to her acceptance of the service of the writ.

79 In *Ratan Tuzul Islam Mazumder*, DR Lim followed *Pratt* and *Firth Finance* and distinguished *Turner*. DR Lim reasoned that:

(a) *Pratt* and *Firth Finance* should be followed because it would not be fair to impose the burdens and obligations of an appointment on a person who does not consent (at [10]).

(b) While making consent a precondition to an appointment might seem unjust to a plaintiff, it did not leave the plaintiff without recourse. A plaintiff might, as was suggested in *Firth Finance*, apply to appoint their own nominee to represent the estate (at [12]).

(c) *Turner* was distinguishable because Master Bell was bound to apply the provisions of the Human Rights Act 1998 and the ECHR, which were not binding on the Singapore courts, and for which there was no equivalent in Singapore (at [13]–[14]).

(d) It was not objectionable in principle for a plaintiff to appoint a "puppet" to represent the estate of a deceased person. However, this did not mean that a plaintiff had carte blanche to appoint whoever he or she wished. Ideally, the plaintiff should appoint someone closely connected to the deceased, such as a spouse, family member or friend. If no such person consented, the next best alternative was a "responsible, professional person". But if even that proved elusive, and if the plaintiff satisfied the court that he has taken all reasonable steps to appoint an appropriate person but failed to obtain their consent, it would be fair to allow the plaintiff to appoint a nominee, even a "puppet". Such a nominee would owe some basic duty to the estate, such as a duty not to act in bad faith (at [14]–[15]).

80 DR Lim's decision in *Ratan Tuzul Islam Mazumder* was followed by Deputy Registrar Jonathan Ng Pang Ern in *Marhani Binte Minhaj v Angus Ng and another* [2022] SGDC 7 ("*Marhani Binte Minhaj*") at [17]–[18]. In

Marhani Binte Minhaj at [20], DR Ng denied an application to appoint the deceased's father to represent the estate. This was on the basis that the deceased's father had not consented to the appointment.

81 I respectfully disagree with the view expressed in *Ratan Tuzul Islam Mazumder* that a person's consent is a precondition to an appointment under O 15 r 6A(4)(*a*) of the ROC.

82 To be clear, I accept that consent is a *relevant consideration*. To begin, the interests of the person to be appointed must be relevant as that person would be subject to the burdens of taking part in litigation. Moreover, one of the main objectives of O 15 r 6A(4)(*a*) is to ensure that an estate is properly represented. Appointing a person who strongly objects to an appointment can have the opposite effect of compromising the estate's interests.

83 I also agree with DR Lim that a plaintiff does not have an unfettered right to appoint whoever he or wishes to represent the estate. A plaintiff ought to take *reasonable steps* to identify persons who might *appropriately* represent the estate and ascertain whether they consent to the appointment.

84 What I disagree with, however, is the proposition that consent is a precondition to an appointment under O 15 r 6A(4)(*a*). Put differently, I do not consider a lack of consent to be an *absolute bar* to a person being appointed. Instead, the presence of consent (or the lack of it) is *one* of various factors which the Court should consider in deciding whether the proposed appointment is appropriate. Without being exhaustive, such factors might include: (a) the proposed appointee's interest in the estate; (b) the relationship between the proposed appointee and the deceased; (c) whether the estate is solvent and can fund the defence of the litigation or whether the proposed appointee is

indemnified against personal liability or costs; (d) the views of other persons with an interest in the estate; and (e) the nature of the claim (for example, whether it involves defending a suit or an application). In my view, such an approach better comports with a plain and purposive interpretation of O 15 r 6A.

85 To start, the plain words of O 15 r 6A do not make consent a precondition to a person being appointed to represent an estate. In fact, O 15 r 6A(4)(*a*) makes no mention of consent of at all. On the contrary, under O 15 r 6A(6), the PT's consent is a precondition to the Court make an order appointing the PT to take further steps in the proceedings. The fact that the drafter expressly made consent a requirement under O 15 r 6A(6) but not under O 15 r 6A(4)(*a*), suggests that the drafter did not intend for consent to be a precondition to an appointment under O 15 r 6A(4)(*a*). I note that in *Ratan Tuzul Islam Mazumder* at [16], DR Lim believed that it would be reading too much into O 15 r 6A(6) to hold that it follows by implication that the court may appoint any person other than the PT without that person's consent. DR Lim read O 15 r 6A(6) as being a clarificatory provision, to dispel all doubt about the PT's position. While that may be one way of reading O 15 r 6A(6), it does not address the more pertinent point that the express words of O 15 r 6A(4)(*a*) do not require consent.

86 Furthermore, a purposive interpretation of O 15 r 6A militates against consent being a precondition to an appointment. As I explained at [30(d)] above, O 15 r 6A has two main objectives, namely: (a) preventing prejudice to the plaintiff by ensuring that the plaintiff can prosecute an action against a deceased's estate without undue delay; and (b) preventing prejudice to the deceased's estate by ensuring that it is properly represented in the action.

87 Neither objective requires the Court to treat consent as a precondition to an appointment. Instead, these objectives are better served if consent is simply a factor to be considered in making an appointment. *Pratt* suggests that the principal justification for a rule requiring consent is that a person should not be made to incur costs or participate in litigation against their will. While I accept that consent is relevant (see [82] above), it cannot be a determinative consideration. The weight to be attached to a lack of consent will depend on the specific facts before the Court. The Court must also account for countervailing considerations, namely, the plaintiff's interests and the risk of abuse. I note that:

(a) It is unclear how a rule making consent a precondition to an appointment works in practice. If the rule operates to prevent a plaintiff from *even filing an application*, this would not be desirable, as circumstances may change and a person may decide to provide his or her consent after an application is taken out.

(b) In some cases, it will be clear that the proposed appointee is the most appropriate persons to represent the estate. This might include cases where a grant of administration is made but not extracted. This might also include cases where the proposed appointee is of age and the sole beneficiary of the estate.

(c) Concerns about incurring costs may not always materialise. If an estate is solvent, the costs of the litigation can be recovered from the estate and the proposed appointee will not ordinarily be personally liable for costs. Further, the appointment may be conditional upon the proposed appointee being indemnity against personal liability or for any costs incurred in the proceedings.

(d) A proposed appointee's concern about incurring liability towards other persons interested in the estate may also be mitigated by giving notice of the proposed appointed to such persons. Having heard all interested parties, the Court can decide on the appropriate person to appoint.

(e) A proposed appointee may also withhold consent for reasons which have nothing to do with costs or liability. In fact, a person could theoretically refuse his consent without giving any reasons. This places a plaintiff in an invidious position.

(f) In some cases, consent may be refused for tactical reasons, to stymie a plaintiff's claim. The facts in *Singapore Gems* are an apt illustration of this.

88 Put simply, the myriad factual scenarios in which the issue of consent can arise make adopting the absolute rule in *Pratt* impractical and inappropriate.

89 The approach outlined at [84]–[88] above also finds support in the case authorities. In *Turner*, Master Bell held (at [28]) that while the Court will be slow to appoint a person who does not consent, each case must be looked at on its own facts. Likewise, in *Glen Lau Lian Seng v Personal representative of Jeswant a/l Natarajan, deceased* [2017] 11 MLJ 713, the High Court of Kuala Lumpur held (at [11]) that that under O 15 r 6A(4)(*a*) of the Malaysian Rules of Court (which is identical to ours), the Court should have regard to all the relevant circumstances of the case *including* the consent of the proposed appointee, although a lack of consent would be an important consideration. In addition to the proposed appointee's lack of consent, Azizul Azmi Adnan J further considered the fact that: (a) the proposed appointee was not indemnified

for any personal liability or expense she might incur in representing the estate; (b) there was no evidence to suggest that the proposed appointee was a beneficiary of the estate; and (c) the proposed appointee, although the deceased's legal wife at the time of his demise, was estranged from the deceased for several years before the deceased passed away, in deciding against allowing the appointment.

90 I also have reservations about the suggestion in *Ratan Tuzul Islam Mazuder* that prejudice to the plaintiff arising from consent being a precondition can be mitigated by allowing the plaintiff to appoint his own nominee to represent the estate, which in certain cases, might include a "puppet".

91 First, the appointment of a nominee may be problematic in practice. If the lack of consent by some other person relates to the estate having insufficient funds to defend the action, this will likely result in the plaintiff having to pay the nominee's costs as well as his own. If the lack of consent has to do with the risk of incurring liability towards other persons who have an interest in the estate, it is equally unlikely that a nominee would accept an appointment without being provided with an indemnity.

92 Second, the appointment of a "nominee", especially one who is a "puppet", appears wrong in principle. There appears to be a conflict of interests if a plaintiff is to fund and effectively conduct the defence of the opposing party in the litigation, through his own nominee. Moreover, as Master Bell observed in *Turner* (at [29]), "if the plaintiffs were to appoint a "puppet" as personal representative who would then deliberately agree to allow the action to be lost by default, this would make a mockery of what is supposed to be an adversarial litigation process and would not amount to a fair trial of the issues between the parties". I agree. I do not consider the strength of Master Bell's observations to

be diminished by Master Bell's reliance on the Human Rights Act 1998 (UK) and the ECHR. A fair trial is also a cornerstone of the Singapore legal system. Justice must be done and seen to be done. Litigation conducted against a "puppet" does not protect an estate's interests and can undermine public confidence in the administration of justice.

93 For completeness, it is worth pointing out that even if I am wrong in my analysis at [81]–[92], and *Ratan Tuzul Islam Mazumder* represents the correct position, this does not assist Maybank. First, DR Lim accepted, applying *Tan Chwee Chye*, that an action commenced against a deceased estate cannot continue if there is no one representing the estate. Moreover, *Ratan Tuzul Islam Mazamder* underscores the need for a person to be appointed to represent the estate and for the proceedings to be carried on against that person. On Maybank's case, there is no need for it to take any of the steps outlined by DR Lim at [14] of his judgment. It suffices that the PT was served with the originating process after being appointed for this purpose. This finds no support in *Ratan Tuzul Islam Mazumder*.

94 To conclude on Maybank's second submission, I do not accept that Maybank is unable to appoint any other person, apart from the PT, to represent the Estate. In oral submissions, Mr Foung described Maybank as being "stuck". I disagree. The purported obstacles which Maybank claims prevent the appointment of the Mother and/or the Brother are more imaginary than real. Once the legal position is properly understood, there is nothing preventing Maybank from *at least making an application* to have Mother and/or the Brother (or some other person) appointed to represent the Estate. I simply cannot see how Maybank can be entitled to proceed with OS 245 and obtain the orders sought without taking this basic step.

Maybank's other arguments are unpersuasive

95 For completeness I address Maybank's other arguments.

96 The first is that Maybank should be allowed to proceed with OS 245 because it is simply seeking to enforce a mortgage in their favour. Citing *Hong Leong Finance Ltd v Tan Gin Huay and another* [1999] 1 SLR(R) 755 ("*Hong Leong Finance*") at [12], Maybank submits that where a mortgagee is entitled to possession of a mortgaged property, the Court has no jurisdiction to refuse an order unless there is a reasonable prospect of the debt being repaid in full. This is unpersuasive. *Hong Leong Finance* does not create an exception to compliance with O 15 r 6A of the ROC. If anything, the Court's observations are apposite only after the rule has been complied with.

97 The second is that if Maybank applies to have the Mother and/or the Brother represent the estate, problems might arise if someone else with an interest in the estate challenges the appointment. Again, this is not a good reason to allow Maybank to continue the proceedings in OS 245 with the Estate unrepresented (assuming the Court has the power to allow this). As I pointed out to Mr Foung at the hearing, it is even less desirable for the estate to be *completely unrepresented*. Maybank's submission is paradoxical because it means that a greater number of persons could potentially challenge any orders made in OS 245. Further, the existence of competing interests and the risk of a challenge is inherent in cases of this nature. To an extent, this is guarded against by the Court's power under O 15 r 6A(5) of the ROC to require that notice be given to persons having an interest in the estate before making an order under O 15 r 6A(4). Maybank is also placing the cart before the horse. Since Maybank has *not even made an application for an appointment*, there is no reliable way of assessing the likelihood of a challenge. Hence, the risk of a possible challenge

to an appointment is not a reason to allow Maybank to proceed against an unrepresented estate.

Points to consider when commencing an action against an estate

98 As a summary of the principles discussed above, and as a guide for future cases, I set out the key points which parties should consider when commencing and carrying on an action against a deceased's estate:

(a) The plaintiff should first ascertain whether a grant of probate or administration has been made in respect of the estate.

(b) Where a grant of probate or administration *has* been made at the time the action is to be commenced, the action should be brought against the personal representative (i.e. the executor or administrator) *directly*, albeit, the personal representative is to be sued in a representative capacity and not a personal one. There is no need for the plaintiff to apply for an order under O 15 r 6A(4)(*a*) for the personal representatives to be appointed to represent the estate for the purpose of the proceedings.

(c) Where a grant of probate or administration *has not* been made at the time the action is to be commenced, the action should be brought against the estate. The plaintiff must then, during the period of validity of the originating process, apply to the Court for an order appointing a person to represent the estate for the purpose of the proceedings.

(i) *Before* making an application to Court, the plaintiff should exercise reasonable efforts to ascertain an appropriate person (or persons) who can be appointed to represent the estate. This minimally requires the plaintiff to ascertain whether a grant of probate or administration has been made after the action was

commenced, which can be readily done by conducting a cause book search. Where a grant or probate or administration has still not been made, the plaintiff should exercise reasonable efforts to ascertain the identity of persons who have an interest in the estate. These might include potential beneficiaries, family members or friends. The plaintiff should also exercise reasonable efforts to ascertain whether such persons (if any) have objections to being appointed under O 15 r 6A(4)(*a*) to represent the estate for the purpose of the proceedings, and if so, the reasons.

(ii) Where a grant of probate or administration is made after the action is commenced, the application under O 15 r 6A(4)(*a*) should be for the personal representative (or personal representatives) to be made party to the proceedings.

(iii) Where a grant of probate or administration has still not been made after the action is commenced, the application should be to appoint an appropriate person (or persons) to represent the estate in the proceedings. In the first instance, when filing the application, the plaintiff has a choice in deciding who it wishes to put forward as the appointee. But regardless of the plaintiff's choice, the plaintiff should give notice to other persons having an interest in the estate (who they are aware of after making reasonable inquiries), to give them the opportunity to object to the proposed appointment or decide whether they wish to be appointed instead.

(iv) *Ordinarily*, an application to appoint the PT to represent the estate under O 15 r 6A should not be made in the *first*

> *instance*, especially if the PT consents to only accepting service of the originating process and not to taking further steps in the proceedings. An application to appoint the PT to represent the estate for the limited purpose of accepting service of an originating process should only be made where there are reasons justifying such an application, such as where a limitation period is expiring, which might complicate the extension of the validity of the originating process for service. In any event, if the plaintiff proposes to appoint the PT, the PT's position should be ascertained *before* filing the application.

Conclusion

99 For these reasons, I find that Maybank cannot proceed with OS 245 without taking steps to appoint a person to represent the Estate. I will not give directions as to who Maybank should apply to have appointed. That is for Maybank to decide in the first instance. Maybank is to file the application within three weeks of my decision, with liberty to seek an extension of time. Once the application is filed, OS 245 will be restored for hearing and fixed together with the application. As the situation is fluid, Maybank may apply for further directions.

100 This leaves the issue of costs. I first deal with the costs of SUM 1212 which were reserved. Given my finding that Maybank had filed Summons 1212 based on a misapprehension of the law, and that Maybank should, but did not take proper steps to appoint an appropriate person to represent the Estate in the first instance, Maybank is to bear its own costs for SUM 1212. As for the costs of OS 245, these are reserved pending the final determination of the matter.

Randeep Singh Koonar
Assistant Registrar

Foung Han Peow (Rajah & Tann Singapore LLP) for the plaintiff;
The defendant absent and unrepresented.