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

[2023] SGHCR 3

Originating Application No 7 of 2023 (Summons No 525 of 2023)

Between

(1) INDIAN TRADING PTE. LTD.

… *Claimant*

And

(1) DE TIAN (AMK 529) PTE LTD

… *Defendant*

GROUNDS OF DECISION

[Landlord and Tenant — Agreements for leases]
[Civil Procedure — Originating processes]

TABLE OF CONTENTS

Indian Trading Pte. Ltd.
v
De Tian (AMK 529) Pte Ltd

[2023] SGHCR 3

General Division of the High Court — Originating Application No 7 of 2023 (Summons No 525 of 2023)
AR Randeep Singh Koonar
17 March 2023

26 April 2023

AR Randeep Singh Koonar:

Introduction

1 Summons No 525 of 2023 ("SUM 525") was the Claimant's application to convert Originating Application No 7 of 2023 ("OA 7") into an originating claim.

2 I allowed the application on 17 March 2023 and delivered a brief oral judgment. I now provide the full grounds of my decision. I do so because SUM 525 raised several interesting questions of principle concerning: (a) whether the law governing conversion applications made under the Rules of Court 2021 ("ROC 2021") is different from the law governing similar applications made under the now revoked Rules of Court (Cap 332, R5, 2014 Rev Ed) ("ROC 2014"); (b) the relevance of the merits of the claim in a conversion application;

and (c) whether deference should be given to the claimant's choice as to how it wishes to prosecute its claim.

Facts

The parties

3 The Claimant is a company in the business of operating restaurants. At the material time of the events giving rise to the dispute between parties, its sole director and shareholder was Mr Abdul Karim Seeman Ali ("Karim"). It is also pertinent to note the involvement of Mr Shaikalavudin Ajmalkhan ("Khan"), who is the brother of Karim's wife. Khan was a co-director of the Claimant from 18 November 2019 to 8 January 2020 and a shareholder from 4 November 2020 to 8 November 2020.

4 The Defendant is a company whose business includes renting out coffee shops.

5 The other key actor in the dispute is 529 Investments Pte Ltd ("529 Investments"). 529 Investments' business included the operation of coffee shops. Its sole director (and one of its shareholders) at the material time was Mr Lim Boon Ker ("Lim"). Khan was also a shareholder of 529 Investments from 2 June 2020 onwards.

The Tenancy Agreement

6 On or around 16 January 2020, the Claimant entered a tenancy agreement ("the Tenancy Agreement") with 529 Investments, for the lease of the premises at 529 Ang Mo Kio Avenue 10 #01-2337 ("the Premises").

7 The material terms of the Tenancy Agreement were as follows:

(a) Under clause 1.1, the Tenancy Agreement was for a fixed term of 36 months, commencing on 7 January 2020 and expiring on 6 January 2023.

(b) Under clause 4.7, the Claimant was granted an option to renew the Tenancy Agreement for a further period of 36 months from the expiry date ("the Option to Renew"). To exercise the Option to Renew, the Claimant had to make a written request to the Landlord, no later than three months before the expiry date.

(c) Under the Tenancy Agreement, 529 Investments was "the Landlord", but the term also covered 529 Investments' successors and assigns. Under clause 4.8, 529 Investments could assign all its rights and interests under the Tenancy Agreement. If it did so, the Claimant was deemed to have consented to the assignment and was to accept the assignee as the new landlord.

8 On 7 January 2020, the Claimant began operating an eating house at the Premises.

The sale of the Premises

9 Sometime in September 2021, the Defendant entered negotiations with 529 Investments to purchase the Premises. An agreement was reached on 24 September 2021 and completion took place on 1 August 2022. On the day of completion, 529 Investments' and the Defendant's respective conveyancing solicitors sent notices to the Claimant ("the Notices"), informing the Claimant of the sale of the Premises and requesting that the Claimant pay future rent to the Defendant.

10 On 15 August 2022, the Defendant's solicitors sent a letter of demand to the Claimant ("the Letter of Demand") after the Claimant failed to pay rent for August. The Letter of Demand was sent to the Premises by registered post. The tracking details showed that the Letter of Demand was delivered to the letterbox at the Premises. After the Letter of Demand was sent, the Claimant paid rent directly to the Defendant from 15 August 2022 onward.

11 For the purposes of the hearing of SUM 525, the Claimant did not dispute that the Notices and the Letter of Demand were *sent* by the solicitors. Instead, the Claimant's case was that Karim, as the Claimant's sole director and shareholder, did not *receive* the notices and did not know of the change in landlord. Karim's evidence was that his wife had made the payment of rent to the Defendant, and she had acted on Khan's instructions. Karim further claimed that Khan's actions and knowledge should not be attributed to the Claimant because Khan was not an authorised representative, servant or agent of the Claimant.

The Notice of Renewal

12 Further, and more importantly, the Claimant's case was that on 2 September 2022, the Claimant (through Karim) gave written notice to 529 Investments that it wished to exercise the Option to Renew ("the Notice of Renewal"). Karim claims to have sent the Notice of Renewal to 529 Investments because he was not informed, and did not know, of the change in landlord. On this basis, the Claimant claimed to have validly exercised the Option to Renew. Conversely, the Defendant's case was that the Option to Renew was not validly exercised because the Notice of Renewal was served on the wrong landlord.

The 14 October 2022 Meeting

13 On 14 October 2022, there was a meeting at the Premises ("the 14 October 2022 Meeting"). The attendees were Karim, Lim, Mr Koh Peck Chong ("Koh") (a director and shareholder of the Defendant), and Mr Reeve Tng ("Tng") (the Defendant's other representative). Karim and Koh, who filed affidavits in OA 7 and SUM 525, gave diametrically opposed accounts of the events which led to and took place at the 14 October 2022 Meeting:

(a) Karim's evidence was that Khan had informed him sometime before 14 October 2022 that a meeting was being arranged between Karim, Lim and the prospective buyers of the Premises. The meeting was meant for Lim to introduce Karim to the prospective buyers. However, during the meeting, Koh and Tng informed him that the Claimant was to vacate the Premises by 6 January 2023. Karim claimed that he was taken by surprise because the Claimant had already sent the Notice of Renewal to 529 Investments to exercise the Option to Renew and he did not know that the Premises had already been sold to the Defendant before the meeting.

(b) Koh's evidence was that the meeting was arranged because Koh wanted to meet with the Claimant's representative to discuss the handover of the Premises when the Tenancy Agreement expired on 6 January 2023 and because certain noise complaints had been made regarding the Premises. Koh tried to arrange for the meeting through Khan, whom he believed to be the Claimant's representative. Koh was unable to contact Khan but managed to contact Lim, who agreed to arrange the meeting. Koh claimed that he and Tng were under the impression that they would be meeting Khan. However, when they attended at the Premises, Karim was there in Khan's place. Karim told

Koh that Khan was unable to attend the meeting and Karim would attend on Khan's behalf. When Koh raised the issue of the handover of the Premises, Karim asked if the Tenancy Agreement could be extended until January 2026. However, Koh did not agree to extend the Tenancy Agreement because the date for the Claimant to exercise the Option to Renew had passed. Koh claims that Karim became upset after hearing this and had said "Then I see you in court" before walking away. The meeting ended on that note. Shortly after the meeting ended, Koh received a call from Khan, who asked whether the Defendant would allow the Claimant to renew the Tenancy Agreement. Koh repeated what he had told Karim during the meeting.

Correspondence leading up to the proceedings

14 On 15 November 2022, the Defendant's then-solicitors, ComLaw LLC ("ComLaw"), wrote to inform the Claimant that the Tenancy Agreement would expire on 6 January 2023 and request that the Claimant arrange for the handover of the Premises.

15 On 19 November 2022, Karim wrote to ComLaw to express his dissatisfaction with the Defendant's decision not to extend the Tenancy Agreement and to ask that the Defendant reconsider its decision. In this letter, Karim neither mentioned the Notice of Renewal nor did he assert that the Option to Renew was validly exercised.

16 On 6 December 2022, ComLaw wrote to the Claimant to reiterate that the Defendant was merely exercising its rights under the Tenancy Agreement and to ask that the Claimant arrange for the handover of the Premises.

17 On 14 December 2022, the Claimant's solicitors, I.R.B. Law LLP ("IRB"), wrote to ComLaw. Among other things, IRB's instructions were that the Claimant had validly exercised the Option to Renew by sending the Notice of Renewal to 529 Investments on 2 September 2022. IRB's letter enclosed a copy of the Notice of Renewal.

18 On 15 December 2022, ComLaw replied to dispute the contents of IRB's letter. In particular, ComLaw disagreed with IRB's assertion that the Claimant did not know of the change in landlord. ComLaw pointed out that the Notices and the Letter of Demand were sent to the Claimant and that the Claimant had paid rent to the Defendant on 15 August 2022. ComLaw further asserted that the Defendant was unaware of the Notice of Renewal and that the Notice of Renewal did not comply with clause 4.7 of the Tenancy Agreement.

The proceedings

19 The Claimant commenced OA 7 on 5 January 2023. The Claimant sought: (a) specific performance of the Tenancy Agreement; (b) damages to be assessed in the alternative; and (c) declarations to the effect that the Notice of Renewal was valid.

20 On 7 January 2023, the Defendant entered the Premises and took possession of it.

21 On 28 February 2023, after the Defendant had filed its affidavits in response to OA 7, the Claimant filed SUM 525 to convert OA 7 into an originating claim.

My Decision

The relevant legal principles

22 The Claimant's application for conversion was made under O 15 r 7(6)(*c*) of the ROC 2021. The provision reads:

> **Hearing of originating applications and summonses (O. 15, r. 7)**
>
> …
>
> (6) Where the Court is of the view that *there are disputes of facts in the affidavits*, the Court may order any of the following:
>
> (a) the parties to file and serve further affidavits;
>
> (b) the makers of the affidavits to be cross-examined;
>
> (c) the *originating application to be converted into an originating claim*, and with the necessary directions;
>
> (d) any other appropriate order.
>
> [emphasis added]

23 Reference should also be made to O 6 r 1 of the ROC 2021 which provides for the mode of commencing civil proceedings. The provision reads:

> **Mode of commencing proceedings (O. 6, r. 1)**
>
> 1.—(1) Unless these Rules or any written law otherwise provide, *a claimant may commence proceedings by an originating claim or an originating application*.
>
> (2) A claimant *must* commence proceedings by an originating claim where the *material facts are in dispute*.
>
> (3) A claimant must commence proceedings by an originating application where —
>
> (a) these Rules or any written law require it;
>
> (b) the proceedings concern an application made to the Court under any written law; or
>
> (c) the proceedings concern solely or primarily the construction of any written law, instrument or

> document or some question of law and *the material facts are not in dispute*.
>
> [emphasis added]

24 Under the ROC 2014, the corresponding provisions relating to the conversion of an originating summons into a writ action were O 28 r 8(1) and O 5 rr 1 to 4 of the ROC 2014, which read:

> **Continuation of proceedings as if cause or matter begun by writ (O. 28, r. 8)**
>
> 8.—(1) Where, in the case of a cause or matter begun by originating summons, *it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun* and may, in particular, order that pleadings shall be delivered or that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.
>
> …
>
> **Mode of beginning civil proceedings (O. 5, r. 1)**
>
> 1. Except in the case of proceedings which by these Rules or by or under any written law are required to be begun by any specified mode of commencement, *proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate*.
>
> **Proceedings which must be begun by writ (O. 5, r. 2)**
>
> 2. Proceedings in which a *substantial dispute of fact is likely to arise* shall be begun by writ.
>
> **Proceedings which must be begun by originating summons (O. 5, r. 3)**
>
> 3. Proceedings by which an application is to be made to the Court or a Judge thereof under any written law must be begun by originating summons.
>
> **Proceedings which may be begun by writ or originating summons (O. 5, r. 4)**
>
> 4.—(1) [Deleted by S 806/2005]
>
> (2) Proceedings —

> (a) in which the sole or principal question at issue is or is likely to be, one of the construction of any written law or of any instrument made under any written law, or of any deed, will, contract or other document, or some other question of law; or
>
> (b) in which there is *unlikely to be any substantial dispute of fact*,
>
> are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or for any other reason considers the proceedings more appropriate to be begun by writ.
>
> …
>
> [emphasis added]

25 In respect of the ROC 2014 provisions, there is an established body of case law considering when an originating summons should be converted into a writ action. The relevant principles may be summarised as follows:

(a) For the court to exercise its discretion to convert an originating summons under O 28 r 8(1), the threshold requirement under O 5 r 2 of the ROC 2014 must be met, that is, a substantial dispute of fact must be likely to arise: *Woon Brothers Investments Pte Ltd v Management Corporation Strata Title Plan No 461 and others* [2011] 4 SLR 777 ("*Woon Brothers*") at [27].

(b) For disputes of fact to warrant conversion:

(i) There must be a controversy concerning the facts themselves, as opposed to whether those facts are sufficient to prove a cause of action or defence: *TDA v TCZ and others* [2016] 3 SLR 329 ("*TDA*") at [30].

(ii) The disputes of fact must be relevant to the case at hand and accompanied by the existence of at least a credible matrix of facts: *Rainforest Trading Ltd v State Bank of India Singapore*

[2012] 2 SLR 713 ("*Rainforest Trading (CA)*") at [42]; *TDA* at [31].

(c) If the threshold requirement is met, the Court considers all the circumstances of the case to determine whether it is more appropriate for the proceedings to continue as a writ action instead of an originating summons. Relevant considerations include:

(i) The nature and range of the factual issues in dispute: *Woon Brother*s at [30]; *TDA* at [26]; *The Ngee Ann Kongsi v Teochew Poit Ip Huay Kuan* [2019] SGHC 256 ("*The Ngee Ann Kongsi*") at [40].

(ii) The utility of the various interlocutory steps which would follow under the writ process, such as discovery and interrogatories: *Woon Brothers* at [32]; *The Ngee Ann Kongsi* at [37]–[39].

(iii) The extent of cross-examination which may be required: *Woon Brothers* at [29].

(d) Even if there are disputes of facts which might ordinarily warrant conversion, a party who fails to apply for conversion in a timely manner may be taken to have elected to forego the opportunity to apply for conversion: *LS Investment Pte Ltd v Majlis Ugama Islam Singapura* [1998] 3 SLR(R) 369 at [54]–[56]; *Haco Far East Pte Ltd v Ong Heh Lai Francis* [1999] 3 SLR(R) 959 at [17]; *TDA* at [34]–[38].

26 Turning to the position under the ROC 2021, I agreed with the parties that while the ROC 2021 provisions are worded and structured slightly differently from the ROC 2014 provisions, the case law interpreting the ROC

2014 provisions remains relevant. Under both the ROC 2014 and ROC 2021, the overarching query in a conversion application is whether there are disputes of fact which ought to be determined after a full trial.

27 That said, the precise words used in the ROC 2021 remain the foremost consideration. Under O 15 r 7(6)(*c*) of the ROC 2021, the Court's power to order conversion is engaged where there are disputes of facts in the affidavits. As a matter of principle and reading O 15 r 7(6)(*c*) in the context of O 6 r 2 of the ROC 2021, such a dispute must relate to *material facts*, to justify conversion. In my judgment, therefore, the threshold requirement for ordering conversion under O 15 r 7(6)(*c*) of the ROC 2021 is *whether the material facts relating to the action are in dispute*.

28 If the threshold requirement for conversion under O 15 r 7(6)(*c*) of the ROC 2021 is satisfied, the court is to determine whether to exercise its discretion, based on all the circumstances of the case. In my view, relevant considerations would include those mentioned at [25(c)] above. I also agreed with parties that the court must give effect to the Ideals under O 3 r 1(2) of the ROC 2021. For reference, the Ideals are as follows:

(a) fair access to justice;

(b) expeditious proceedings;

(c) cost-effective work proportionate to —

(i) the nature and importance of the action;

(ii) the complexity of the claim as well as the difficulty or novelty of the issues and questions it raises; and

(iii) the amount or value of the claim;

(d) efficient use of court resources;

(e) fair and practical results suited to the needs of the parties.

29 But I would add that while the court must seek to achieve the Ideals in all its orders and directions, given the range of factors the court is to consider, no one factor can have a talismanic quality and the application of individual factors can point towards different outcomes. The court's role is ultimately to strike a fair balance where there are competing considerations.

The material facts relating to OA 7 were in dispute

30 As regards the threshold requirement for conversion (at [27] above), parties agreed that the material facts relating to OA 7 were in dispute. In particular, parties agreed that:

(a) The central issue in OA 7 was whether the Tenancy Agreement was validly extended by the Claimant ("the Central Issue").

(b) To determine the Central Issue, the Court had to make factual findings on:

(i) Whether the Claimant knew of the change in the landlord before the 14 October 2022 Meeting and at the time the Notice of Renewal was served on 529 Investments.

(ii) Whether Khan had authority to act on the Claimant's behalf, which would in turn determine whether Khan's actions and knowledge should be attributed to the Claimant.

(c) Based on the affidavits filed in OA 7, there was a dispute between parties on the issues at sub-paragraphs (b)(i) and (ii) above.

(d) The dispute concerned the existence of the facts themselves and not simply the legal consequences which would follow if the facts were established.

The disputes relating to the material facts could not be determined summarily

31 While the Defendant accepted that the material facts relating to OA 7 were in dispute, the Defendant submitted that OA 7 should not be converted into an originating claim because the disputed facts could be determined summarily (i.e. on the affidavits alone and without cross-examination).

32 In short, the Defendant's contention was that the Claimant's case was bound to fail on its merits. The Defendant noted that it was undisputed that the Claimant had paid rent to the Defendant since August 2022, before the Notice of Renewal was issued. According to the Defendant, this showed that the Claimant knew of the change in landlord, regardless of whether the Claimant had received the Notices and the Letter of Demand and whether Khan had authority to act for the Claimant.

33 I disagreed with the Defendant's submission because I was not satisfied that the Claimant's case was bound to fail on its merits. Before I explain why I reached this conclusion on the evidence, I first deal with the anterior legal issue of whether the merits of a claim (or defence) are a relevant consideration in a conversion application; and if so, the standard to be applied to determine whether a conversion should be denied based on a lack of merits.

34 As a matter of principle, I accepted that the merits of a claim (or defence) are relevant in a conversion application. On the one hand, a conversion application is ordinarily not the proper forum to adjudicate on disputed facts

since the Court's main concern is the mode by which the proceedings are to continue. But where a claim (or defence) is plainly and obviously lacking in merit, so as to make summary determination appropriate, the court should be extremely slow to order conversion. In such cases, conversion arguably serves no purpose because the court can, and should, summarily determine the disputed facts on the affidavit evidence. Further, conversion would be unfair to the opposing party by putting that party to the additional (and unnecessary) costs associated with a full trial. The case authorities support this approach.

35 In *State Bank of India Singapore v Rainforest Trading Ltd and another* [2011] 4 SLR 699 ("*Rainforest Trading (HC)*"), the plaintiff commenced proceedings by way of originating summons to enforce its security over shares pledged to it by the 1st defendant. To resist the application, the defendants levelled various allegations of fraud against the plaintiff and applied to convert the originating summons into a writ action. Steven Chong J (as he then was) dismissed the conversion application and summarily determined the allegations of fraud against the defendants (at [47] to [77]). Chong J did so on the basis that "it [was] clear…that the allegations of fraud raised by the defendants [were] *devoid of any merit* and consequently [had] *no bearing* on the substantive issues [emphasis added]" (at [30]).

36 Chong J's decision was upheld by the Court of Appeal in *Rainforest Trading (CA)* at [41]. The Court of Appeal further observed (at [42]) that:

> 42 …While it was stated by this court in *Woon Brothers* ([23] supra) at [30] that a writ action is usually more appropriate when allegations of fraud are made, *it cannot be the case that a conversion must be ordered the moment allegations of fraud are made by a defendant*, for this would allow defendants to unnecessarily prolong and complicate otherwise straightforward and legitimate claims made against them, which is precisely the case here. Mr Chacko is wrong to cite *Woon Brothers* for the overly broad proposition that an

> originating summons must be converted the moment there are allegations of substantial disputes of fact, allegations of fraud or both. The alleged disputes of fact as well as allegations of fraud ***must be accompanied by the existence of at least a credible matrix of facts*** and must be relevant to the dispute at hand, which was not the case here.
>
> [emphasis added in italics and bold italics]

37 The requirement that a dispute of fact must be accompanied by "the existence of at least a credible matrix of facts" is noteworthy. It makes clear that a party cannot seek conversion (and avoid summary determination) of an originating summons or originating application by making bare assertions which have no evidential basis. At the same time, the language used by the Court of Appeal suggests that the applicant's burden is not an onerous one, and conversion will only be denied where the claim or defence clearly lacks merit.

38 *In DBS Bank Ltd v Lam Yee Shen and another* [2021] 5 SLR 1202 ("*Lam Yee Shen"),* the plaintiff granted the defendants a housing loan facility which was secured by a mortgage over the defendants' property. When the defendants defaulted on making repayments, the plaintiff commenced proceedings by way of originating summons, seeking vacant possession of the mortgaged property and payment of sums secured by the mortgage. In response, the defendants raised various allegations of fraud, presumed undue influence and discrepancies in the mortgage documents. The defendant contended that these were matters which ought to be determined after a trial or cross-examination.

39 In *Lam Yee Shen* (at [10]–[14]), Aedit Abdullah J applied summary judgment principles to determine whether the application should be summarily determined in the plaintiff's favour, or whether a trial or cross-examination was necessary. This required the plaintiff to first establish a *prima facie* entitlement to judgment before the burden shifted to the defendants to raise triable issues. Abdullah J explained the basis for his approach as follows (at [11]):

> …[T]he threshold of a triable issue being raised balances the need to not prolong matters unnecessarily *where the case is overwhelming*, with the *need to allow the defendant his day in court at least where some evidence is forthcoming from him.*
>
> [emphasis added]

40 On the evidence, Abdullah J found that the plaintiff had established a *prima facie* case for judgment and the defendants had failed to raise any triable issues. The defendants' appeal to the Appellate Division of the High Court ("Appellate Division") was dismissed (see *Lam Yee Shen v DBS Bank Ltd* [2022] 1 SLR 671), with the Appellate Division agreeing with Abdullah J's reasons (at [1]).

41 In my view, although no formal application for conversion was made in *Lam Yee Shen*, the principles articulated in the case are equally applicable in this context. Abdullah J's reasoning suggests that if the defendants had succeeded in raising triable issues, the originating summons would have been converted into a writ action for those issues to be tried.

42 Finally, I deal with the case of *Jiangsu Overseas Group Co Ltd v Concord Energy Pte Ltd and another matter* [2016] 4 SLR 1336 ("*Jiangsu*"), which the Defendant relied heavily on in written and oral submissions.

43 In *Jiangsu*, the applicant filed an originating summons to set aside two arbitral awards on the ground that the arbitral tribunal lacked jurisdiction because there was no concluded contract, and hence, no valid arbitration agreement. The applicant further applied for both parties' witnesses to be cross-examined. The applicant asserted that cross-examination was necessary because there were fundamental disputes of fact over whether an oral contract was concluded between the parties.

44 Chong J (as he then was) dismissed the applications for cross-examination, reasoning as follows (at [42]–[43]):

> 42 …In my view, there must be good reasons beyond the existence of factual disputes to allow oral evidence and cross examination. *The court, in deciding whether to set aside an arbitral award, is fully competent to sift through the transcripts of oral evidence before the tribunal* (see *AQZ v ARA* [2015] 2 SLR 972 ("*AQZ*") at [54]). I agree with the view expressed by Judith Prakash J that the *existence of substantial disputes of fact as to whether a party had entered into the relevant arbitration agreement is not per se a sufficient reason to allow oral evidence and/or cross-examination* (*AQZ* at [55]).
>
> 43 Nor is it a sufficient reason that, in this case, *Jiangsu* was not represented before the tribunal. Allowing the arbitration to proceed in its absence was entirely Jiangsu's own choice and doing. Jiangsu would have had the chance to cross-examine Herlene and other material witnesses had it participated in the arbitration hearings. Ample notices and reminders were sent to Jiangsu. Having deliberately chosen not to do so, they should stand or fall by that strategy. *I was also mindful that findings of fact by the tribunal are generally indisputable and, consequently, cross-examination is generally not resorted to in applications under O 69A of the ROC* (see *Beijing Sinozonto Mining Investment Co Ltd v Goldenray Consortium (Singapore) Pte Ltd* [2014] 1 SLR 814 at [52]). Besides, there is a substantial body of objective evidence including the exchange of correspondence between the parties to assist the court to determine this factual inquiry. *The objective evidence speaks for itself.* I *did not think that cross-examination would be helpful in the limited context of the setting aside applications.*
>
> [emphasis added]

45 In my view, *Jiangsu* does not detract from the general proposition that summary determination is only appropriate in clear cases where there are no triable issues. In this regard, there are three notable aspects of the case, which formed the basis of Chong J's decision to deny the applications for cross-examination. First, as *Jiangsu* concerned applications to set aside arbitral awards, the Court already had the benefit of the evidence led before the tribunal, which diminished the need for oral evidence to be taken again, even if it were

open to the Court to examine the tribunal's findings of fact (*Jiangsu* at [42]). Second, insofar as evidence was not placed before the tribunal, this was due to Jiangsu's decision not to participate in the arbitral proceedings (*Jiangsu* at [43]). Third, to the extent that the main issue in *Jiangsu* was whether there was a concluded contract, an objective test was to be applied, and the question was not what parties had subjectively intended (*Jiangsu* at [75]–[76]). As Chong J found (at [43]), *Jiangsu* was a case where the objective evidence "[spoke] for itself".

46 In summary, the following principles can be distilled from the case authorities discussed above:

(a) The merits of a claim or defence are a relevant consideration in deciding whether conversion should be ordered.

(b) However, the party applying for conversion only needs to show that the claim or the defence gives rise to a triable issue.

(c) Conversely, if an application for conversion is to be denied based on the merits *alone*, the court must be satisfied that it would be appropriate for the case to be summarily determined. In practical terms:

(i) Where the claimant is the resisting party, the claimant must establish that he is entitled to summary judgment on the claim.

(ii) Where the defendant is the resisting party, the defendant must establish that the claimant's claim is liable to be struck out.

47 Applying these principles to the facts, I was satisfied that the Claimant had raised triable issues and this was not a case where the Claimant's claim was liable to be struck out.

48 To begin, I found that there was a triable issue as to whether the Claimant knew of the change in landlord. In this regard, it was *Karim's* knowledge that was material since Karim was the Claimant's sole director and shareholder and there was no evidence before me as to who else had authority to act for the Claimant.

49 On the evidence, I accepted that there were some difficulties with the Claimant's case that Karim did not know of the change in landlord. At trial, the Claimant would need to establish that Karim did not receive the Notices and the Letter of Demand, which were sent to the Premises and/or the Claimant's registered address. The Claimant would also need to establish why rent was paid to the Defendant before the Claimant allegedly came to know of the change in landlord. Finally, the Claimant would need to establish why Karim never mentioned the Notice of Renewal in his letter to ComLaw dated 19 November 2022 and why the Notice of Renewal was first disclosed in IRB's letter to ComLaw dated 14 December 2022.

50 However, it did not follow that the Claimant's case was bound to fail. The Defendant's submissions relied heavily on the fact that the Claimant had paid rent directly to the Defendant. According to the Defendant, this showed that that the Claimant knew of the change in landlord, and Khan's role was irrelevant.

51 I disagreed with the Defendant's submission, which was circular in its reasoning. On the Defendant's own case, the Defendant liaised with Khan over

the payment of rent and other matters concerning the Premises. What is unclear, however, is why the Defendant had liaised with Khan, when Khan did not have a formal role in the Claimant at the relevant time. Ultimately, whether the Claimant's payment of rent to the Defendant should be taken as evidencing the Claimant's knowledge of the change in landlord turned on Khan's role, which was itself a material fact and a triable issue. The analysis does not change even if Karim's wife had performed the funds transfer. Like Khan, Karim's wife did not hold a formal role in the Claimant. Further, Karim's evidence was that his wife had acted on Khan's instructions. Hence, Khan's authority to give those instructions remained a fact in issue.

52 Finally, it was not the Defendant's case in SUM 525 that the Notice of Renewal was forged or that Karim had not in fact served it on 529 Investments, contrary to what the face of the document suggests. Assuming Karim had issued the Notice of Renewal, it is inconceivable that he would have sent it to 529 Investments had he known of the change in landlord.

53 For these reasons, I found that the disputes relating to the material facts in OA 7 could not be determined summarily.

OA 7 should be converted into an originating claim

54 Having found that the material facts relating to OA 7 were in dispute, and that these disputes could not be determined summarily, I next consider whether OA 7 should be converted into an originating claim as a matter of the Court's discretion.

55 The Defendant submitted that even if the disputed facts could not be determined summarily, a full trial of the matter was not necessary. Instead, OA

7 should continue as an originating application, and parties could apply to the judge hearing OA 7 for certain witnesses to be cross-examined.

56 I disagreed with the Defendant's submission.

57 First, I found that where a claimant applies for conversion, and the court is satisfied that there are triable issues, the court should *ordinarily* allow conversion unless doing so would cause the defendant to suffer prejudice which cannot be compensated by costs. I came to this view for the following reasons:

(a) First, I considered that the position of a claimant is different to that of a defendant. Under O 6 r 1(1) of the ROC 2021, a claimant has a choice as to whether to commence proceedings by way of originating claim or originating application unless one of the conditions under O 6 r 1(2) or (3) of the ROC 2021 applies. In contrast, a defendant cannot compel a claimant to litigate his claim in a certain way. To illustrate, had the Claimant commenced proceedings by way of an originating claim, the Defendant could not have insisted that the originating application procedure should apply instead, on the basis that it was more expedient or cost-effective.

(b) Second, a claimant bears the legal burden of proving his claim. The claimant should therefore have leeway in deciding on the litigation strategy that would be most advantageous to him. In this regard, it is also significant that a claimant who fails to apply for conversion in a timely manner may be taken to have waived his right to have the claim determined by a full trial (see [25(d)] above). What this means is that a claimant cannot hedge to see whether the outcome of the proceedings is in his favour before seeking to have a full trial of the matter. But the flipside is that before a claimant can be taken to have waived his right,

the claimant must be given a fair opportunity to have his claim determined by the originating claim procedure.

(c) Third, as there was no issue of a time-bar applying, I saw no impediment to the Claimant applying for permission to withdraw OA 7 and recommencing the action as an originating claim. Had the Claimant made such an application, I had little doubt that the Claimant would be granted permission to withdraw, subject to the Claimant paying the Defendant's wasted costs. In practical terms, this was no different to ordering conversion, with appropriate costs orders being made.

58 Second, I disagreed with the Defendant's submission that conversion was not necessary because the Court could give directions for the cross-examination of certain witnesses. This submission rested on two main planks, neither of which was compelling.

59 The Defendant first cited a passage in *Woon Brothers* where the Court of Appeal observed (at [29]) that:

> 29 However, the Appellant urged this court not to convert the OS into a writ, arguing that the case could proceed just as fairly and expeditiously by the court, pursuant to O28 r4(4), giving directions for the filing of evidence and attendance of deponents for cross-examination on specific areas. For several reasons, we declined the Appellant's request. First, *O28 r 4(4) is only meant to be adopted in cases where there are few disputes of fact*...In the present case numerous allegations of varying natures, including fraud, were levelled against multiple parties. Given the range of factual issues that were in dispute and the number of parties who would be responding to the allegations made against them, the amount of cross-examination which the court would have to permit in order to be fair to all parties would effectively render the OS a writ in all but name.
>
> [emphasis added]

60 Based on this, the Defendant submitted that conversion was not warranted in the present case because there were only three or less disputes of fact and the disputes were not wide-ranging. In my view, the reference to "a few disputes of fact" in *Woon Brothers* was not intended to lay down a test based on a quantitative assessment of the factual issues in dispute. The inquiry must bear a qualitative dimension as well. This is evident from the fact that the Court of Appeal considered various other factors, including, the nature of the allegations, the number of witnesses who would need to testify, and the amount of cross-examination required.

61 Applying this to the present case, although there were only a few key issues in dispute, evidence would need to be given on a range of areas, including: (a) whether Karim received the Notices and the Letter of Demand; (b) Khan's authority to deal with matters concerning the Tenancy Agreement and the Premises on the Claimant's behalf; (c) the basis of the Defendant's belief that Khan was the Claimant's representative; (d) the events leading up to the 14 October 2022 Meeting; and (e) the events which transpired at the 14 October 2022 Meeting. These areas were hardly narrow and several witnesses would need to give evidence and be cross-examined for the Court to make findings of fact. Further, insofar as Khan and Lim were material non-party witnesses, there was a possible need to compel their involvement in the proceedings. These were all circumstances which warranted having a full trial.

62 The Defendant next relied on the Ideals. The Defendant submitted that a full trial would be more costly than allowing OA 7 to continue as an originating application with the Court limiting the amount of cross-examination required to a few areas. This was untenable.

63 To begin, the saving of costs or time was not a singular or overriding consideration under the Ideals. The Court had to also ensure that the matter was determined fairly and that the Claimant was allowed to properly ventilate it case.

64 The Defendant was also placing the cart before the horse in suggesting that the Court should limit the amount of cross-examination. The appropriate scope of cross-examination, and the time to be allocated for it, depended on the factual issues and the evidence before the Court. It could not be limited by the Court arbitrarily imposing limits, purely in the interest of saving time and costs.

65 Further, insofar as the scope of cross-examination was concerned, I did not see how costs would differ significantly, depending on the mode of the proceedings. The key consideration in assessing costs would be the extent of cross-examination required and the amount of work done. And if the Claimant's claims were found to be unmeritorious, the Defendant would be entitled to its costs of the action.

66 For completeness, I should mention that the Claimant originally advanced two additional reasons for conversion in its written submissions, which were then abandoned at the oral hearing. I will briefly explain why these submissions were unmeritorious in any event.

67 First, the Claimant submitted that the originating claim procedure would allow for more extensive production of documents. At the hearing, the Claimant conceded that discovery was not likely to be extensive given the nature of the dispute. This concession was properly made and I placed no weight on this factor in deciding whether conversion should be ordered.

68 Second, the Claimant submitted that the Defendant's act of re-entering the Premises on 7 January 2023 amounted to: (a) a breach of the Claimant's right to quiet enjoyment of the Premises; (b) nuisance; (c) trespass to property; and (d) wrongful interference with the Claimant's use of the premises. According to the Claimant, OA 7 should be converted to an originating claim because these additional causes of action were of a "highly factual nature". The Claimant further contended that conversion should be ordered to allow it to particularise the various heads of claim arising from the additional causes of action. At the hearing, the Claimant conceded that the additional causes of action were all contingent on whether the Tenancy Agreement was extended by the Notice of Renewal. This concession was properly made. I add that even if there were possible issues concerning the damage suffered by the Claimant, this alone did not require conversion as the Court could order an assessment of damages if OA 7 was decided in the Claimant's favour. Hence, I placed no weight on this factor in deciding whether conversion should be ordered.

Conclusion

69 For these reasons, I allowed the application for conversion in SUM 525.

70 I ordered that the costs of SUM 525 be costs in the action. Although the application for conversion was allowed, I was not minded to award the Claimant its costs of the application. Given the correspondence between parties' solicitors before the proceedings were commenced (at [14]–[18] above), it should have been obvious to the Claimant that the material facts were in dispute and the Claimant should have commenced the proceedings as an originating claim from the outset. Equally, I did not think that the Defendant should be unconditionally entitled to its costs of the application, having resisted the application on unmeritorious grounds. The fairest outcome was to order that the costs of SUM

525 be costs in the action, such that the party who ultimately prevails on its version of the disputed facts will receive its costs.

71 I further ordered that the Claimant pay the Defendant's wasted costs arising from the conversion. As the Claimant commenced the proceedings as an originating application, the Defendant was required to file responsive affidavits, which it would not have needed to do if the applicant was filed as an originating claim. Considering that not all work done will be wasted (as the Defendant's affidavits of evidence-in-chief for the trial are likely to be based on these affidavits), I fixed such wasted costs at $4,000 (all-in).

72 This leaves me to record my appreciation to counsel for their able assistance in the matter.

Randeep Singh Koonar
Assistant Registrar

Azeera Ali (I.R.B. Law LLP) for the claimant;
Andy Chiok Beng Piow (AM Legal LLC) for the defendant.
