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

[2023] SGHCR 7

Originating Application No 302 of 2022 (Summons No 3123 of 2022)

Between

Guanghua SS Holdings Limited

… *Claimant*

And

(1) Lim Yew Cheng
(2) Lin Minghan

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Service — Substituted service out of jurisdiction]
[Civil Procedure — Foreign judgments — Registration — Setting aside]

TABLE OF CONTENTS

Guanghua SS Holdings Ltd
v
Lim Yew Cheng and another

[2023] SGHCR 7

General Division of the High Court — Originating Application No 302 of 2022 (Summons No 3123 of 2022)
AR Desmond Chong
25 October, 16 November 2022

15 June 2023

AR Desmond Chong:

Introduction

1 Guanghua SS Holdings Limited (the "Claimant"), the claimant in Originating Application No 302 of 2022 ("OA 302"), obtained judgment in Hong Kong on 20 April 2022 (the "HK Judgment") against Mr Lim Yew Cheng ("D1") and Mr Lin Minghan ("D2"), who were the first and second defendants in OA 302 (collectively, the "Defendants"). In the HK Judgment, D1 was ordered to pay the Claimant USD 7,140,096.20 plus interest, and the Defendants were ordered to jointly and severally pay the Claimant USD 220,620,022.33 plus interest. In OA 302, the Claimant was granted an order of court ("Registration Order") to register the HK Judgment as a judgment of the General Division of the High Court of the Republic of Singapore. The Claimant then filed Summons No 2727 of 2022 ("SUM 2727") to apply to serve the notice

of the registration of the HK Judgment ("Notice of Registration") on D1 by way of substituted service. SUM 2727 was granted by an Assistant Registrar (the "AR"). The present application, Summons No 3123 of 2022 ("SUM 3123"), was D1's application to set aside the Registration Order and, further or alternatively, to set aside the order of court granting substituted service ("Substituted Service Order") of the Notice of Registration and the substituted service effected pursuant to that order.

2 This application raised both legal and evidential issues that required nuanced analysis. The first legal issue was the circumstances under which a claimant would have to first attempt to serve a notice of registration of a foreign judgment on a defendant out of jurisdiction before resorting to substituted service. This issue turned on the factual question of whether the Claimant knew or should have known that D1 was residing in Beijing in the People's Republic of China ("PRC") at the time SUM 2727 was made. The second legal issue was whether a notice of registration could be served by substituted service out of jurisdiction under the new Rules of Court 2021 ("ROC 2021"), as the ROC 2021 was silent on this point.

3 After hearing the parties' submissions, I dismissed D1's application and provided my brief reasons orally. I now provide the full grounds of my decision.

Facts

The parties

4 The Claimant was a company incorporated in the Cayman Islands. D1 and D2 were Singapore citizens. D2 was D1's son. It was undisputed that, according to D1's "People Profile" registered with the Accounting and Corporate Regulatory Authority ("ACRA"), D1's place of residence was at

Gallop Road in Singapore ("Gallop Road Address"). D2's place of residence was in the Balmoral Hills condominium in Singapore ("Balmoral Hills Address").

Procedural history

The Hong Kong Suit

5 In Action No 1972 of 2020 ("HK Suit"), the Claimant brought a claim at the High Court of the Hong Kong Special Administrative Region Court of First Instance against the Defendants for liabilities arising from guarantees which the Defendants provided to the Claimant. On 15 June 2021, the Claimant applied for summary judgment against the Defendants. On 20 April 2022, the court delivered the HK Judgment and granted summary judgment in favour of the Claimant.

OA 302: The application to register the HK Judgment

6 On 6 July 2022, the Claimant filed OA 302 to register the HK Judgment as a judgment of the General Division of the High Court of the Republic of Singapore ("SG Judgment") pursuant to s 4 of the Reciprocal Enforcement of Foreign Judgments Act 1959 (2020 Rev Ed) ("REFJA"). On 7 July 2022, the AR granted OA 302. This was recorded in the Registration Order (HC/ORC 3481/2022), which was in Form 88 of the Supreme Court Practice Directions 2021 ("SupCt PD 2021"). The Registration Order also stated that the Defendants were at liberty to apply to set aside the Registration Order within 21 days after service of the Notice of Registration on them.

7 As there were two defendants, two separate notices of registration were issued for each defendant: the notice of registration for D2 was dated 15 July 2022 ("D2 notice of registration") while the Notice of Registration for D1 was

dated 20 July 2022. I shall refer to the two notices of registration collectively as the "Notices of Registration".

Attempts to personally serve D1

8 From 15 to 22 July 2022, the Claimant made five attempts to personally serve the Registration Order and D2 notice of registration on D2 at the Balmoral Hills Address. However, all five attempts were unsuccessful.

9 On 20 and 21 July 2022, the Claimant made two attempts to personally serve the Registration Order and the Notice of Registration on D1 on the Gallop Road Address. The evidence from the process server who attempted to effect personal service was as follows:

(a) on Wednesday, 20 July 2022, at or about 8.10pm, upon the process server's arrival, he was informed by D1's domestic helper that D1 was not in; and

(b) on Thursday, 21 July 2022, at or about 7.50pm, upon the process server's arrival, he was informed by a Chinese woman claiming to be D1's wife that D1 was in the PRC and she did not know when he would be back.

SUM 2718 and SUM 2727: The substituted service applications

10 On 22 July 2022, the Claimant filed Summons No 2718 of 2022 ("SUM 2718") and SUM 2727 to serve the respective Notices of Registration on D2 and D1 respectively, as well as any other documents to be filed in OA 302 which were required to be served personally (collectively, the "Registration Papers"), by way of substituted service in the following methods:

(a) sending a copy of the Registration Papers (i) by registered post to the Hong Kong address of Sidley Austin LLP ("Sidley Austin HK"), who were the Defendants' counsel in the HK Suit, and (ii) by email to Sidley Austin HK; *or*

(b) sending a copy of the Registration Papers by registered post to the Balmoral Hills Address and the Gallop Road Address.

11 On 27 July 2022, the Claimant requested permission to withdraw SUM 2718. On 28 July 2022, a hearing for both SUM 2718 and SUM 2727 was fixed before the same AR who had granted OA 302. The AR granted the Claimant permission to withdraw SUM 2718. The learned AR also granted the application in SUM 2727 but ordered the methods of substituted service outlined at [10(a)] and [10(b)] above to be *cumulative*, as opposed to alternative, methods. Therefore, the Claimant had to serve by *both* methods outlined at [10(a)] and [10(b)] above. This was recorded in the Substituted Service Order (HC/ORC 3822/2022).

12 It was undisputed that, on 2 August 2022, the Claimant duly served the Registration Order, the Substituted Service Order, and the Notice of Registration on D1 by registered post and by email to Sidley Austin HK.[1] Both parties' counsel also confirmed at the hearing before me that the Claimant had duly served the Registration Papers by registered post to the Gallop Road Address and the Balmoral Hills Address.

[1] Lim Yew Cheng's 1st affidavit dated 23 August 2022 at [11] to [12].

SUM 3123: The present application to set aside the Registration Order

13 On 23 August 2022, D1 filed the present application pursuant to O 3 r 2(8) and O 60 r 9 of the ROC 2021 and s 5(1)(*c*) of REFJA.

14 Through the affidavits filed for the present application, it became known that D1 had been solely residing in the China World Hotel in Beijing since 8 February 2020,[2] and that D1 had a lease with the China World Hotel which ran from 1 April 2018 to 1 April 2023.[3] It was undisputed that the Claimant did not attempt to effect service on D1 in the PRC before attempting to personally serve on D1 at the Gallop Road Address or before making the application in SUM 2727.

The parties' cases

15 D1 made two principal submissions to set aside the Registration Order.

(a) First, D1 sought to set aside the Substituted Service Order on three alternative grounds: (i) the Claimant had not shown that it would be impractical to serve the Notice of Registration on D1 personally in the PRC, so the Claimant should have attempted to serve the Notice of Registration on D1 personally in the PRC first before resorting to substituted service; (ii) the Claimant should not be permitted to use substituted service as a shortcut to avoid employing the methods of service out of jurisdiction set out in O 8 r 2(1) of ROC 2021, which, following O 60 r 7(2) of ROC 2021, applied to service of a notice of registration out of jurisdiction; and (iii) the Claimant breached its duty

2 Lim Yew Cheng's 1st affidavit dated 23 August 2022 at [17].

3 Lim Yew Cheng's 2nd affidavit dated 17 October 2022 at [15].

to disclose all the relevant material facts in SUM 2727, which was an application without notice.

(b) Second, even if the Substituted Service Order was not set aside, D1 sought to set aside service of the Notice of Registration on the basis that service was not effected in accordance with the laws of the PRC.

16 D1 submitted that, if the answer to either of the foregoing questions at [15(a)] and [15(b)] above was in the affirmative, the Registration Order should be set aside.

17 The Claimant submitted that the Substituted Service Order was correctly ordered because the Claimant did not know whether D1 was residing in the PRC at the time SUM 2727 was made. The methods of substituted service employed were not contrary to PRC law and were the most effective methods to serve and provide notice of the papers to D1. The Claimant further submitted that it gave full and frank disclosure of all material facts in SUM 2727. Even if the Substituted Service Order were to be set aside, or if the service of the Notice of Registration were found to be defective, the Claimant submitted that the court should not exercise its discretion to set aside the Notice of Registration, as D1 had not suffered any prejudice.

Preliminary observations

18 Before delving into the issues proper, it first bears highlighting a few preliminary observations at the outset to set the context for this case.

(a) Substituted service both in and out of Singapore: First, the Substituted Service Order provided for *both* substituted service *out* of Singapore and *in* Singapore (see [10] and [11] above). This meant that,

in considering if the Substituted Service Order was valid, it had to be considered whether the ROC 2021 permitted substituted service of the Notice of Registration both in and out of Singapore.

(b) Substituted service was effective: Second, D1 did *not* dispute that the methods of substituted service under the Substituted Service Order were *effective* in bringing the Notice of Registration to D1's notice. This was the requirement under O 7 r 7(2) of the ROC 2021 to determine if a method of substituted service should be ordered (see [31] below). Indeed, D1 would have no basis in this case to claim otherwise, as it was the effectiveness of these methods of service that allowed D1 to bring this application *on time* within the 21-day timeline.

(c) D1 was in the PRC: The third pertinent undisputed fact was that D1 *was* in the PRC at the time when the Registration Order and SUM 2727 were made. It was also undisputed that no attempts to serve the Notice of Registration on D1 in the PRC were made before SUM 2727 was filed. Instead, SUM 2727 was filed after two unsuccessful attempts at personal service on D1's residential address *in Singapore* were made, in accordance with para 65(2) of the SupCt PD 2021.

(d) Test of "impracticality": Fourth, O 7 r 7(1) of the ROC 2021 provided that, if a document was required to be served personally and it was "*impractical* to serve it personally, a party may apply to serve it by substituted service" [emphasis added]. While it was not clear from the text of the ROC 2021 that the test for substituted service under O 7 r 7 applied (as I shall explain at [44] below), *both* parties accepted and applied the test of "impracticality" under O 7 r 7(1) to determine if the

Claimant was permitted to apply for substituted service in this case. Therefore, I also considered the application on this basis.

Issues to be determined

19 Bearing in mind the foregoing points, the parties' submissions raised the following issues to be determined in this application.

(a) The first main issue concerned whether the Substituted Service Order should be set aside. This in turn required determination of the following sub-issues.

(i) The first issue was the first legal question highlighted in the introduction (at [2] above) and the first argument made by D1 at [15(a)] above. As D1 was in the PRC when the Registration Order and SUM 2727 were made, the question was whether the Claimant was required to serve the Notice of Registration on D1 personally in the PRC before applying for substituted service under SUM 2727? As aforementioned at [18(d)] above, to determine this, both parties applied the test of "impracticality" under O 7 r 7. Thus, the question was, based on the information as it was known when SUM 2727 was made, was it "impractical" for the Claimant to serve on D1 personally in the PRC? Alternatively, was there any exception to the default requirement of service out of jurisdiction that applied in this case?

(ii) The second issue was the second legal question highlighted in the introduction (at [2] above) and the second argument made by D1 at [15(a)] above. O 8 r 2(1) of the ROC 2021 outlined a list of methods of service out of Singapore.

O 60 r 7(2) of the ROC 2021 stated that O 8 r 2 applied in relation to service of a notice of registration out of Singapore. However, the Substituted Service Order did not provide for any methods of service that fell within the enumerated methods of service under O 8 rr 2(1)(*a*)–2(1)(*f*). Thus, the second issue was whether the Substituted Service Order provided an impermissible "shortcut" to circumvent O 8 r 2(1).

(iii) The third issue was the third argument made by D1 at [15(a)] above: should the Substituted Service Order be set aside on the basis that the Claimant breached its duty to give full and frank disclosure of all material facts in SUM 2727?

(b) The second main issue was whether the Notice of Registration should be set aside on the basis that the methods of service under the Substituted Service Order were contrary to PRC law.

(c) Finally, if either of the foregoing questions were answered in the affirmative, the remaining question was whether this court should exercise its discretion not to set aside the Registration Order on the basis that D1 did not suffer any prejudice.

20 I will first outline the applicable legal principles before turning to my analysis of the issues.

Applicable legal principles

Service requirements under the revoked Rules of Court

21 Before delving into the requirements of service under the ROC 2021, it was important to first consider the key requirements of service under the

revoked Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC 2014"). This provided the context to consider the changes that had been effected by ROC 2021.

Personal service within Singapore (Order 10)

22 First, if a defendant was in Singapore, a document need not be served on the defendant personally unless the ROC 2014 or an order of court explicitly required the document to be served personally (O 62 r 1(1), ROC 2014). Under the ROC 2014, a writ of summons and originating summons must be served personally (see O 10 rr 1(1) and 5, ROC 2014).

Substituted service within Singapore (O 62 r 5)

23 If a document had to be served personally, but it appeared to the court that it was "*impracticable* for any reason to serve that document personally on that person" [emphasis added], the court may make an order for substituted service of that document (O 62 r 5(1), ROC 2014). The overarching requirement was that substituted service must be effected by methods which could "bring the document to the notice of the person to be served" (O 62 r 5(3), ROC 2014). Under para 33(2) of the Supreme Court Practice Directions 2013 ("SupCt PD 2013"), "[t]wo reasonable attempts at personal service should be made before an application for an order for substituted service is filed".

Service out of Singapore (Order 11)

24 Where a defendant had left Singapore before an originating process was issued against him, the plaintiff had to first seek leave under O 11 r 1 of the ROC 2014 to serve the originating process on the defendant out of jurisdiction before resorting to substituted service (see the High Court's decision in *Consistel Pte Ltd and another v Farooq Nasir and another* [2009] 3 SLR(R)

665 ("*Consistel*") at [30]). I shall refer to this as the "default rule in *Consistel*". This default rule was subject to at least two exceptions: (a) when the defendant left the country in anticipation that legal proceedings will be initiated against him, and (b) when a defendant was constantly moving from country to country such that it was impossible to serve the document on him personally (*Consistel* at [35]). I shall refer to both of these situations as the "*Consistel* exceptions to service out". The methods to serve a document out of jurisdiction were outlined in O 11 rr 3 and 4 of the ROC 2014 (see the High Court's decision in *Humpuss Sea Transport Pte Ltd (in compulsory liquidation) v PT Humpuss Intermoda Transportasi TBK and another* [2015] 4 SLR 625 ("*Humpuss*") at [58]). Service out of jurisdiction must not be effected in a manner which was contrary to the law of the foreign country (O 11 r 3(2), ROC 2014).

Substituted service out of Singapore (O 11 r 3 and O 62 r 5)

25 However, where it was "impracticable for any reason" to serve a document personally on a defendant situated out of Singapore, the document may be served on the defendant by substituted service out of jurisdiction (*Petroval SA v Stainby Overseas Ltd and others* [2008] 3 SLR(R) 856 ("*Petroval*") at [26]). Substituted service out of jurisdiction was permissible under the ROC 2014 because O 11 r 3 (which sets out the alternative modes of service of originating process out of jurisdiction) explicitly stated that the provision on substituted service – O 62 r 5 – "*shall apply* in relation to the service of an originating process out of Singapore" [emphasis added]. In other words, it was *expressly* stated in the ROC 2014 that substituted service out of jurisdiction was permissible.

26 Crucially, where a defendant had left Singapore before an originating process was issued against him, the plaintiff had to first *seek leave* to serve the

originating process on the defendant out of jurisdiction before resorting to substituted service (*Consistel* at [30]). Substituted service out of Singapore must be effected in a manner which was in accordance with the law of the country in which service is effected (O 11 r 3(3), ROC 2014).

Order for registration and notice of registration (O 67 rr 5 and 7)

27 I now turn to the rules on service concerning the registration of foreign judgments under the ROC 2014. An order for registration of a foreign judgment must be "served on the judgment debtor" (O 67 r 5(1), ROC 2014). A notice of registration of the foreign judgment must be "served *personally*" on the judgment debtor "*unless the Court otherwise orders*" [emphasis added] (O 67 r 7(1), ROC 2014). The fact that the court may order otherwise showed that the notice of registration may be effected by substituted service within Singapore. If the defendant was situated out of Singapore, service of a notice of registration out of the jurisdiction was "permissible *without leave* …" [emphasis added] (O 67 r 7(2), ROC 2014).

28 Could a notice of registration be served by way of substituted service out of Singapore? O 67 r 7(2) of the ROC 2014 provided that "*Order 11, Rules 3*, 4 and 6, shall apply in relation to such a notice as they apply in relation to a writ" [emphasis added]. It will be recalled that O 11 r 3 expressly stated that the provision on substituted service – O 62 r 5 – "shall apply" in relation to the service of an originating process out of Singapore (see [25] above). As such, pursuant to O 67 r 7(2) read with O 11 r 3 and O 62 r 5, the clear terms of ROC 2014 *allowed* a notice of registration to be served on a defendant by way of substituted service out of jurisdiction.

Service requirements under the ROC 2021

29 The provisions on service under the ROC 2021 were largely the same as those under the ROC 2014. The provisions of the ROC 2021 that dealt with service were set out in Orders 7 and 8. As was clear from the respective titles of these two Orders, Order 7 dealt with "Service in Singapore" while Order 8 dealt with "Service out of Singapore". As I shall explain below, the only substantive difference between the ROC 2021 and the ROC 2014 was that the ROC 2021 was *silent* on whether substituted service out of jurisdiction was permissible.

Service in Singapore (Order 7)

30 Under O 7 r 1(1)(*a*) of the ROC 2021, a document only needed to be served personally "where expressly required by [the ROC 2021] or any written law, or where the Court order[ed] such service, or where the serving party decide[d] to do so voluntarily". Under O 7 r 1(2), the court may, in an appropriate case, dispense with personal service or with ordinary service or with service altogether.

Substituted service within Singapore (O 7 r 7)

31 O 7 r 7 was the only provision in the ROC 2021 that governed substituted service. That provision provided:

> **Substituted service (O. 7, r. 7)**
>
> **7**.—(1) If a document is required to be served personally and it is *impractical* to serve it personally, a party may apply to serve it by substituted service.
>
> (2) The Court may order any method of substituted service that is *effective in bringing the document to the notice of the person to be served*, including the use of electronic means.
>
> (3) Substituted service is to be effected within 14 days after the order of the Court.
>
> [emphasis added]

32 Under para 65(2) of the SupCt PD 2021, "2 reasonable attempts at personal service should be made before an application for an order for substituted service is filed".

33 The first noticeable difference between O 7 r 7 of ROC 2021 and O 62 r 5 of ROC 2014 was that the latter used the test of "impracticability" while the former used the test of "impracticality" to determine if substituted service should be ordered. However, nothing in the records in Hansard or the Civil Justice Commission Report (29 December 2017) ("CJC Report") showed that there was an intention to change the test by substituting the word "impracticable" with "impractical". Indeed, the CJC Report simply stated that Order 7 of ROC 2021 "*simplifies and consolidates* the existing Orders 10 and 62" [emphasis added]. As such, there did not appear to be any substantive difference between the legal tests of "impracticability" and "impracticality", and neither party contended otherwise.

34 The second noticeable difference between O 7 r 7 of ROC 2021 and O 62 r 5 of ROC 2014 was that the former used the test of "effectiveness" to determine if a *method* of substituted service should be permitted, as O 7 r 7(2) stated that the method of substituted service must be "*effective* in bringing the document to the notice of the person to be served" [emphasis added]. On the other hand, O 62 r 5(3) phrases the test more generally by stating substituted service of a document "is effected by taking such steps as the Court may direct *to bring the document to the notice* of the person to be served" [emphasis added]. Again, it did not appear that the tests were meant to be different in substance, and neither party contended otherwise.

Service out of Singapore (Order 8)

35 Under O 8 r 1(1) of the ROC 2021, service of an originating process or other court document out of Singapore may only be permitted if the court's prior approval had been given:

> **Service out of Singapore with Court's approval (O. 8, r. 1)**
>
> **1**.—(1) An originating process or other court document may be served out of Singapore *with the Court's approval* if it can be shown that the Court has the jurisdiction or is the appropriate court to hear the action.
>
> (2) To obtain the Court's approval, the claimant *must apply to the Court by summons without notice and supported by affidavit* which must state —
>
> (*a*) why the Court has the jurisdiction or is the appropriate court to hear the action;
>
> (*b*) in which country or place the defendant is, or probably may be found; and
>
> (*c*) whether the validity of the originating process needs to be extended.
>
> …
>
> [emphasis added]

36 O 8 r 2 outlined the general methods of service out of Singapore that may apply regardless of the foreign jurisdiction the defendant was situated in, as follows:

> **Methods of service out of Singapore (O. 8, r. 2)**
>
> **2**.—(1) *Where the Court's approval has been obtained under Rule 1(2)*, service of the originating process or other court documents may be effected out of Singapore in the following manner:
>
> (*a*) according to the manner contractually agreed between the parties;
>
> (*b*) where there is a Civil Procedure Convention governing service in the foreign country, according to the manner provided in that convention;

> (*c*) through the government of the foreign country if that government is willing to effect service;
>
> (*d*) through the judicial authority of the foreign country if that authority is willing to effect service;
>
> (*e*) through a Singapore consular authority in that foreign country;
>
> (*f*) according to the manner provided by the law of that foreign country.
>
> …
>
> (6) Nothing is to be done under this Rule that is contrary to the laws of the foreign country.
>
> [emphasis added]

Substituted service out of Singapore

37 The next question was whether substituted service out of jurisdiction was permissible under the ROC 2021. As alluded to earlier, the text of the ROC 2021 did not clearly permit this, unlike ROC 2014. None of the provisions in O 8 rr 1–8 of the ROC 2021 provided for substituted service. Unlike the ROC 2014 (see [25] above), none of the provisions in O 8 rr 1 to 8 of the ROC 2021 expressly stated that the provision on substituted service – O 7 r 7 – "shall apply" to service out of jurisdiction. Consequently, on the face of the text of Orders 7 and 8 of the ROC 2021, O 7 r 7 did not seem to apply to service out of jurisdiction.

38 On 21 October 2022, which was after the parties had filed their written submissions in this case, Lee Seiu Kin J delivered His Honour's grounds of decision in *Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE")* [2022] SGHC 264 ("*Janesh*"). In that case, Lee J held that substituted service out of jurisdiction *was* permissible under the ROC 2021. Lee J's reasons may be summarised as follows.

(a) First, O 8 r 2(1) of the ROC 2021, which outlined the methods of service out of jurisdiction, did not prescribe a closed list as to how service of a document could be effected out of Singapore, given that, first, O 8 r 2(1) omitted the use of imperative language, and merely stated that service "*may*" be effected out of Singapore "in the following manner"; and, second, the word "or" was not used between O 8 r 2(1)(*e*) and O 8 r 2(1)(*f*), unlike other provisions of the ROC 2021 such as O 6 r 1(3) (*Janesh* at [87] and [88]). This line of reasoning suggested that the court in *Janesh* considered that substituted service out of jurisdiction flowed from *O 8 r 2(1)*, and not O 7 r 7. I will return to this point later at [44] below.

(b) Second, the ROC 2021 "was not intended to drastically change the regime relating to jurisdiction in general" or the regime relating to "the service of originating processes or other court documents out of Singapore". Rather, "the intention was to simplify things, for example, by obviating the need for a claimant to scrutinise a list of cases in which service out of Singapore is permissible" (*Janesh* at [89]). This was evident from the observations made by the drafters of the ROC 2021 in the CJC Report, which stated:

> *Scope*
>
> 1 This Chapter sets out the provisions governing service of originating processes and other court documents out of Singapore. *It largely retains the existing Order 11 with a simplification and rearrangement of its provisions.*
>
> *Service out of Singapore with Court's approval*
>
> Instead of enumerating all the permissible cases for service of an originating process out of Singapore, Rule 1(1) prescribes the criteria for **obtaining the Court's approval for service out of Singapore, namely showing** that the Court has the jurisdiction or is the appropriate court to hear the case. This makes it

> unnecessary for a claimant to scrutinise the long list of permissible cases set out in the existing Rules in the hope of fitting into one or more descriptions. It also avoids the possibility that a particular category of cases which could and should be heard in Singapore is actually not in the list.
>
> [Lee J's emphasis in *Janesh* in bold; emphasis added in italics]

The power of the court to allow substituted service out of jurisdiction was "one of considerable vintage", having been expressed in O 62 r 5 of the ROC 2014. If "the drafters of ROC 2021 had intended to curtail the court's power in such a radical fashion, there would have been express and specific language to that effect" (*Janesh* at [90]).

39 As such, following *Janesh*, substituted service out of jurisdiction was permissible under O 8 r 2(1) of the ROC 2021. Following *Consistel*, where a defendant had left Singapore before the originating process was issued, a claimant would have to first seek permission to serve the originating process out of jurisdiction before resorting to substituted service out of jurisdiction.

40 At this juncture, it bears highlighting that *neither party* disputed that substituted service out of jurisdiction was permissible under ROC 2021, either in their written or oral submissions before me. Indeed, when asked about this at the hearing before me, counsel for D1 expressly conceded that they accepted that substituted service out of jurisdiction was permissible under the ROC 2021. With this in mind, I now turn to the service requirements for the order for registration and notice of registration under the ROC 2021.

Order for registration and notice of registration (O 60 rr 5 and 7)

41 As aforementioned at [13] above, D1 sought to rely on s 5(1)(*c*) of REFJA to set aside the Registration Order on the basis that the Notice of

Registration had not been validly served on him. Section 5(1)(*c*) of REFJA provided as follows:

> **Cases in which registered judgments must or may be set aside**
>
> **5**.—(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the *registration* of the judgment —
>
> > (*c*) *may* be set aside if the registering court is satisfied that *the notice of registration had not been served on the judgment debtor*, or that the notice of registration was defective.
>
> [emphasis added]

42 Therefore, whether s 5(1)(*c*) was satisfied turned on whether the Notice of Registration had been validly served on D1. In this regard, O 60 rr 5 and 7 of the ROC 2021 outlined the requirements for service of the Registration Order and the Notice of Registration. The requirements under the ROC 2021 were the same as those under the ROC 2014 (see [27] above): an order for registration must be served on the judgment debtor under O 60 r 5, while the notice of registration must be served on the judgment debtor personally unless the court orders otherwise under O 60 r 7:

> **Order for registration (O. 60, r. 5)**
>
> **5**.—(1) An order in Form 88 giving permission to register a judgment must be drawn up by, or on behalf of, the judgment creditor and *served* on the judgment debtor.
>
> …
>
> **Notice of registration (O. 60, r. 7)**
>
> **7**.—(1) Notice of the registration of a judgment must be served on the judgment debtor and, subject to paragraph (2), *must be served personally unless the Court otherwise orders*.
>
> (2) Service of such a notice out of Singapore is *permissible without permission*, and *Order 8, Rules 2, 3, 7 and 8* apply in relation to such a notice as they apply in relation to an originating claim.

[emphasis added]

43 Service of a notice of registration out of Singapore is "permissible without permission" (O 60 r 7(2), ROC 2021).

Does O 7 r 7 apply to substituted service out of jurisdiction under O 8 r 2(1)?

44 I now return to a comment first highlighted at [38(a)] above. Following *Janesh*, it appeared that substituted service out of jurisdiction was permissible under *O 8 r 2(1)* of the ROC 2021. In other words, it was *O 8 r 2(1)* that was the source of the court's power to order substituted service out of jurisdiction. What remained unclear after *Janesh* was the interaction between O 7 r 7 and O 8 r 2(1), specifically, whether O 7 r 7 applied to substituted service out of jurisdiction. This raised three questions:

(a) First, did the test of "impracticality" under O 7 r 7(1) apply to determine if substituted service out of jurisdiction under O 8 r 2(1) should be allowed?

(b) Second, did the test of "effectiveness" under O 7 r 7(2) of the ROC 2021 apply to determine the method of substituted service out of jurisdiction under O 8 r 2(1)?

(c) Third, did the requirement to "apply" for the court's permission under O 7 r 7(1) apply to a party seeking to serve a notice of registration by substituted service out of jurisdiction under O 60 r 7(2) of the ROC 2021, even though O 60 r 7(2) of the ROC 2021 stated that service of a notice of registration out of Singapore is "permissible *without permission*" [emphasis added] and that the methods to serve the notice of registration out of jurisdiction were found in O 8 r 2(1)?

45 There was no need for me to reach a firm view in this case.

(a) Regarding the test of impracticality under O 7 r 7(1), *both parties* in this case applied this test to the present application. Therefore, I need not say anymore about this issue and proceeded on this basis.

(b) Regarding O 7 r 7(2), this question was not an issue in this case, as it was *undisputed* that the methods of substituted service under the Substituted Service Order *were effective* in bringing the Notice of Registration to the notice of D1 (see [18(b)] above).

(c) Regarding the requirement to seek the court's permission under O 7 r 7(1), all the parties in this case proceeded on the basis that the court's permission for substituted service *was* required. In any event, the methods of substituted service within Singapore under the Substituted Service Order would clearly require the court's permission under O 60 r 7(1) read with O 7 r 7(1) of the ROC 2021. Accordingly, I also proceeded on the basis that the court's permission was required.

Summary of applicable principles under the ROC 2021

46 In summary, the requirements of service for the order for registration and notice of registration of a foreign judgment under the ROC 2021 were as follows.

(a) Order for registration: An order for registration of a foreign judgment must be "served on the judgment debtor" (O 60 r 5(1), ROC 2021) (see [42] above), which meant that the order for registration may be served by way of ordinary service rather than personal service (see O 7 r 1(1), ROC 2021). If an order for registration had to be served out of Singapore, the court's approval under O 8 r 1(1) of the ROC 2021

had to be obtained. This was because O 60 r 5 did not state that the order for registration could be served out of jurisdiction without permission. If an order for registration had to be served out of Singapore by way of substituted service under O 8 r 2(1) of the ROC 2021, following *Janesh*, this was permissible and the court's approval would also need to be sought under O 8 r 1(1).

(b) Service of notice of registration in Singapore: On the other hand, a notice of registration must be "served personally" on the judgment debtor "unless the Court otherwise orders" (O 60 r 7(1), ROC 2021) (see [42] above). This meant that a notice of registration may be served by way of substituted service within Singapore.

(c) Service of notice of registration out of Singapore: A notice of registration may be served out of jurisdiction without obtaining the court's prior permission (O 60 r 7(2), ROC 2021) (see [42] above). Applying *Janesh*, a notice of registration may be served by substituted service out of jurisdiction, though it was unclear if the court's permission would be required for this. It was also uncertain if the tests under O 7 rr 7(1) and 7(2) applied. Nevertheless, in this case, the parties applied the test of "impracticality" under O 7 r 7(1), and there was no dispute that the requirement under O 7 r 7(2) was met (because the methods of substituted service under the Substituted Service Order were effective in bringing the Notice of Registration to D1's notice).

47 Having set out the applicable statutory framework and legal principles, I now turn to the issues raised by the parties' submissions.

Issue 1: Should the Substituted Service Order be set aside?

48 The first broad issue was whether the Substituted Service Order should be set aside. As highlighted at [15(a)] above, D1 made three submissions in this regard. I shall first turn to D1's submission that the Claimant should have attempted to serve the Notice of Registration on D1 personally in the PRC before resorting to substituted service.

Sub-Issue 1: Did the Claimant need to attempt to serve the Notice of Registration on D1 personally in the PRC before resorting to substituted service?

Parties' submissions

49 D1's main submission was that, following the default rule in *Consistel*, the Claimant should have first attempted to serve the Notice of Registration on D1 personally in the PRC before resorting to substituted service. This was because D1 had been residing solely in the PRC since February 2020, and the Claimant had not shown that it would be "impractical" to serve D1 personally in the PRC. D1 submitted that the Claimant knew that D1 resided solely in the PRC because the Claimant's representative, Mr Liu Kao ("Mr Liu"), regularly met D1 in Beijing, including in the China World Hotel, during the period when the Claimant was applying for the Substituted Service Order; and because the Claimant delivered mooncakes to the China World Hotel for D1 annually.

50 On the other hand, the Claimant submitted that it had proved that it was "impractical" to serve D1 personally in the PRC. At the time when SUM 2727 was made, although the Claimant knew that D1 spent a significant time in Beijing and that D1 would stay in the China World Hotel when D1 was there, the Claimant did not know the exact whereabouts of D1's residence in Beijing, including which specific room in the China World Hotel D1 stayed in, or even

when and for how long D1 would be in the PRC. The Claimant relied on the following facts for this submission. First, D1 was an international businessman who appeared to maintain dual residence in Singapore and the PRC. Second, the China World Hotel was, by its nature as a hotel, an impermanent and temporary address. There was also no way for the Claimant to find out the specific room in the hotel which D1 stayed in. Third, D1 had provided at least two other addresses as his address in other official documents. Fourth, D1's visa in the PRC appeared to be temporary.

51 To consider whether it was justified for the Claimant not to attempt service out of jurisdiction before resorting to substituted service, a careful scrutiny of the evidence needed to be undertaken. After having done so, I found that the Claimant's submission was supported by the evidence.

Did the Claimant know that D1 resided solely in the PRC?

52 The first important point to note was that the court had to consider what the Claimant knew or would have known had it made the proper enquiries *at the time when SUM 2727 was made*, not what the evidence showed by the time the present application was heard before me. In this regard, the Claimant's affidavit filed in support of SUM 2727 stated as follows:

> 9. I verily believe that as *the exact whereabouts of the 1st Defendant is unknown and unascertainable*, it is impractical to serve the Registration Order, the Notice of Registration, and any other relevant documents filed or made in this action (the 'Registration Papers') on the 1st Defendant personally. …
>
> 10. In this regard, two attempts at personal service of the Notice of Registration and Order of Court on the 1st Defendant at [the Gallop Road Address] on 20 July 2022 and 21 July 2022 were unsuccessful. *The Gallop [Road] Address is the 1st Defendant's address,* ***as indicated in his People Profile extracted from the Accounting and Corporate Regulatory Authority***. …

> 11. Based on the Endorsement of Service:
>
> 11.1. on Wednesday, 20 July 2022 at or around 8:10pm, the Process Server went to the Gallop *[Road]* Address to serve the Notice of Registration. *The Process Server was informed by the 1st Defendant's domestic worker that the 1st Defendant was not home*; and
>
> 11.2 on Thursday, 21 July 2022 at or around 7:50pm, the Process Server went again to the Gallop [Road] Address to serve the Notice of Registration but *was again informed that the 1st Defendant was overseas in the PRC at the moment*.
>
> …
>
> 21. Whilst it appears from the remarks of the 1st Defendant's domestic worker during the attempt to effect personal service on the 1st Defendant at the Gallop [Road] Address on 20 July 2022 … that 1st Defendant has been there recently, and was as of 21 July 2022 overseas in the PRC, ***it is not known as to when he will return to Singapore and how long he will continue to be in the PRC***. To this end, *the Claimant is aware that the 1st Defendant spent significant time in the PRC, during which* ***he would stay at China World Hotel*** … and *may be located there*. However, the Claimant is *not aware as to where exactly the 1st Defendant is presently staying at* if he is in the PRC, in particular *whether he is currently in Beijing or at [China World Hotel]* and if so, *which room*. The Claimant *has no way to ascertain the same*.
>
> 22. In light of the foregoing, I verily believe that it would be impracticable to serve the Registration Papers on the 1st Defendant personally since *the Claimant is unable to determine his exact whereabouts at a particular time*.
>
> 23. Nevertheless, for completeness, *on the possibility that the 1st Defendant may be resident in the PRC* and on the assumption that PRC law is relevant, the Claimant has been advised that service via the proposed methods is not prohibited by PRC law. …
>
> [emphasis added in italics and bold italics]

53 The Claimant's explanation in the affidavit filed in support of SUM 2727 showed that the following key facts were what were known to the Claimant at the time SUM 2727 was made.

(a) First, the key *objective* fact was that D1's *registered residential address*, according to what he registered with ACRA under his "People Profile", was *in Singapore* (that is, the Gallop Road Address). Therefore, according to the official records, D1's place of residence *was in Singapore*. There was no evidence on the record as to D1's registered address on his National Registration Identity Card ("NRIC"), as confirmed by counsel for D1 when asked about this at the hearing before me. Bearing in mind that this was *D1's* application to set aside the Registration Order, D1 had not adduced any evidence to prove that his official registered address was outside of Singapore.

(b) Second, it was also undisputed that, when the Claimant's process server sought to effect personal service on D1's registered residential address in Singapore, neither D1's domestic helper nor his wife informed the process server that D1 *did not reside there* or had moved to the PRC or overseas. Rather, D1's domestic helper informed that D1 was *not in*, while D1's wife informed that, while D1 was in the PRC (on 21 July 2022), she was *unsure when he would be back in Singapore* (see [9] above).

(c) Third, D1's registered residential address in Singapore was also *where his family – his wife –* resided in.

(d) Fourth, whenever D1 was in the PRC, he would stay at *a hotel* (the China World Hotel).

(e) Fifth, while the Claimant knew that D1 "spent significant time in the PRC, during which he would stay at [the] China World Hotel", and "*may* [thus] be located there" [emphasis added], the Claimant did not know where D1's specific place of residence in the PRC was (or

which room in the China World Hotel D1 stayed in, if he was staying there), how long he will continue to be in the PRC, and when he will return to Singapore.

(f) Sixth, there was no way for the Claimant to find out D1's specific place of residence in the PRC, including which specific room in the China World Hotel he stayed in.

54 The foregoing facts led to the clear conclusion that, based on the objective evidence, what the Claimant knew or would have known at the time SUM 2727 was made was that D1's *main place* of residence appeared to be in Singapore, although D1 would also spend significant time in the PRC. I agreed with the Claimant's counsel, Mr Jason Teo ("Mr Teo"), that the objective evidence showed the Claimant that D1 seemed to maintain dual residence in Singapore and the PRC. This was because D1's official registered address was the Gallop Road Address in Singapore, and D1's wife also resided there. D1's wife and domestic helper also did not inform the Claimant's process server that D1 did not stay in the Gallop Road Address or that he had moved to the PRC. The fact that D1 stayed in a hotel whenever he was in the PRC would have also reinforced the inference that D1's residence in the PRC was temporary, subject to possible change at any time, and that his main place of residence was in accordance with what he registered with ACRA in his People Profile – the Gallop Road Address.

55 Second, in addition to the foregoing facts that were disclosed in SUM 2727, the additional facts highlighted by Mr Teo further bolstered the conclusion that D1 seemed to be constantly moving between Singapore and the PRC, and did not seem to have a permanent place of residence in the PRC.

(a) First, D1 had provided at least two other addresses in his official documents. D1 did not provide the China World Hotel as his address in the contracts underlying the dispute in the HK Suit. Instead, in these contracts, D1 provided a "c/o" address *in Guangzhou* as his address.[4] Separately, in the HK Suit, D1 stated yet another different address *in Beijing* (in Hanwei Plaza) in his affidavits.[5]

(b) Second, according to D1's own registration document with the China World Hotel, D1's visa type in the PRC also did not appear to be long term as it was stated to be "valid until" only 7 October 2022. Tellingly, this same registration document even stated the *Gallop Road Address* as D1's address.[6]

56 In these circumstances, it was permissible for the Claimant to first attempt to serve D1 personally in Singapore, and then apply for substituted service within and out of Singapore, because the circumstances of the case would have led the Claimant to the conclusion that D1 was constantly moving from country to country such that it was impossible to serve the Notice of Registration on D1 personally. This was one of the two *Consistel* exceptions to service out (see [24] above).

57 This exception also made complete sense when applied to the unique facts of this case. It was undisputed that, if D1 was to be served in the PRC, that would have to be done via O 8 r 2(1)(*b*) of the ROC 2021, that is, according to manner provided by the Civil Procedure Convention governing service in the PRC (which was the Treaty on Judicial Assistance in Civil and Commercial

---

4 Liu Kao's 4th affidavit dated 22 September 2022 at pp 70 and 153.

5 Liu Kao's 4th affidavit dated 22 September 2022 at pp 548 and 575.

6 Lim Yew Cheng's 2nd affidavit dated 17 October 2022 at p 16.

Matters between the PRC and the Republic of Singapore ("Sino-Singapore Treaty")). There were two ways to effect service under the Sino-Singapore Treaty, namely, by:

(a) a Request for Service in the form specified by the Sino-Singapore Treaty by the Supreme Court of Singapore to the Ministry of Justice of the PRC, which will, after its review, effect service through the PRC court system according to the applicable internal laws of the PRC; or

(b) service made by the Singapore Embassy in Beijing to D1 at his residence in Beijing.

58 However, I agreed with the Claimant that there were at least two difficulties with this in this case.

(a) First, the Claimant did not know the specific room in the China World Hotel where D1 stayed in. As the Claimant pointed out in its affidavit, this was a critical requirement for both methods of service under the Sino-Singapore Treaty, because they would require the Claimant to state the *complete address* of the party to be served in the PRC in the respective specified forms.[7] If the address was incomplete, service will *not* be effected. This was plain from Article 8 of the Sino-Singapore Treaty:[8]

> ARTICLE 8 INCOMPLETE OR INACCURATE ADDRESS: If the address of a person on whom judicial documents are to be served ('the addressee') is incomplete or inaccurate, *the Central Authority of the requested party may ask the requesting party to provide additional*

7 Liu Kao 4th affidavit dated 22 September 2022 at [20].

8 Zhongda Wu's 1st affidavit dated 23 August 2022 at pp 26–27.

> *information to locate the addressee. If the Central Authority of the requested party is still unable to locate the addressee with the additional information given to it* or for any other reason unable to serve the judicial documents, *it shall notify the requesting party accordingly, state the reasons for not being able to effect service and return the judicial documents*. [emphasis added]

(b) Second, and more importantly, service under the Sino-Singapore Treaty might take several months before the documents were actually served on D1.[9] Bearing in mind the key facts highlighted at [53] above, it would have been completely impractical to serve D1 in the PRC when he had *so many different addresses* (even within the PRC itself) and it was unclear *for how long* he would stay in the China World Hotel. While D1 sought to submit that his residence in the China World Hotel was not temporary, it was very telling that his lease with the China World Hotel began *from 1 April 2018*, but D1 had, on his own evidence, only been residing exclusively in the PRC *since 8 February 2020*. In other words, for almost two years from 1 April 2018 to 7 February 2020, D1 *did not always* reside in the PRC. This amply showed that he constantly moved from place to place (between Singapore and the PRC, and, even within the PRC, among different addresses), and explained why he had registered and used so many different addresses. Consequently, even if the Claimant somehow discovered D1's specific room number in the China World Hotel, by the time service was attempted on D1 via the method under the Sino-Singapore Treaty months later, D1 might not even have been living there in the specific hotel room anymore.

---

9 Liu Kao 4th affidavit dated 22 September 2022 at [34].

D1's meetings with the Claimant's representative in the PRC

59 As aforementioned at [49] above, D1 also relied on the fact that Mr Liu was regularly meeting D1 during the period when the Claimant was seeking the Substituted Service Order, including at the Aria Café at the China World Hotel. These meetings were to discuss issues relating to the subject matter of the HK Suit.

60 To this, Mr Teo made the following submissions:

(a) The mere fact that D1 and Mr Liu regularly met in Beijing and in the café of the hotel where D1 was residing in would only have led the Claimant to the inference that he was residing in the PRC *at the times* when they met; it would not have reasonably led the Claimant to the inference that D1, who was an international businessman, had fully moved to the PRC since February 2020 and was *solely* residing there.

(b) Even though D1 and Mr Liu regularly met, it would have been impractical to require Mr Liu – or even any other one of the Claimant's representatives – to directly ask D1 for his room number, because this would either give D1 advanced notice that the Claimant intended to effect service on D1 (and thus risk D1 moving so as to avoid being served) or it would have required the Claimant to deceive D1 as to the purpose for enquiring about D1's hotel room number. The Claimant submitted that such deception should not be the standard of behaviour that should be expected of applicants for substituted service.

61 I agreed with Mr Teo's submissions as summarised at [60] above. I also agreed with Mr Teo that the fact that D1 and Mr Liu were in constant communication did not mean that it was incumbent on Mr Liu to directly ask

D1 for his address to be served. That would be an outcome that would not make any sense (as few defendants would willingly accept to be served) and, indeed, was *not* a requirement before substituted service could be ordered. This was evident from the following:

(a) For instance, under para 65(2) of the SupCt PD 2021, at least two reasonable attempts at personal service should be made before an application for an order for substituted service was filed. If these initial attempts to serve personally at a defendant's last known address failed because there was no response at the address or because a resident at the address informed the applicant's process server that the defendant did not reside there, neither the ROC 2021 nor the SupCt PD 2021 required the applicant to prove that the applicant had attempted to ask the defendant for his address to be served.

(b) If the initial attempts to serve personally at a defendant's last known address failed because the defendant was momentarily and coincidentally not at the address during the attempts to serve personally, the ROC 2021 and SupCt PD 2021 did not require the applicant to prove that he had attempted to ask the defendant for a time when the defendant will be available at the address to be served.

(c) If an applicant sought to serve by email, under para 65(6) of the SupCt PD 2021, the applicant had to show "that the email account to which the document will be sent belongs to the person to be served and that *it is currently active*" [emphasis added]. To prove that the email account was "currently active", it was common for applicants to rely on evidence that the applicant had been in *recent* communication with the party to be served by that specific email. Yet, if the standard of behaviour suggested by D1 were to be accepted, the fact that the

> applicant and the party to be served had been in recent communication by email should, rather than lead to the conclusion that the order for substituted service by email should be made, *instead* lead to the conclusion that the applicant should ask the party to be served where and when he can be served personally. That does not make sense and would be a position that would run contrary to the express requirement under para 65(6) of the SupCt PD 2021.

62 The foregoing positions were not novel, as the *same* procedures existed under paras 33(2) and 33(6) of the SupCt PD 2013 (to be read with the ROC 2014). Therefore, it was simply not a requirement that the Claimant had to *directly ask* D1 what his room number in the China World Hotel was, or whether he was residing in the PRC on a non-temporary basis, such that he could be served there. Had that been the case, I agreed with the Claimant that it would have risked D1 leaving and moving to a different address to delay being served. This was a real possibility in this case, bearing in mind that the objective evidence showed that D1 *himself* had at least one other address in Beijing in Hanwei Plaza (see [55(a)] above). Thus, I was unable to agree with D1 that the mere fact that he had been regularly meeting Mr Liu in Beijing meant that the Claimant knew or should have known D1's address in Beijing or that he was solely residing in Beijing.

Delivery of mooncakes to China World Hotel

63 D1 also relied on the fact that the Claimant had been delivering mooncakes to the China World Hotel for D1 annually. The Claimant's evidence was that the mooncakes were arranged by the Claimant to be delivered *by a courier* to the *concierge* of the China World Hotel. The hotel made its own arrangements to deliver the mooncakes to D1's room.

64 The affidavits filed by the parties clearly showed that the Claimant *did not* know the room number of D1 in the China World Hotel. The Claimant *fully disclosed in SUM 2727* that it knew that, when D1 stayed in the PRC, D1 would stay in the China World Hotel (see [52] above). Therefore, the mere fact that the Claimant had been sending mooncakes to D1 annually at the China World Hotel address did not assist D1.

Caselaw relied upon by D1

65 I next turn to the caselaw relied upon by D1. As aforementioned at [51] above, D1 relied on *Consistel* to submit that the Claimant should have attempted to serve D1 in the PRC first before resorting to substituted service. However, as aforementioned at [56] above, one of the *Consistel* exceptions to service out applied in this case. Furthermore, *Consistel* could be distinguished from the present case. In *Consistel*, the first respondent was a Singapore citizen whose *registered address on his NRIC was in the United Arab Emirates* ("UAE") (*Consistel* at [4]). The second respondent was the first respondent's wife who was a Singapore permanent resident. When the appellants attempted to serve the writ of summons personally on the respondents, the attempts were made at a flat in Singapore (the "Flat") which did not even belong to the respondents or their family members, but instead belonged to the respondents' *friend* (*Consistel* at [13]), and where the respondents would only stay at whenever they were in Singapore (*Consistel* at [6]). When the attempts of personal service were made, there was no response on the first attempt when the process server knocked on the door of the Flat (*Consistel* at [7]). On the second attempt, the respondents' friend informed that the respondents *did not reside at the Flat* (*Consistel* at [8]). All these facts would have clearly led the appellants in *Consistel* to the conclusion that the respondents in that case did *not* reside in Singapore, and that they resided in the UAE.

66 In the foregoing circumstances, Andrew Ang J (as His Honour then was) held in *Consistel* that the order for substituted service of the writ *within Singapore* was not permitted, and that leave for service out of jurisdiction had to be obtained first before resorting to substituted service. The decision in *Consistel* was clearly correct on the facts of that case – when it is clear from the circumstances of the case that a defendant was situated out of Singapore, substituted service, which was the exception rather than the rule under O 62 r 5 of the ROC 2014 (and O 7 r 7 of the ROC 2021), should *not* be the first port of call. Otherwise, substituted service would be exploited to circumvent the default requirements of service out of jurisdiction. The present facts were far removed from the facts of *Consistel*. Consequently, *Consistel* could be distinguished.

67 D1 also relied on the Court of Appeal's decision in *Burgundy Global Exploration Corp v Transocean Offshore International Ventures Ltd and another appeal* [2014] 3 SLR 381 ("*Burgundy*") to submit that substituted service should not be effected within one jurisdiction as a shortcut to serve documents on a defendant who resided in another jurisdiction. However, *Burgundy* could also be distinguished. In that case, one of the issues before the court was whether leave should be granted to serve examination of judgment debtor ("EJD") documents on the directors of a Philippines company out of jurisdiction. In that case, the company directors were resident in the Philippines and were not party to the main Suit (which was between the Philippines company and another company that was listed on the New York Stock Exchange). The further question which the court had to consider was whether the documents could be served on the company directors by substituted service on the company's lawyers in Singapore. D1 relied on the Court of Appeal's observation that "upholding this novel mode of substituted service could pave the way for parties to use this as a shortcut to serve documents on foreign

persons who hold senior positions in a company by serving the documents on the company's lawyers instead" (*Burgundy* at [115]).

68 However, once again, close attention to the specific facts of *Burgundy* had to be paid. In that case, it was unequivocally the case that the company directors were resident in the Philippines (see *Burgundy* at [5] to [6]). Even the company itself was based in the Philippines. There was no evidence to suggest that the company directors were constantly moving from country to country. In those circumstances, it was clear that service must be effected on the company directors out of jurisdiction in the Philippines. Furthermore, it bears noting that the Court of Appeal's observations on substituted service were made *obiter*, as the Court of Appeal stated that they "need not decide this point as [they] set aside the order for substituted service of the EJD Orders on the ground that leave for service out of jurisdiction had not been obtained."

69 The key point in both *Consistel* and *Burgundy* was that, in those cases, substituted service *within Singapore* was being used to circumvent the requirement to seek permission to serve the defendants *out of jurisdiction*, even though those defendants were unequivocally resident abroad. This was not the case here, because the Substituted Service Order provided for both substituted service within and *out* of Singapore, and the circumstances as they were known to the Claimant showed that D1 was constantly moving between Singapore and the PRC.

70 D1 also cited various English cases for the proposition that substituted service was the exception rather than the norm, especially when there was a bilateral convention between the originating jurisdiction and the foreign country where service was to be effected. These cases which D1 cited were *Cecil and others v Bayat and others* [2011] 1 WLR 3086, *Knauf UK GmbH v British*

Gypsum Ltd and another [2002] 1 WLR 907, and *Marashen Ltd v Kenvett Ltd (Ivanchenko, third party)* [2018] 1 WLR 288. None of these cases dealt with the situation in this case where one of the *Consistel* exceptions to service out applied. Consequently, I found that these cases did not assist D1.

Conclusion

71 To summarise, I found that the facts would have led the Claimant to the conclusion that D1 was constantly moving between Singapore and the PRC such that it was impossible to serve the Notice of Registration on D1 personally in the PRC. This was one of the *Consistel* exceptions to service out. Furthermore, the fact that it was impossible to serve the Notice of Registration on D1 personally in the PRC meant that it was impractical to serve the Notice of Registration on D1 personally in the PRC. Therefore, I found that the Substituted Service Order was validly made.

Sub-Issue 2: Did the Substituted Service Order provide an impermissible "shortcut" to circumvent O 8 r 2(1) of the ROC 2021?

72 Next, D1 submitted that the Substituted Service Order provided an impermissible "shortcut" to circumvent O 8 r 2(1) of the ROC 2021, which was the provision which set out the methods of service out of jurisdiction (see [36] above). According to D1, this was because O 60 r 7(2) of the ROC 2021 did not provide that O 7 r 7 – the provision on substituted service – applied to service of a notice of registration out of Singapore; instead, O 60 r 7(2) stated that O 8 rr 2, 3, 7 and 8 applied in relation to service of a notice of registration out of Singapore. This thus raised the question of whether substituted service out of jurisdiction of a notice of registration could be ordered under O 60 r 7(2).

73 I first considered the methods of substituted service out of Singapore provided under the Substituted Service Order (that is, by registered post and email on Sidley Austin HK; see [10(a)] above). In my judgment, a careful study of the statutory provisions and the caselaw as I have outlined above showed that O 60 r 7(2) of the ROC 2021 *did* permit a notice of registration to be served on a judgment debtor by way of substituted service out of jurisdiction.

74 The only substantive difference between the provisions on service under the ROC 2014 and the ROC 2021 was that, under the ROC 2021, the provision on the methods of service out of jurisdiction (O 8 r 2(1), ROC 2021) did *not* expressly state that the provision on substituted service (O 7 r 7, ROC 2021) "shall apply" in relation to service out of jurisdiction. Therefore, O 8 r 2(1) was *silent* on whether a defendant could be served out of jurisdiction by way of substituted service. On the other hand, under the ROC 2014, the provision on the methods of service out of jurisdiction (O 11 r 3(1), ROC 2014) *did* expressly state that the provision on substituted service (O 62 r 5, ROC 2014) "shall apply".

75 When faced with this, Lee J had clearly held in *Janesh* that O 8 r 2(1) of the ROC 2021 permitted substituted service out of jurisdiction (see [38] above). As such, substituted service out of jurisdiction was permitted *under O 8 r 2(1)* of the ROC 2021. When asked about this at the hearing before me, counsel for D1 did *not* dispute Lee J's holding in *Janesh* nor even the position that substituted service out of jurisdiction was permitted under the ROC 2021. Therefore, because O 8 r 2(1) permitted substituted service out of jurisdiction, and O 60 r 7(2) provided that O 8 r 2 applied to the service of a notice of registration out of jurisdiction, it followed that O 60 r 7(2) allowed a notice of registration to be served by substituted service out of jurisdiction. This meant that the methods of substituted service out of Singapore provided under the

Substituted Service Order did not provide an impermissible shortcut to circumvent O 8 r 2(1) of ROC 2021.

76 As for the methods of substituted service within Singapore provided under the Substituted Service Order – by registered post to the Balmoral Hills Address and the Gallop Road Address (see [10(b)] above) – these would have been ordered under O 7 r 7 of the ROC 2021, since they concerned substituted service within Singapore. These methods were not impermissible because one of the *Consistel* exceptions to service out applied in this case. Therefore, I found that the Substituted Service Order did not provide an impermissible "shortcut" to circumvent O 8 r 2(1) of the ROC 2021.

Sub-Issue 3: Was there a lack of full and frank disclosure of all material facts in SUM 2727?

77 I now turn to the final submission made by D1 to seek to set aside the Substituted Service Order, which was that the Claimant did not make full and frank disclosure of all material facts that it knew or would have known had it made the proper enquiries when it made the substituted service application in SUM 2727.

Parties' submissions

78 The crux of D1's submission here is that the Claimant did not disclose the following three facts:

(a) D1 had been solely resident in the PRC since February 2020;

(b) Mr Liu was regularly meeting D1, including at the Aria Café in the China World Hotel, and the Claimant had been delivering mooncakes to the China World Hotel for D1; and

(c) the methods of substituted service under the Substituted Service Order did not comply with the means provided in O 8 r 2(1) of the ROC 2021.

79 The pertinent facts that the Claimant disclosed in its supporting affidavit in SUM 2727 have been extracted at [52] above. The Claimant submitted that it did not breach its duty of full and frank disclosure, as it had made it clear to the court that D1 may be located in the PRC.

Applicable legal principles

80 SUM 2727 was an application "without notice" (which was known as an "*ex parte*" application under the ROC 2014), as it did not need to be served on anyone (O 1 r 3(1), ROC 2021). It was trite that, in any application without notice, the applicant had a duty to give full and frank disclosure of all material facts known to him and those facts which he would have known had he made proper inquiries. "Material facts" were those that were material for the court to know in dealing with the application, and the extent of the inquiries depended on the facts and circumstances of the case (*Tay Long Kee Impex Pte Ltd v Tan Beng Huwah (trading as Sin Kwang Wah)* [2000] 1 SLR(R) 786 ("*Tay Long Kee Impex*") at [21]).

81 It was equally well established that a mere failure to provide full and frank disclosure of all material facts did not warrant the setting aside of the order made in the application without notice. In the context of an *ex parte* application for an interim injunction, the Court of Appeal held in *Tay Long Kee Impex* that, once material non-disclosure was established, the court has a discretion to either: (a) discharge the interim injunction without looking into the merits, which would be appropriate where the omissions were deliberate with a view to misrepresent; (b) continue the *ex parte* injunction; or (c) grant a fresh injunction

if all the facts were now before it (*Tay Long Kee Impex* at [25] and [33]). The duty to give full and frank disclosure was not so strict that even a minor breach would be a basis to set aside an *ex parte* injunction (*Tay Long Kee Impex* at [27]). Where there was suppression, instead of innocent omission, of the material facts, it must be a special case for the court to exercise its discretion not to discharge the *ex parte* injunction (*Tay Long Kee Impex* at [35]). While *Tay Long Kee Impex* was a case concerning an injunction, there was "no reason in principle why there should be a difference in approach between an application for leave to serve out of jurisdiction … and one for an injunction" (*Lee Hsien Loong v Review Publishing Co Ltd* [2007] 2 SLR(R) 453 at [58] per Sundaresh Menon JC (as His Honour then was)). The foregoing principles should thus equally apply to an application without notice for substituted service.

Analysis

82 Regarding the first fact at [78(a)] above, besides bare assertions on affidavit, D1 had not proved why the Claimant knew or would have known that D1 had been solely resident in the PRC. Instead, as I had already found, the evidence supported the Claimant's assertions that, at the time SUM 2727 was made, it did not know D1's exact whereabouts and for how long D1 would remain in the PRC.

83 It also followed that the second fact at [78(b)] above was not a material fact that needed to be disclosed. This was because the fact that D1 and Mr Liu had been meeting in Beijing did not mean that Mr Liu knew that D1 was fully resident in the PRC when SUM 2727 was filed, or D1's room number in the China World Hotel.

84 More importantly, the fact that D1 and Mr Liu had been meeting in Beijing did not go toward the *tests* which the parties themselves applied to

determine if substituted service should be ordered, which was whether it was *impractical* to serve D1 personally, and whether the proposed method of substituted service would be effective in bringing the Registration Papers to D1's notice. Consider, hypothetically, that the Claimant did disclose the fact that D1 and Mr Liu had been regularly meeting in Beijing, including in the Aria Café. This fact would *not* have changed the court's analysis as to whether substituted service should be ordered, because the fact remained that (a) based on the key facts as outlined at [53] above, D1 appeared to be maintaining dual residence in Singapore and the PRC, (b) the Claimant did not know D1's room number in the China World Hotel and could not be expected to ask D1 this, and (c) there was also no evidence that D1 had informed any of the Claimant's representatives, including Mr Liu, that he had moved to the PRC. This hypothetical counterfactual example amply showed that the fact that D1 and Mr Liu regularly met in Beijing was *not* material to the determination of the issue in SUM 2727.

85 Even if this were a material fact, it was clear that the omission to disclose this fact in SUM 2727 was a minor breach that did not justify setting aside the Substituted Service Order. This was because there was nothing in the evidence to suggest that the Claimant suppressed this fact in its supporting affidavit in SUM 2727 in an effort to mislead the court.

86 Finally, D1's reliance on the third fact at [78(c)] above was a non-starter, because the methods of substituted service under the Substituted Service Order were permissible under O 8 r 2(1) of the ROC 2021, as I have analysed at [37] to [39] above.

87 As such, I found that the Claimant did not breach its duty of full and frank disclosure when it made the application for substituted service in

SUM 2727. Accordingly, despite the best efforts of D1's counsel, I agreed with the Claimant that there was no basis to set aside the Substituted Service Order. The Substituted Service Order was not legally defective.

Summary of findings

88 In conclusion, I summarise my findings on the Substituted Service Order as such:

(a) The Claimant did not have to first attempt to serve the Notice of Registration on D1 personally in the PRC because one of the *Consistel* exceptions to service out applied in this case: the evidence as they were known when SUM 2727 was made led the Claimant to the clear inference that D1 was constantly moving between Singapore and the PRC such that it was impossible to serve the Notice of Registration on D1 personally. For the same reason, it was impractical for the Claimant to serve the Notice of Registration on D1 personally, so the Substituted Service Order was validly ordered.

(b) The methods of substituted service out of Singapore provided under the Substituted Service Order did *not* provide an impermissible "shortcut" to circumvent O 8 r 2(1) of ROC 2021, because O 8 r 2(1) itself permitted substituted service out of jurisdiction.

(c) The methods of substituted service within Singapore provided under the Substituted Service Order did *not* provide an impermissible "shortcut" to circumvent O 8 r 2(1) of ROC 2021, because one of the *Consistel* exceptions to service out applied in this case.

(d) The Claimant did not breach its duty to give full and frank disclosure of all material facts in SUM 2727.

89 Consequently, there was no basis to set aside the Substituted Service Order.

Issue 2: Was the Notice of Registration validly served in accordance with PRC law?

Parties' submissions

90 D1's next submission was that, even if the substituted service order were not set aside, the Registration Order should be set aside because D1 was not validly served with the Notice of Registration in accordance with the laws of the PRC. D1 submitted that this was because O 8 r 2(6) of the ROC 2021 provided that "[n]othing is to be done under this Rule that is contrary to the laws of the foreign country." According to D1's expert witness on PRC law, Mr Zhongda Wu ("Mr Wu"), "proper service of judicial documents issued by a Court of Singapore to [the D1] who reside[d] in Beijing, China, [could] only be carried out" in the manner provided for under the Sino-Singapore Treaty, as summarised at [57] above. D1 submitted that, because the Substituted Service Order did not effect service in accordance with the means under the Sino-Singapore Treaty, the Notice of Registration was not served in accordance with the laws of the PRC.

91 On the other hand, the Claimant's expert witness on PRC law, Mr Xin Zhengyu ("Mr Xin"), explained that the PRC Civil Procedure Law, bilateral treaties, and international conventions of the PRC "only regulate[d] the situation where the party requesting for judicial assistance [sought] to serve judicial documents in the territory of the requested party, and [did] not involve the situation where the litigant [was] in the territory of the requested party but the

service process [was] not carried out in the territory of the requested party."[10] Mr Xin opined that the methods of service employed in the Substituted Service Order were methods of service that were carried out outside the territory of the PRC, because they were effected in Hong Kong and Singapore.[11]

Applicable legal principles

92 In determining whether a method of service was contrary to the laws of the relevant foreign country, an important distinction was to be drawn between a manner of service *not specifically provided for* by foreign law and service which was *positively contrary* to foreign law. The former would not be contrary to the law of the foreign jurisdiction at all (*Humpuss* at [86]). Accordingly, in *Humpuss*, Steven Chong J (as His Honour then was) found that the fact that there were no laws governing the service of foreign originating processes on Indonesian individuals or legal entities in Indonesia was fatal to the defendant's case that service of the foreign process had to be carried out by the Indonesian court bailiff. As a result, service of the writ by private means at the defendants' registered address in Indonesia was permissible (*Humpuss* at [71]–[72]). Similarly, in *Petroval* at [26], Tay Yong Kwang J (as His Honour then was) observed that the pertinent question in that case was whether Swiss law *prohibited* service "outside [Switzerland] on Swiss residents".

Analysis

93 The methods of service under the Substituted Service Order were for service on a party's counsel in Hong Kong (by registered post and email) and for service on a party's address outside of the PRC (in Singapore by registered

---

10 Xin Zhengyu's affidavit dated 19 September 2022 at p 225 at [18].

11 Xin Zhengyu's affidavit dated 19 September 2022 at p 223 at [11].

post). Therefore, the pertinent question in this case was whether PRC law *prohibited* service on a party's counsel situated in Hong Kong and on a party's foreign residential address.

94 In the present case, the critical fact that was fatal to D1's submission was that *no* provision of PRC law prohibited service on a party's counsel in Hong Kong or on a party's address overseas. When asked about this at the hearing before me, counsel for D1 conceded this fact. As such, applying *Humpuss* and *Petroval*, the methods of service employed by the Substituted Service Order were not contrary to PRC law. Accordingly, I found no basis to set aside the Notice of Registration and the Registration Order, and I dismissed the application.

Issue 3: Are there other reasons to justify not setting aside the Registration Order?

95 As I have rejected the foregoing two bases to set aside the Registration Order, there was no need for me to make any findings on the Claimant's alternative submission that I should exercise my discretion not to set aside the Registration Order on the basis that no substantial prejudice had been caused to D1 (see [17] above). Nevertheless, for completeness, I observed that, even if I had found that the Substituted Service Order should be set aside or that the Notice of Registration was not validly served in accordance with PRC law, I would have exercised my discretion not to set aside the Registration Order.

Applicable legal principles

96 It was clear from the use of the word "may" in s 5(1)(*c*) of REFJA (see [41] above) that the court had a discretion whether to set aside an order for registration, even if the requirement under s 5(1)(*c*) was satisfied. The principal

purpose of the requirement to serve a notice of registration on a judgment debtor personally was to ensure that the "judgment debtor will not be deprived of his property without proper notice and reasonable opportunity to defend" (see the Report of the Law Reform Committee on Enforcement of Foreign Judgments (June 2005) at [84]). Therefore, central to the exercise of the court's discretion in s 5(1)(*c*) of REFJA was the question of whether a defendant had been prejudiced by being deprived of a reasonable opportunity to raise any proper grounds to set aside the registration of a foreign judgment.

97 Similarly, in *Madihill Development Sdn Bhd and another v Sinesinga Sdn Bhd (transferee to part of the assets of United Merchant Finance Bhd)* [2012] 1 SLR 169 ("*Madihill*"), the High Court considered the question of whether the registration of a Malaysian judgment under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("RECJA") should be set aside because, at the time the judgment was registered, there was a pending appeal before the Malaysian Court of Appeal, and s 3(2)(*e*) of RECJA provided that a judgment cannot be registered if there is a pending appeal against the judgment. However, by the time the setting aside application was heard before the High Court of Singapore, there was no longer any pending appeal. Quentin Loh J (as His Honour then was) held in *Madihill* at [28] that, in the circumstances of that case, there was:

> … *no utility or practical consideration* that require[d] the setting aside of the registration *just for [the judgment creditor] to apply once more to register the Malaysian judgment.* Such overemphasis on technicalities no longer has any place in modern civil procedure. … [emphasis added]

98 While *Madihill* concerned a setting aside application under RECJA rather than s 5(1)(*c*) of REFJA, both statutes concerned the registration of foreign judgments. Loh J's holding that there was no "utility or practical consideration" in setting aside the registration of the Malaysian judgment,

despite it being *undisputed* in that case that there *was* a technical defect in the registration of the Malaysian judgment at the time of the registration (due to the pending appeal), was consistent with the general principle that, where there was *no undue prejudice* occasioned to the judgment debtor by the registration of a foreign judgment despite a technical fault or defect, a court should be slow to set aside the registration of the judgment.

Analysis

99 In this case, it was undisputed that D1 did receive notice of the Notice of Registration. It was for this reason that D1 filed this application within the stipulated 21-day timeline. As such, I could see no purpose for setting aside the Registration Order now and requiring the Claimant to attempt to serve D1 personally in the PRC first, when this process could take months and there was *no guarantee* that D1 would willingly accept service in the PRC and not, instead, move to a different address. In fact, it bears highlighting that D1's lease with the China World Hotel was due to expire on 1 April 2023, so the fact that service in the PRC under the Sino-Singapore Treaty could take months could well mean that, by the time service was attempted on D1 in his room in the China World Hotel, D1 might not even be residing there anymore. D1 did not provide any undertaking that he would be residing in the same hotel room or even that he would continue to reside in the PRC until he had been served by the Claimant.

100 In this regard, D1 submitted that he had not shown any past pattern or present intention to evade service of the Notice of Registration. This submission did not make sense: if D1 was so ready to accept service, there would be no reason for D1 to seek to set aside the Registration Order now for the sole reason that he should be served again *after a few months* in the PRC, even though he

presently already had notice of the Registration Order and Notice of Registration.

101 D1 sought to rely on *Consistel* at [49] to submit that prejudice is immaterial. First and foremost, *Consistel* did not concern the exercise of discretion under s 5(1)(*c*) of REFJA. Second, what Ang J had held in *Consistel* at [49] was that the issues of whether:

> … the respondents were in contact with [the respondents' friend] who resided at their last known residential address, that they clearly had notice of the Writ and that the first respondent was a Singapore citizen … were only relevant, if at all, *to determine how substituted service should be effected*. … [emphasis added]

102 Therefore, a close study of *Consistel* showed that the court did *not* make a broad finding that prejudice was immaterial. Rather, Ang J had held in that case that the issues raised by the plaintiff went towards the question of the *effectiveness* of the methods of substituted service.

103 As such, not only was there no substantial prejudice, but there was no prejudice occasioned to D1 at all by any failure to serve D1 in the PRC prior to the substituted service. Accordingly, I would not have set aside the Registration Order even if I had agreed with D1 on the first two issues.

Conclusion

104 Accordingly, I dismissed the present application. Finally, I record my gratitude to the parties' counsel for their submissions.

Desmond Chong
Assistant Registrar

Danny Ong, Jason Teo, and Lee Jin Loong (Setia Law LLC) for the claimant;
Vithiya Rajendra, Daryl Wong, and Ang Guo Qiang (WongPartnership LLP) for the first defendant;
Second defendant absent and unrepresented.