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

[2023] SGHC 33

Bankruptcy No 2704 of 2020 (Summonses Nos 4139, 4144 and 4145 of 2022)

In the matter of Insolvency, Restructuring and Dissolution Act (Act 40 of 2018)

And

In the matter of the Estate of Lim Lie Hoa also known as Lim Le Hoa also known as Lily Arif Husni

Between

Jane Rebecca Ong

… *Plaintiff*

And

Lim Lie Hoa also known as Lim Le Hoa also known as Lily Arief Husni

… *Defendant*

GROUNDS OF DECISION

[Insolvency Law — Bankruptcy — Trustee in bankruptcy — Inspection of bankers' books — Whether principles applicable to inquiry of company's dealings is also applicable to examination of bankrupt and others]
[Banking — Banker's books — Proceedings — Civil]

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v
Lim Lie Hoa

[2023] SGHC 33

General Division of the High Court — Bankruptcy No 2704 of 2020
(Summonses Nos 4139, 4144 and 4145 of 2022)
Goh Yihan JC
17 January 2023

15 February 2023

Goh Yihan JC:

1 The applicants were the joint and several private trustees of the estate of the deceased debtor ("the Estate"), Mdm Lim Lie Hoa, also known as Lim Le Hoa, also known as Lily Arief Husni ("the Deceased Debtor"). These were the applicants' applications, pursuant to s 335 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"), in HC/SUM 4139/2022, HC/SUM 4144/2022 and HC/SUM 4145/2022 ("the Applications"). The respondents were Citibank Singapore Limited, Oversea-Chinese Banking Corporation Limited and United Overseas Bank Limited, respectively. While the prayers sought for in each of the Applications differ slightly, the main prayer for all was for an order, pursuant to s 175 of the Evidence Act 1893 (2020 Rev Ed) ("EA") read with s 47 of the Banking Act 1970 ("BA"), and para 7 of Part 1 of the Third Schedule of the BA, that each respondent provides inspection of

the relevant or specified bankers' books, and that the applicants be at liberty to inspect and take copies of the same.

2 After hearing the parties on 17 January 2023, I granted the Applications and made the orders prayed for in each of them. As the Applications raised, among others, the relevant principles in an application under s 335 of the IRDA ("s 335"), I explain my decision in these grounds. In particular, I will consider whether the principles in respect of an application under s 244 of the IRDA ("s 244"), which is the provision providing for an inquiry into company's dealings when a company is in judicial management or is being wound up, are also applicable in the context of an application under s 335.

Background facts

3 The Deceased Debtor died on 8 August 2009, following which Mr Ong Siauw Ping ("OSP") was appointed as executor and trustee of the Estate, pursuant to the last will and testament of the Deceased Debtor dated 9 July 2009.

4 On 17 December 2020, the plaintiff, Ms Jane Rebecca Ong, applied for an order for the administration in bankruptcy of the Estate of the Deceased Debtor and for the applicants to be appointed as the joint and several private trustees of the Estate. That application was made after a statutory demand for a debt owed by the Deceased Debtor to the plaintiff was served on OSP, and the 21 days referred to in s 312(*a*)(i) of the IRDA had lapsed since the service of the demand and the demand was neither complied with nor set aside. An order-in-terms in respect of that application was granted on 4 March 2021 (the "administration order").

5 Since their appointment as private trustees, the applicants have been investigating into the affairs and property of the Estate so as to reconcile the accounts. These investigations into the past dealings of the Estate focused on, among others, a property known as 16 East Sussex Lane Singapore 279802 ("16 East Sussex"). It was discovered that sometime on 5 August 2011, 16 East Sussex was devolved upon OSP. Subsequently, sometime on or around early 2018, 16 East Sussex was sub-divided into two lots. These two lots were sold separately to third party purchasers on 27 February 2018 and 17 May 2018, respectively.

6 The total sale proceeds of 16 East Sussex amounted to $35,088,000 before accounting for the relevant fees and taxes. According to court papers received in the examination of judgment debtor against the Estate, OSP admitted that he had deposited, in his capacity as the sole executor of the Estate, the abovementioned sale proceeds into his personal bank accounts ("the Bank Accounts"). The Bank Accounts include those held with, among others, the respondents in the Applications.

7 While the Deceased Debtor's will provided that the legal and beneficial title of 16 East Sussex belongs to OSP, this is "subject to the payment of debts, expenses and duties". As such, since 16 East Sussex is a principal asset of the Estate, the sale proceeds from its sale should have been made available to the creditors of the Estate before any distribution to the Estate's beneficiaries, including to OSP.

8 In this connection, the applicants have since June 2022 requested copies of, among others, the complete and unredacted bank statements of OSP's Bank Accounts to determine the whereabouts of the sale proceeds of 16 East Sussex ("the Relevant Bank Statements"). The applicants required the Relevant Bank

Statements to ascertain the Estate's affairs, dealings, and property. In this regard, the applicants had requested from both OSP and the respondents for copies of the Relevant Bank Statements. However, OSP had not provided the applicants with such copies at the date of the Applications. The respondents had also stated that they were not able to provide such copies without OSP's consent or a court order.

The applicable law

Overview

9 The Applications were made under s 335 of the IRDA, read with s 47 of the BA, para 7 of Part 1 of the Third Schedule of the BA and s 175 of the EA ("s 175"). I will come to these provisions of the BA and the EA subsequently. For now, ss 335(1) and 335(3) of the IRDA provide as follows:

> **Examination of bankrupt and others**
>
> 335.—(1) Where a bankruptcy order has been made, the Court may, upon an application made by the Official Assignee at any time (whether before or after the discharge of the bankrupt), or upon an application made by a creditor (who has tendered a proof) at any time before the discharge of the bankrupt —
>
> > (*a*) summon the bankrupt to appear before it on an appointed day and examine the bankrupt as to the bankrupt's affairs, dealings and property; and
> >
> > (*b*) summon any other person to appear before the Court on the same or another appointed day and examine the person, if it appears to the Court that the person would be able to give information concerning the bankrupt or the bankrupt's affairs, dealings or property.
>
> …
>
> (3) Without prejudice to subsection (2), the Court may at any time require any person mentioned in subsection (1)(*b*) to submit an affidavit to the Court containing an account of the person's dealings with the bankrupt or to produce any documents in the person's possession or under the person's

> control relating to the bankrupt or the bankrupt's affairs, dealings or property.

10 Under s 335(1) of the IRDA, where a bankruptcy order has been made, the court may, upon an application made by the Official Assignee, summon any person to appear before the court, if it appears to the court that the person would be capable of giving information concerning the bankrupt or the bankrupt's affairs, dealings, and property. Further, under s 335(3) of the IRDA, the court may require such a person to produce any documents in his possession or control concerning the bankrupt or the bankrupt's affairs, dealings, or property.

The applicable principles to s 335 of the IRDA

The principles in relation to an application under s 244 of the IRDA apply similarly

11 There does not appear to be a local decision on s 335 of the IRDA or its predecessor provision which was s 83 of the Bankruptcy Act (Cap 20) (2009 Rev Ed). There was also no explanation of s 335 provided in the *Report of the Insolvency Law Review Committee* (2013) (Chairman: Lee Eng Beng SC) on which the IRDA is primarily based. However, there is an analogous provision applicable in the case of insolvent companies found in s 244 of the IRDA, which is derived from s 285 of the Companies Act (Cap 50) (2006 Rev Ed) ("Companies Act"). There have been a number of local decisions explaining the application of s 285 of the Companies Act ("s 285"). The question that the Applications posed was whether those principles in relation to s 285 of the Companies Act (and by extension s 244 of the IRDA) should apply in relation to s 335 of the IRDA. In my view, those principles should apply to s 335 of the IRDA as well. I decided this for the following reasons.

12 To begin with, as a matter of precedent, there are foreign decisions which have held that the equivalent foreign provisions of s 244 of the IRDA should be applied in accordance with the same principles as the equivalent foreign provisions of s 335 of the IRDA. Thus, in the English High Court decision of *In re Murjani (A Bankrupt)* [1996] 1 WLR 1498 ("*Murjani*"), Lightman J held that the principles which apply in the case of an application by the trustee under s 236 of the Insolvency Act 1986 (c 45) (UK) (similar to s 244 of the IRDA) in cases of insolvent companies must be equally applicable in the case of an application by a trustee in bankruptcy under s 366 of the same Act (which is similar to s 335 of the IRDA) (at 1508). Lightman J made this statement in the context of deciding whether confidential evidence relied on by the trustee of a bankrupt person, in an application without notice for an order under s 366, should on its face be disclosed to the party against whom an order is sought, where the court is of the opinion that the court will or may be unable to fairly and properly dispose of the application if part of the evidence is withheld from him (at 1507). While the present application did not involve confidential information put before the court in support of an application without notice, I was of the view that this decision is nevertheless authority for the broader point that there is no distinction between the principles governing the statutory investigative powers under ss 244 and 335 of the IRDA.

13 The Hong Kong courts have taken a similar approach to that in *Murjani*. For example, in the Hong Kong Court of First Instance decision of *Ip Pui Lam Arthur and another v Alan Chung Wah Tang and others* [2015] HKCU 578, the court held that the principles governing the court's exercise of discretion under s 29 of the Bankruptcy Ordinance (Cap 6) (Hong Kong) ("Bankruptcy Ordinance"), which is the equivalent provision to s 335 of the IRDA, and those governing the exercise of such discretion under s 221 of the Companies

Ordinance (Cap 622) (Hong Kong) ("Companies Ordinance") (now repealed), which is the equivalent provision to s 244 of the IRDA, would be essentially the same. The reason for this, as To J explained, is that the functions of a trustee in bankruptcy and those of a liquidator in a company insolvency context are essentially the same. This is to put the affairs of the bankrupt or the insolvent company in order, as well as to administer the bankrupt's or the insolvent company's affairs in all aspects, including the getting in of any assets to pay creditors (at [12]). Therefore, the learned judge concluded that the two provisions serve the same broad purpose of arming the trustee or the liquidator, in their capacities as officers of the court, with the necessary powers to investigate the affairs of the bankrupt or the insolvent company. This is all the more necessary because the trustee in relation to the bankrupt, similar to a liquidator with respect to the insolvent company, is a stranger to the bankrupt's affairs and thus may face some difficulties in acquiring the relevant information. Thus, adopting the principles set out in the judgment of the Hong Kong Court of Final Appeal in *Joint and Several Liquidators of Kong Wah Holdings Ltd v Grande Holdings Ltd* [2007] 1 HKLRD 116*,* which was the leading authority in Hong Kong on the exercise of the court's powers under s 221 of the Companies Ordinance, the court granted a discovery order under s 29 of the Bankruptcy Ordinance as the documents sought were reasonably required to enable the trustees to perform their functions, the respondents against whom the order was sought were able to provide the information or documents, and there was nothing to suggest that making an order against them would be oppressive (at [14] and [71]).

14 More tangentially, in the recent High Court decision of *Wang Aifeng v Sunmax Global Capital Fund 1 Pte Ltd and another* [2022] SGHC 271, I had to consider the applicable principles to the exercise of a court's discretion under

s 327(1)(*c*) of the IRDA ("s 327(1)(*c*)"). This section provides, among others, that the court's permission is needed for legal proceedings to proceed against a bankrupt. Because there had not been a local decision on the exercise of discretion under s 327(1)(*c*) or its predecessor provision in the now repealed Bankruptcy Act (Cap 20, 2009 Rev Ed), I had found it helpful to refer to cases that have laid down factors in the similar context of granting permission to continue or commence proceedings against companies that are being wound up. In this context, I had said this (at [29]):

> In my view, the policy that underlies s 327(1)(*c*)(ii), which involves an insolvent individual, is the same as the policy which applies to the situation involving the grant of permission to continue or commence proceedings against an insolvent company. Indeed, as the learned District Judge put it in *JA v JB* (at [13]), "the same principles ought to apply to both categories of insolvent beings, as *the task of the liquidator or the trustee in bankruptcy is the same* – to gather in the assets of the insolvent person and then distribute them fairly … amongst the creditors in as efficient, expeditious and cost-effective a manner as possible after payment of secured and preferential debts".
>
> [emphasis added]

15 Accordingly, apart from precedent, the similarity in the policies behind ss 244 and 335 of the IRDA led me to conclude that the applicable principles to the application of s 244, as well as its predecessor provision under s 285 of the Companies Act, are also applicable to the application of s 335 of the IRDA.

The two-stage test applicable to s 335 of the IRDA

16 In this regard, the Singapore courts have adopted a relatively expansive approach towards s 285 of the Companies Act, which may be invoked to assist a liquidator in accumulating facts, information, and knowledge that would enable him to discharge his statutory functions (see the High Court decision of

Liquidator of W&P Piling Pte Ltd v Chew Yin What and others [2004] 3 SLR(R) 164 ("*W&P Piling*") at [27]).

17 More specifically, the Court of Appeal in *PricewaterhouseCoopers LLP and others v Celestial Nutrifoods Ltd (in compulsory liquidation)* [2015] 3 SLR 665 ("*Celestial*") had set out a two-stage test in relation to s 285 of the Companies Act (at [43]) which, for the reasons I have explained above, should be adopted in relation to s 335 of the IRDA.

18 The first stage of the test set out in *Celestial* is that, as a threshold requirement under s 285 of the Companies Act, the liquidator has to show that there is some reasonable basis for his belief that the person who is the subject of the application can assist him in obtaining relevant information and/or documents, and that the information and/or documents are reasonably (but not absolutely) required. The Court of Appeal in *Celestial* has held that the hurdle to be crossed by the liquidator under this first stage is not high. Indeed, there ought to be a general predisposition in favour of the liquidator's views because he, being an officer of the court, is presumed to be neutral, independent, and acting in the best interest of the company. I found that this first stage, with the suitable modifications, applied equally in relation to an application under s 335 of the IRDA.

19 The second stage of the test set out in *Celestial* requires that the courts balance the conflicting interests involved in deciding whether to grant the order under s 285 of the Companies Act. In this regard, as the Court of Appeal explained in *Celestial*, the liquidator is generally a stranger to the company's affairs. This means that he may be unable to obtain the information which he needs from persons connected with the company such as officers and directors of the company. Also, those who may have breached their duties to the company

or engaged in serious wrongdoing would put up some resistance to any inquiry to their conduct. Even where persons involved with the company are totally innocent, they may have motives for concealing what they have done. As such, the power conferred under s 285 enables the liquidator to carry out investigations by providing him with a strong and cost-effective mechanism to discharge his duties. Through this, s 285 also protects the public interest in maintaining confidence in the integrity and effectiveness of the legal mechanisms by which corporate conduct is regulated. In contrast to this, the power conferred by s 285 of the Companies Act is undeniably inquisitorial. As such, it should not be made when it would be wholly unreasonable, unnecessary, or oppressive to the defendant.

20 More specifically, when balancing the conflicting interests involved, the courts do not generally consider the risk of a respondent being exposed to liability as being an absolute bar to the making of an order of s 285 of the Companies Act. This is because, as the Court of Appeal explained in *Celestial* (at [44(b)]), "the purpose of the power under s 285 is to enable the liquidator to obtain not only general information about the company's affairs but also to discover facts and documents relating to specific claims against specific persons". As such, while the court will give weight to the risk that compliance might expose the defendant to liability, that, by itself, will not be a bar as that would defeat the very purpose of s 285 to enable the liquidator to seek specific information against individuals. That said, a court will give weight to the risk that compliance might expose the respondent to criminal penalties in the jurisdiction in which the documents are situated. Where there is a real risk, the court will be slow to order production.

21 As with the first stage of the test set out in *Celestial*, I decided that the second stage should also apply in relation to an application under s 335 of the IRDA, with the appropriate modifications. In particular, as for the specific factor of whether the respondent would be exposed to liability, I considered whether the Bankers' Books Exception applied. If this exception applied, then it would absolve the respondents in the present case of any potential liability and not constitute a factor against an order made in the applicants' favour pursuant to s 335. I will explain the applicability of the Bankers' Books Exception below.

My decision: the Applications were granted

22 As I alluded to at the outset of these grounds, I granted the Applications. I did so for the following reasons.

The applicants had standing to make the Applications

23 As a preliminary issue, I decided that the applicants had standing to make the Applications. This is because, pursuant to s 327(1)(*a*) read with s 39(2) of the IRDA, upon the making of the administration order, the property of the Estate vests in the applicants as private trustees. The property then becomes divisible among the Estate's creditors.

24 Moreover, s 39(2) of the IRDA clarifies that, unless the context requires otherwise, any reference in the IRDA to the Official Assignee includes a reference to a trustee in bankruptcy. Therefore, pursuant to s 39(1) of the IRDA, a trustee in bankruptcy has all the functions and duties of the Official Assignee and may exercise all of the powers of the Official Assignee in relation to the bankrupt's estate.

25 As such, I decided that the applicants had the standing to make the present Applications under s 335 of the IRDA.

The first stage: the Relevant Bank Documents in the possession of the respondents were reasonably required by the applicants

26 I turned then to consider the first stage of the test in *Celestial* as applied to the Applications under s 335 of the IRDA. In my judgment, the Relevant Bank Documents in the possession of the respondents were reasonably required by the applicants.

27 First, I found that the applicants had some reasonable basis for their belief that the respondents could assist them in obtaining the Relevant Bank Statements. In this connection, the sale proceeds from 16 East Sussex were not deposited into the Estate's bank account but were instead deposited directly into OSP's bank accounts. Such deposit would be evidenced by OSP's bank statements from the respondents and the cashiers' orders from the sale of 16 East Sussex deposited into the Bank Accounts. As such, I found that the applicants had a reasonable basis to believe that the respondents would be able to provide them with the Relevant Bank Statements. In any event, the respondents have not at any time disputed that they are not able to provide the applicants with the Relevant Bank Statements. Instead, the respondents' broad position was that a court order is required before they would release the Relevant Bank Statements.

28 Second, I also found that the Relevant Bank Statements were reasonably required by the applicants to discharge their functions and duties. It is trite law that the general duties of the applicants as private trustees include the duty to investigate the conduct and affairs of the bankrupt (see s 22(1)(*a*) of the IRDA). I was satisfied that the events leading up to the sale of 16 East Sussex, as well

as the subsequent deposit of the sale proceeds into OSP's Bank Accounts, raised questions as to whether the conduct and affairs of the Estate had been carried out appropriately. Indeed, because the Deceased Debtor's will makes clear that OSP's legal and beneficial ownership of 16 East Sussex is "subject to the payment of debts, expenses and duties", the sale proceeds from its sale should have been made available to the Estate's creditors before any distribution to the Estate's beneficiaries, including OSP, was done.

29 Accordingly, I agreed with the applicants that the Relevant Bank Statements were crucial to their investigations into whether the conduct and affairs of the Estate have been carried out appropriately. In particular, I was of the view that the documents in the applicants' current possession, including the heavily redacted bank statements, were incomplete and insufficient for them to conduct their necessary investigations.

30 For all the reasons, I found that the applicants had satisfied the first stage of the test in *Celestial* as applied to the Applications under s 335 of the IRDA.

The second stage: the balance of interests weighed in favour of disclosure

The factors in favour of disclosure

31 I turned then to the second stage of the test in *Celestial* as applied to the Applications under s 335 of the IRDA. In this regard, the Court of Appeal in *Celestial* had outlined several factors which are relevant to the balancing exercise in this stage. I decided that most of these factors all pointed in favour of disclosure with respect to the Applications.

32 First, while the respondents may not have a direct relationship with the Estate, I noted that they are in possession of the Relevant Bank Statements.

Indeed, as the Court of Appeal held in *Celestial* (at [44(a)]), the absence of a fiduciary or contractual relationship with the company in the case of the third parties should not fetter the exercise of the power under s 285 of the Companies Act vis-à-vis those third parties so long as the third party is able to provide relevant information and/or documents. Indeed, there is no precondition for the exercise of such power under s 285 (see *W&P Piling* at [29(c)]). As such, in the present case, the respondents' lack of a direct relationship with the Estate should not fetter the exercise of the power under s 335 of the IRDA vis-à-vis them if they are able to provide the relevant information and/or documents. Given that I had found that the respondents could provide the Relevant Bank Statements, this factor counted in favour of disclosure.

33 Second, the applicants were seeking only an order for the production of the Relevant Bank Statements and not an oral examination of the respondents. As the Court of Appeal held in *Celestial* (at [44(c)]), while s 285 of the Companies Act does not differentiate between the production of documents and the oral examination of witnesses, an order for oral examination of witnesses is likely to be more oppressive than an order for the production of documents. While an order for the production of documents involves only advancing the time of discovery if an action ensues, an oral examination provides the opportunity for pre-trial depositions which the liquidator would never otherwise be entitled to. The person examined has to answer on oath and his answers can both provide evidence in support of a subsequent claim brought by the liquidator and also form the basis of later cross-examination (see *Celestial* at [44(c)]). As such, there is a greater risk of oppression when examination of witnesses is ordered. In the present case, the fact that the applicants were not seeking an oral examination pointed in favour of disclosure.

34 Third, while the Court of Appeal in *Celestial* (at [44(d)]) held that it is oppressive to require someone suspected of serious wrongdoing or fraud to prove the case against him on oath before proceedings are brought, this factor was not applicable here as there was no suggestion that the respondents were suspected of any serious wrongdoing or fraud.

35 Fourth, there was no litigation contemplated against the respondents. As such, there was no attempt to gain undue advantages in the litigation process through the orders sought, which would have counted against disclosure (see *Celestial* at [44(e)]).

36 Fifth, while the Court of Appeal in *Celestial* held (at [44(g)]) that the court will consider the practical burden imposed when a great deal of time and expenses is required to comply with disclosure, there was no suggestion by the respondents that this was the case here. Accordingly, these factors pointed in favour for an order of disclosure to be made in the Applications.

The specific consideration of the respondents' potential liability and the applicability of the Bankers' Books Exception

(1) Overview of the Bankers' Books Exception

37 Quite apart from the factors outlined above, the crucial factor in the Applications pertained to whether the respondents would be exposed to liability under the BA if they were to comply with any order made by the court. This therefore concerned the Court of Appeal's consideration of this factor in *Celestial* (at [44(b)] and [44(f)]). In brief, the court had held that while the risk of a respondent being exposed to liability is a matter that would be relevant to deciding whether there should be disclosure, it is merely a factor and will not be conclusive. Likewise, the court also held that weight will be given to the risk

that compliance might expose the respondent to claims for breach of confidence, or criminal liability in the jurisdiction where the documents are situated. It was in this context that the respondents had expressed some reservations about making the Relevant Bank Statements available without a court order. In particular, the respondents were concerned about being in breach of banking secrecy requirements if they were to disclose the Relevant Bank Statements without a court order.

38 In this regard, the duty of bank secrecy is governed by s 47 of the BA. Section 47(1) of the BA states that customer information must not, in any way, be disclosed by a bank in Singapore or any of its officers to any other person except as expressly provided in the BA. Pursuant to s 47(2) of the BA, the disclosure of customer information may be allowed in certain circumstances as provided in the Third Schedule of the BA. In particular, para 7 of Part 1 of the Third Schedule provides that customer information may be disclosed, when necessary for compliance with an order of the Supreme Court or a Judge sitting in the Supreme Court pursuant to the powers conferred under Part 4 of the EA, to all persons to whom the disclosure is required to be made under such court order. This is what I had termed the "Bankers' Books Exception".

39 In this connection, s 175 of the EA (which is found under Part 4 of the EA) provides that on the application of a party to a legal proceeding, the court may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. For completeness, I set out the full text of s 175(1), as it is the governing provision in light of the BA:

> **Court or Judge may order inspection**
>
> **175.**—(1) On the application of any party to a legal proceeding, the court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings.

40 Accordingly, an order by the court made pursuant to its power under s 175(1) of the EA carves out an exception to the requirement of banking secrecy under s 47(1) of the BA. This exception is permitted by s 47(2) of the BA, which expressly allows the disclosure of customer information in certain defined circumstances, including s 175(1) of the EA. As such, I was of the view that s 175(1) was the governing provision in relation to the Bankers' Book Exception sought in the Applications.

41 In my view, the application of the Bankers' Book Exception should be analysed in three steps: (a) whether the documents concerned fall within the definition of "bankers' books" under the EA, (b) if so, whether the proceeding in which the application for inspection was made is a "legal proceeding" under the terms of s 175(1) of the EA, and (c) if so, whether the court should exercise its discretion to order inspection.

(2) The Relevant Bank Statements fell within the definition of "bankers' books" under s 170 of the EA

42 As stated in s 170 of the EA, "bankers' books" includes ledgers, day books, cash books, account books and all other books used in the ordinary business of the bank. In this regard, the Court of Appeal in *Wee Soon Kim Anthony v UBS AG* [2003] 2 SLR(R) 91 ("*Anthony Wee*") has held (at [36]) that any form of permanent record maintained by a bank in relation to the transactions of a customer, including correspondence between a bank and a customer, would fall within the scope of "other books" in the definition of

"bankers' books" under s 170 of the EA. More recently, the High Court in *La Dolce Vita Fine Dining Company Ltd v Zhang Lan and others* [2022] SGHC 89 ("*La Dolce Vita*"), citing *Anthony Wee*, further emphasised that for information to be considered an entry in a bankers' book, such entry must relate to the transactions of the bank (see *La Dolce Vita* at [24]–[25]).

43 With the above definition in mind, I was satisfied that the Relevant Bank Statements fell within the definition of "bankers' books" under s 170 of the EA. This is because they consist of the complete and unredacted bank statements of OSP's Bank Accounts. Such bank statements would therefore constitute a permanent record maintained by the respondents in relation to the transactions of OSP and/or the bank.

(3) The Applications constituted "legal proceedings" under s 175 of the EA

44 Additionally, I was satisfied that the Applications constituted "legal proceedings" under s 175 of the EA such that I could order the applicants be at liberty to inspect and take copies of any entries in a bankers' book for the purposes of such proceedings.

45 In this regard, the High Court in *Success Elegant Trading v La Dolce Vita Fine Dining Co Ltd and others and another appeal* [2016] 4 SLR 1392 ("*Success Elegant Trading*") held that "legal proceeding" referred to in s 175(1) of the EA "would refer to the very application for disclosure, in which the applicant demonstrates a right to discovery independent of s 175" (at [92]). In other words, for an order of disclosure to be made, a party must demonstrate a substantive right to the documents, independent of s 175 of the EA. Any reliance on s 175 would be misconceived as it only provides for the court's power to make a disclosure order and is not a substantive basis that grounds a

disclosure application. Put simply, s 175 does not provide an independent right to inspection of bankers' books where none existed. While *Success Elegant Trading* concerned applications for the discovery of bank documents, I was of the view that the reasoning in the case was equally applicable in the context of the Applications, where the production of bank statements was sought pursuant to s 335 of the IRDA.

46 Applying *Success Elegant Trading*, I was satisfied that the Applications brought pursuant to s 335 of the IRDA each constitute a "legal proceeding" within s 175 of the EA, whereby the applicants have shown a right to the Relevant Bank Statements independent of s 175. I accepted that the phrase "for any purpose of such proceedings" in s 175 of the EA includes the purpose of enabling the applicants to carry out the necessary investigations and to assess whether the conduct and affairs of the Estate have been carried out appropriately.

(4) An order to inspect and take copies should be made

47 For the reasons I have given above in relation to why the Relevant Bank Statements were reasonably required by the applicants for their investigations, I decided that an order to inspect and take copies should be made under s 175(1) of the EA.

48 Accordingly, I was satisfied that the Relevant Bank Statements could be disclosed to the applicants pursuant to the Bankers' Books Exception. Returning then to the second stage of the test in *Celestial* as applied to s 335 of the IRDA, I found that this constituted a factor in favour of making the orders sought, since any potential liability of the respondents would be adequately resolved by the application of the Bankers' Books Exception.

49 Taken holistically, the second stage of the test in *Celestial* as applied to s 335 of the IRDA applied in favour of the applicants. I therefore concluded that it was appropriate to grant the Applications sought.

Conclusion

50 For all of the reasons, I granted the Applications sought. Although these applications were not seriously contested (if at all), I am grateful to Mr Kumar and his team for their nonetheless comprehensive and helpful submissions.

Goh Yihan
Judicial Commissioner

Balakrishnan Ashok Kumar, Gloria Chan Hui En and Stanley Tan Sing Yee (BlackOak LLC) for the applicants;
Ivan Lim (Allen & Gledhill LLP) for the respondent in Summons No 4144 of 2022;
The respondent in Summons No 4139 of 2022 absent and unrepresented;
The respondent in Summons No 4145 of 2022 absent and unrepresented.