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

[2023] SGHC 332

Originating Claim No 138 of 2023 (Registrar's Appeal No 196 of 2023, Summonses Nos 3265 and 3266 of 2023)

Between

(1) Nimisha Pandey
(2) Deepak Mishra

… *Claimants*

And

Divya Bothra

… *Defendant*

Counterclaim of Defendant

Between

Divya Bothra

… *Claimant in Counterclaim*

And

(1) Nimisha Pandey
(2) Deepak Mishra

… *Defendants in Counterclaim*

GROUNDS OF DECISION

[Civil Procedure — Amendments]

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Nimisha Pandey and another
v
Divya Bothra

[2023] SGHC 332

General Division of the High Court — Originating Claim No 138 of 2023
(Registrar's Appeal No 196 of 2023, Summonses Nos 3265 and 3266 of 2023)
Goh Yihan J
7 November 2023

27 November 2023

Goh Yihan J:

1 HC/RA 196/2023 ("RA 196") was the defendant's appeal against the decision of the learned Assistant Registrar (the "AR") below to grant summary judgment for the first claimant in HC/SUM 1661/2023 ("SUM 1661"). The learned AR had ordered the defendant to pay the first claimant a sum of S$626,422, being the balance purchase price (the "Balance Purchase Price") of the property at [address redacted] (the "Property"). Together with RA 196, the defendant also applied in HC/SUM 3265/2023 ("SUM 3265") to amend her Defence and Counterclaim (Amendment No 2) ("DCC 2") and in HC/SUM 3266/2023 ("SUM 3266") to adduce further evidence.

2 After hearing the parties and considering their submissions, I allowed SUM 3265 in part but dismissed SUM 3266. The hearing of RA 196 was

therefore deferred to a date to be fixed by the Registry. These are the reasons for my decision.

The parties' positions

The first claimant's position

3 I begin by setting out the parties' positions. The first claimant's position was that she was the former owner of the Property. On or about 12 October 2015, the first claimant and the defendant entered into a Sales and Purchase Agreement in respect of the Property (the "SPA"). As the defendant was not yet at the age of majority at that time, the defendant acted through her father, Mr Rajesh Bothra ("Mr Bothra"), in his capacity as her trustee. Pursuant to the SPA, the first claimant agreed to sell the Property to the defendant for the total price of S$4m (the "Purchase Price").

4 On 2 July 2016, the title to the Property was transferred to the defendant but without the Purchase Price being paid. Notwithstanding this transfer, the first claimant expected to be paid the Purchase Price in due course. She had allowed the transfer to take place before being paid because of the close relationship between the parties at the time. After some payments towards the Purchase Price as detailed in the table below, the first claimant's position was that the Balance Purchase Price is at S$626,422:

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Statement Of Accounts – Balance Purchase Price		
Date	**Details**	**Amount**
	Total Due from Defendant to Claimant:	**4,000,000**
07.05.2018	Direct transfer from Defendant's account to 1st Claimant's account	(1,310,000)
07.05.2018	Direct transfer from Defendant's account to the account of Metro Capital Ltd (which is a company owned by Mr Mishra) as the 1st Claimant's nominee and/or agent	(390,000)
06.08.2018	Cheque issued to Mr Mishra as 1st Claimant's nominee and/or agent	(250,000)
14.07.2021	Direct transfer from Defendant's account to the account of Mr Mishra, as the 1st Claimant's nominee and/or agent	(35,000)
01.09.2022	Direct transfer from Defendant's account to the account of Mr Mishra, as the 1st Claimant's nominee and/or agent	(222,300)
01.09.2022	Direct transfer from Defendant's account to the account of Mr Mishra, as the 1st Claimant's nominee and/or agent	(1,166,278)
	Total Paid by Defendant:	(3,373,578)
	Balance Purchase Price:	**626,422**

5 On 3 March 2023, the first claimant therefore commenced the underlying claim, HC/OC 138/2023 ("OC 138"), for the Balance Purchase Price.

6 Before I turn to the defendant's position, it is worth highlighting that the Property has been sold to a third-party buyer in 2022. As such, an Option to Purchase was executed on 8 July 2022, with the date of completion of sale set on 3 March 2023. On 14 February 2023, the first claimant lodged a caveat against the Property (the "Caveat") as an unpaid vendor of the Property. On 23 February 2023, the defendant filed an application to cancel the Caveat. In response to this application, the first claimant filed HC/OA 203/2023

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("OA 203") on 8 March 2023 under s 127(4) of the Land Titles Act 1993 (2020 Rev Ed) for an order that the Caveat be maintained or an order that the balance sale proceeds from the sale of the Property be paid into court pending the resolution of OC 138. On 30 March 2023, I heard OA 203 and ordered that the balance sale proceeds be paid into court. I mention OA 203 because the defendant took a different position in that application in relation to the Balance Purchase Price from the positions she has taken since then.

The defendant's position

7 Despite the best efforts of Mr Vikram Nair, who appeared for the defendant, to recast her conduct in a different light, the fact was that the defendant had taken at least three different positions in relation to the first claimant's claim for the Balance Purchase Price.

The defendant's first position: either her father or her parents paid the Purchase Price in 2016 by one cheque or in multiple payment transfers

8 Originally, the defendant took the position that Mr Bothra had fully paid the Purchase Price in 2016. In this regard, the defendant pleaded the following in the Defence and Counterclaim (Amendment No 1) ("DCC 1") dated 17 March 2023 for OC 138:

> *Para 8 of the SOC*
>
> 9. The Defendant (as Purchaser) failed to pay to the 1st Claimant the Purchase Price on the Completion Date.
>
> **Para 8 of the Defence**
>
> Para 8 of the SOC is denied and the 1st Claimant is put to strict proofs of her allegation set out therein because as far as the Defendant is aware of, the sale transactions and the payment arrangements were made in 2016 between the Defendant's father and Deepak, the 1st Claimant's husband, (who is also the 2nd Claimant). At or around completion of the transfer of title of

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> the property in June 2016, Deepak, the 1st Claimant's husband, (who is also the 2nd Claimant) had acknowledged that he had received the cheque from the Defendant's father, and there was no mortgage or mortgage loan taken under the property.
>
> [text in bold in original]

As is clear, the defendant's pleaded case in DCC 1 was that her father, Mr Bothra, had fully paid the Purchase Price by a cheque that was handed to the second claimant.

9 The defendant and Mr Bothra took a similar, if slightly different, position in OA 203. In her affidavit filed in OA 203, the defendant affirmed that her father, Mr Bothra, was a party to the SPA and that "he [would] also provide an affidavit to show that full payment has been made by my parents for my gift of the property known as [address redacted] [*ie*, the Property]".[1] Similarly, Mr Bothra affirmed in his affidavit that "in 2016, my wife and I made the following payments for the purchase of [address redacted] [*ie*, the Property]"[2]:

	Date	**Amount (US$)**
1.	12th May 2016	$ 223,941.17
2.	30th October 2016	$ 289,359.20
3.	3rd November 2016	$ 1,000,000.00
4.	9th November 2016	$ 1,500,000.00
	Total :	US$ 3,013,297.00
	=	**S$ 4.188 million**
		(including late interests)

1 Defendant's Reply Affidavit in OA 203 dated 21 March 2023 at para 10.

2 Rajesh Bothra's Reply Affidavit in OA 203 dated 21 March 2023 at para 10.

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As such, the defendant's position in OA 203 was that, unlike her originally pleaded case in OC 138, both her parents, instead of just her father, had made *full* payment towards the Property in *2016*. I should also mention that Mr Bothra took this position in OA 203 as well.

The defendant's second position: she had overpaid for the Property as of 2018

10 After OA 203 was allowed, the defendant amended the DCC 1 on 29 May 2023 to take a different position in relation to the Property. In the DCC 2 dated 29 May 2023, the defendant pleaded that she had "overpaid" for the Property as of 2018. I set out the relevant paragraph of the DCC 2.

> *Para 9 of the amended SOC*
>
> 10. To-date, the Defendant has failed to make payment of the full Purchase Price to the 1st Claimant. An outstanding Purchase Price of S$626,422 ("**Balance Purchase Price**") remains due and payable by Defendant to the 1st Claimant, the breakdown of which is provided at paragraph [13] below.
>
> In view of the foregoing, paras 9 and 13 of the amended SOC are not denied only to the extent that as of 31st March 2023, in addition to a receipt of the accumulated sum of S$3,373,578 set out in para 13 of the amended SOC, the 1st Claimant or the 2nd Claimant, being her nominees and/or agent, has not taken or failed to take into account the deposit sum of S$200,000, above and a further sum of (S$3,390,000 less S$1,402,554) paid by Defendant/ her parents on or about 12th February 2018. … Defendant further avers that the 1st Claimant's purported Claim, is baseless and vexatious as her parents have made full payment on the purchase price of the Property to the 1st Claimant or to the 2nd Claimant, being her nominee and/or agent. The Defendant append an account of the payments totalling S$1,987,446 already made by Defendant/ her parents to the 1st Claimant or to the 2nd Claimant, being her nominees and/or agent, (where S$3,390,000 less S$1,402,554) had been drawn down from the SCB facility in February 2018 and has not been taken into account by the Claimants):-

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	Date	**Particulars**	**Amount (S$)**
1.	12.02.2018	Remittance to Metro Capital Ltd (an entity belong [*sic*] to the 2nd Claimant)	$1,634,000
2.	12.02.2018	Remittance to Mystic Serenity Ltd (an entity belonging to the 2nd Claimant)	$353,446 (or its equivalent in US dollars)
		Total:	**S$ 1,987,446**

[text in bold in original; deletion marks omitted]

11 While not pleaded very clearly, the defendant's position in the DCC 2 was that she had overpaid the Purchase Price, based on: (a) the first claimant's account of the payments in 2018, 2021, and 2022 (see [4] above); and (b) the sum total of three specified payments in 2018, being: (i) an alleged remittance of S$1,634,000 in 2018 to Metro Capital Limited ("Metro"); (ii) an alleged remittance of S$353,446 in 2018 to Mystic Serenity Ltd ("Mystic"); and (iii) payment of the deposit of S$200,000 as set out in Clause 2 of the SPA. As such, the defendant asserted that the first claimant did not have a claim to the Balance Purchase Price because there was no balance to be paid. Both the defendant and her father affirmed affidavits to this effect.

12 While the defendant's position in the DCC 2 was inconsistent with her original position in the DCC 1 (and OA 203), the defendant did not explain this inconsistency. It bears repeating that this was an obvious inconsistency: whereas the defendant had pleaded in the DCC 1 (and OA 203) that either Mr Bothra or her parents paid the Purchase Price *in 2016*, her position in the DCC 2 was that she had overpaid for the Property *as of 2018*. In any event, the defendant's position that she had overpaid for the Property was the position advanced before

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the learned AR below. The learned AR entered summary judgment against the defendant for the Balance Purchase Price because, among other things, the defendant's position in the DCC 2 was "wholly contradictory" to her position in OA 203 with "no real explanation for the shifting account".

The defendant's third position: there was a "Running Account" between Mrs Bothra and the claimants

13 The defendant advanced a *third* position in SUM 3265 to support her appeal in RA 196. The defendant said that, due to the previously good relationship between the claimants and her family, there were numerous mutual dealings between both families. As part of the mutual dealings, both families would advance moneys to each other under running accounts. One such running account, which the defendant sought to introduce via amendments to the DCC 2, was between the claimants and her mother, Mrs Bothra (as well as the companies Mrs Bothra owned, such as Fareast Distribution and Logistics Pte Ltd ("FEDL")) (the "Running Account"). More specifically, under this Running Account, the claimants and Mrs Bothra advanced moneys to each other or to third parties on each other's instructions in an informal manner without specifically tracking the purpose of the payments. The payments would then be used to off-set payment obligations owed to each other under the Running Account, with the net amount owing by one party to the other under the Running Account at any given time being a loan owed to the other party.

14 The defendant further stated that between 2011 and 2019, Mrs Bothra, through FEDL, had advanced around US$62m to the claimants or to third parties on either of their instructions under the Running Account. In making these advances, the staff handling these payments by FEDL had filled in "random invoice numbers" as the reason for payment in the bank remittance

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instructions form that had no connection to any actual invoices.[3] As such, the defendant's *present and third* position was that these advances "would have more than covered the Alleged Unpaid Balance owed to the [first claimant]".[4]

15 As for why she did not advance this present position before, the defendant explained that her parents did not realise the legal significance of the Running Account as a defence to the first claimant's claim for the Balance Purchase Price. Mr and Mrs Bothra therefore did not convey this information to the defendant. Instead, Mr and Mrs Bothra apparently thought that they needed to "identify specific payments made to the [c]laimants as payment of the Alleged Unpaid Balance to resist the [first claimant's] Alleged Unpaid Balance Claim".[5] Mr and Mrs Bothra therefore selected a few of the numerous payments they had made to the claimants over the years to make the point that the Balance Purchase Price had been more than paid for. In other words, while the defendant did not put it this way, Mr and Mrs Bothra had advanced demonstrably false (or, at the very least, wholly inconsistent) accounts in their previous affidavits in OA 203 as well as in SUM 1661.

16 Having outlined the parties' respective positions, I turn to consider SUM 3265, which was the defendant's application to amend the DCC 2.

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3 Defendant's Written Submissions dated 1 November 2023 ("DWS") at para 6.

4 DWS at para 6.

5 DWS at para 9.

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SUM 3265: the defendant's application to amend

The defendant's application

17 In SUM 3265, the defendant applied to amend the DCC 2 to plead four new matters, namely: (a) the Running Account Defence as I have set out at [13]–[14] above; (b) that the claimants were estopped from claiming the Balance Purchase Price in line with the Running Account (the "Estoppel Defence"); (c) if there was no Running Account, that the Balance Purchase Price would be time-barred as at the date the claimants commenced OC 138 (the "Time Bar Defence"); and (d) that a Standard Chartered Bank Facility could be used set-off the Balance Purchase Price on the premise that there was no Running Account Defence (the "SCB Facility Defence").

18 In addition to these defences, the defendant also intended to amend her counterclaim in DCC 2 in the following ways: (a) a refinement of her existing claim for losses caused by the claimants' wrongful caveat on the Property; (b) a refinement of her existing claim for an account against the second claimant for her affairs under the Power of Attorney that Ms Bothra had executed in the second claimant's favour; and (c) relating to the learned AR's findings that the payments from FEDL to Metro and Mystic did not constitute payments towards the Purchase Price, a refinement of the claim for repayment of monies advanced to the claimants, their nominees, and/or third parties on their instructions (totalling around S$2.6m) as a loan.

The applicable principles

19 In the High Court decision of *Wang Piao v Lee Wee Ching* [2023] SGHC 216, I dealt with the question of when amendments to a defence

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can be allowed in the face of a summary judgment that had been entered against the defendant. I had said the following (at [41]):

> (a) First, the court should take into account the stage of proceedings, *eg*, post-judgment as in the present case. Amendments should be granted sparingly in order not to disrupt the finality of litigation.
>
> (b) Second, when considering whether the application is made in good faith, it is relevant to consider whether the applying party has always maintained the defence or if the applying party is seeking to introduce new points. When considering whether the proposed amendments are material, the applying party must establish that there is a fair or reasonable probability that the pleadings disclose a *bona fide* defence.
>
> (c) Third, in assessing whether it is just to allow the amendments, the court should consider whether the amendments will allow the applying party to have a second opportunity to do something he missed the first-time round.

20 In my view, SUM 3265 could be dealt with through an application of these principles.

My decision: the amendments to include the Running Account Defence and the Estoppel Defence are not allowed

21 Applying these principles to the present case, I disallowed the amendments to include the Running Account Defence and the Estoppel Defence. I treated the Estoppel Defence as being dependent on the Running Account Defence because that was how the defendant had described the former. I focus on the Running Account Defence in my reasoning below because that formed the main thrust of the defendant's submissions before me.

First stage: the amendments are sought post-judgment

22 First, the defendant sought the amendments post-judgment. In order to preserve finality to the claimant, amendments should be granted sparingly as a

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starting point. This is consistent with cases such as the High Court decision of *Emjay Enterprises Pte Ltd v Skylift Consolidator (Pte) Ltd (Direct Services (HK) Ltd, third party)* [2006] 2 SLR(R) 268. However, this does not mean that amendments cannot be granted in the appropriate case.

Second stage: the defendant has not provided good reasons for the amendments, nor are the amendments material

23 Second, I turn to the defendant's reasons for the amendments. In this regard, it was curious why the defendant never advanced the Running Account Defence when she had multiple opportunities to do so. Instead, even as far back as March 2023 in OA 203, when the first claimant applied to maintain her Caveat over the Property on the basis that the Balance Purchase Price remained unpaid, the defendant never raised the Running Account Defence. Instead, the defendant's primary argument then was that her father, Mr Bothra, had made full payment for the Property in 2016. To prove this, Mr Bothra filed a separate affidavit exhibiting some transaction advices which he claimed showed that he had made full payment for the Property. There was no mention of the Running Account Defence then. Even before the learned AR below, the defendant made no mention of the Running Account Defence. Instead, her defence rested on three alleged payments, which were (a) a payment of S$1,634,000 in 2018 from FEDL to Metro, an entity that belongs to the second claimant, (b) a payment of S$353,466 in 2018 from FEDL to Mystic, and (c) a deposit of S$200,000. There was, once again, no mention of the Running Account Defence.

24 In fact, as I have recounted earlier, the defendant had advanced *three* different positions against the first claimant's claim for the Balance Purchase Price. This was therefore very different from the Court of Appeal decision of *Hwa Lai Heng Ricky v DBS Bank Ltd and another appeal and another*

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application [2010] 2 SLR 710, where the court had allowed amendments post-summary judgment. However, as the claimants have pointed out, that was in the context of the defendant having maintained the same defence before the AR in the first instance. The AR had refused to consider those defences because they had not been pleaded. Thus, it may be surmised that the Court of Appeal allowed the amendments because the defendant there had always maintained the same defence sought to be introduced on appeal. It was thus not a belated attempt to introduce new arguments after judgment. Accordingly, unless the defendant had good reasons to explain the multiple positions she had taken in the present case, the fact that she had advanced so many different and inconsistent defences was a factor that counted against allowing the amendments.

25 Of course, the defendant attempted to explain these difficulties. She explained that she had to rely on the information and evidence provided to her by her parents. It was only after she changed solicitors for the present appeal that her new solicitors had "identified material facts to [her] defence and new legal characterisation of the material facts which were not pleaded in the present DCC". I did not find this explanation convincing. As I said above, the defendant had to deal with the claimants' claim on the Balance Purchase Price not only in the present claim, but also in relation to the first claimant's Caveat over the Property in OA 203. It was all too convenient for the defendant to now say that she had not realised the proper legal characterisation of the transactions, which actually constituted a Running Account. Even if she had left this to her parents, the fact remained that her father filed an affidavit to deal with the Caveat. It was inexplicable why Mr Bothra, whom Mrs Bothra said was well-versed with the details of the Running Account, made absolutely no mention of this. In fact, Mr Bothra had advanced two completely different accounts from the Running Account Defence.

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26 In any event, I was not convinced that the Running Account Defence had any merit. In this regard, the defendant submitted that the Singapore Federal Court had held in *Bajaj Textiles Ltd v Gian Singh & Co Ltd* [1968-1970] SLR(R) 40 ("*Bajaj Textiles*") that (at [5]) the "amount due on a running account is a cause of action known to the common law". This is said to follow from the English High Court decision of *In re Footman Bower & Co Ltd* [1961] 2 All ER 161, in which the court had stated as follows (at 165):

> In the case of a current account where the debtor-creditor relationship of the parties is recorded in one entire account into which all liabilities and payments are carried in order of date as a course of dealing extending over a considerable period, the true nature of the debtor's liability is, in my judgment, a single and undivided debt for the amount of the balance due on the account for the time being without regard to the several items which as a matter of history contribute to that balance.

27 While I accepted that a running account is a cause of action, the facts of *Bajaj Textiles* are important. In that case, the plaintiffs had sued the defendants for the balance price of goods sold and delivered. The defendants then counterclaimed on a running account. In recognising the validity of the defendants' counterclaim, J W D Ambrose J, who delivered the judgment of the court, implicitly recognised that there must be a *coincidence* of the parties in relation to the original claim and the alleged running account. In this way, the outstanding amount from the running account can then be used to offset the original claim. But this is obviously only possible if the *same parties* are involved in the original claim and the running account.

28 This was also the case in another decision cited by the defendant, that is, the High Court decision of *Mitfam International Ltd v Motley Resources Pte Ltd* [2014] 1 SLR 1253. In that case, the plaintiff had sued the defendant for unpaid sums under an invoice for supply of goods. While the defendant did not dispute its liability to make those payments, it took the position that there was a running

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account between the parties. The defendant therefore argued that the unpaid sums had been settled under the running account. In fact, the plaintiff owed the defendant an outstanding balance under the running account. Judith Prakash J (as she then was) dismissed the defendant's running account defence for lack of evidence but accepted in principle the possibility of such a defence. However, as with *Bajaj Textiles*, a running account defence would only work if the *same parties* are involved in the original claim and the running account.

29 The problem with the defendant's Running Account Defence was that, under the SPA, the defendant owed the Purchase Price (and any balance) to the first claimant. Yet, the Running Account Defence posits a running account between Mrs Bothra and the claimants. There was simply nothing to indicate how and why Mrs Bothra was involved in the SPA at all. This conclusion was not changed by the claimants' apparent acknowledgement of a running account between Mrs Bothra and the claimants in HC/OC 593/2023 ("OC 593"), which the claimants had commenced against Mrs Bothra for the taking of accounts. This was because the running account which the claimants had acknowledged in that case was between Mrs Bothra and the claimants. This similarly had nothing to do with the defendant or the defendant's liability under the SPA. If indeed there was such a running account, then Mrs Bothra could take that up against the claimants separately. But, put simply, any such claim had nothing to do with the defendant's liability to pay the Balance Purchase Price in the present case.

30 In any event, on the basis of the defendant's own evidence, I was not convinced that there was even such a Running Account. In this regard, the defendant had authorised a payment of S$1,166,278 on 31 August 2022 for the specific purpose of "Property consideration payment". This therefore

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undermined the existence of the Running Account in relation to the Property because the defendant herself authorised a *specific* payment for that Property. Finally, as the claimants rightly pointed out, it was not clear what the Running Account stood at when the SPA was signed on 12 October 2015. It was therefore unclear how the defendant could plead that the payments in the Running Account "would have more than covered the purchase price of the Property".[6]

Third stage: the defendant could have advanced these amendments at an earlier stage

31 Third, given that the defendant had all the documents in her possession, she would have been able to advance the Running Account Defence at the outset. It was too late for her to do so when judgment has been entered against her. This would have constituted a real prejudice to the first claimant, who was entitled to summary judgment if the facts and law support such an outcome. Further, as I have said above, I was not convinced that the Running Account Defence was genuine, based on how the defendant has conducted her case.

32 For all of these reasons, I disallowed the defendant's amendment to the DCC 2 to introduce the Running Account Defence. Since the Estoppel Defence was based on the Running Account Defence, it followed that I also disallowed the defendant's amendment to introduce that defence.

[6] Defendant's draft amendments to para 10 of the DCC 2; Nimisha Pandey's 3rd Affidavit dated 27 October 2023 at para 60(c); Claimant's Written Submissions at para 23(a)(iii).

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The other amendments

33 I turn now to the other amendments. First, as for the Time Bar Defence, I allowed the defendant to amend the DCC 2 because the defendant had pleaded the defence of laches in the original Defence and Counterclaim. While Mr Koh Junxiang ("Mr Koh"), who appeared for the claimants, explained why the Time Bar Defence fails substantively, that could be dealt with at the appropriate time.

34 Second, as for the defendant's proposed amendments to reflect the SCB Facility Defence, I allowed the defendant to amend the DCC 2 to do that. This was because the SCB Facility Defence stood apart from the Running Account Defence and the defendant had previously raised this. While Mr Koh suggested that this amendment had not been sufficient particularised, I again thought that could dealt with at the appropriate time.

35 Third, as for the defendant's amendment to her counterclaim as set out in DCC 2, I allowed these to the extent that they were not dependent on the Running Account Defence. In the first place, these amendments were sought at an early stage of the proceedings, since the counterclaim was proceeding for trial and that was only at the pleadings stage with no judgment being entered. As such, I allowed the defendant to amend her counterclaim in the DCC 2 in this limited manner.

36 For all of these reasons, I allowed SUM 3265 in part.

SUM 3266: the application to adduce further evidence

The application to adduce further evidence

37 In SUM 3266, the defendant sought to adduce the following categories of evidence.

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(a) The Statement of Claim filed by the claimants in OC 593, which was served on Mrs Bothra on 3 October 2023. The defendant said that the claimants had acknowledged that there was a running account between her mother and the claimants.

(b) Evidence of payments that her mother/FEDL had made to the claimants or to entities on their instructions under the Running Account.

The applicable principles

38 The threefold requirements set out in the seminal English Court of Appeal decision of *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") govern the admissibility of new evidence in the present case (see, *eg*, the Court of Appeal decisions of *Toh Eng Lan v Foong Fook Yue and another appeal* [1998] 3 SLR(R) 833 at [34], *ARW v Comptroller of Income Tax and another and another appeal* [2019] 1 SLR 499 at [99], and *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 ("*Anan Group*") at [21]). The three requirements in *Ladd v Marshall* are:

(a) first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial or hearing;

(b) second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; and

(c) third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.

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39 However, the *Ladd v Marshall* requirements do not apply with full force in all appeals. In this regard, the Court of Appeal in *Anan Group* set out a two-step analysis that a court should adopt in dealing with an application to adduce fresh evidence on appeal. At the first stage, the court should consider the nature of the proceedings below and evaluate the extent to which it bore the characteristics of a full trial. The cases should be analysed as lying on a spectrum as follows (see *Anan Group* at [35]).

(a) On one end of the spectrum, there are appeals against a judgment after trial or a hearing bearing the characteristics of a trial, where the court should apply the *Ladd v Marshall* requirements in its full rigour.

(b) On the other end of the spectrum, which consists of interlocutory appeals or appeals arising out of hearings which lack the characteristics of a trial, the court remains guided by the rule in *Ladd v Marshall* but is not obliged to apply it in an unattenuated manner.

(c) However, for cases falling in the middle of the spectrum, which include appeals against a judgment after a hearing of the merits, but which did not bear the characteristics of a trial, the court is to determine the extent to which the first requirement, *ie*, the criterion of non-availability, should be applied strictly. Relevant non-exhaustive factors include: (i) the extent to which documentary and oral evidence was adduced for the purposes of the hearing; (ii) the extent to which parties had the opportunity to revisit and refine their cases before the hearing; and (iii) the finality of the proceedings in disposing of the dispute between the parties.

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40 At the second stage, the court should determine whether there are any other reasons for which the *Ladd v Marshall* requirements ought to be relaxed in the interests of justice (see *Anan Group* at [37]–[54]). In any event, the court should conduct a balancing exercise between the interests of finality and the right of an applicant to put forth relevant and credible evidence, having regard to the considerations of proportionality and prejudice (see *Anan Group* at [59]).

My decision: SUM 3266 is dismissed

41 Given that SUM 3266 was taken out after judgment, albeit not after a full trial, the *Ladd v Marshall* requirements applied with some rigour albeit not strictly. With these principles in mind, I dismissed SUM 3266 for the following reasons.

42 First, the defendant had two previous opportunities to refine her case and adduce the necessary evidence. I did not think that the defendant could explain away these past opportunities because she had "left it up to her parents and the [c]laimants" to handle the dealings regarding the Property.[7] While it may have been so during the relevant transactions, the defendant was responsible for the running of her own case when the present claim was brought against her. She therefore ought to have conducted her defence properly, instead of pleading two different positions and then attempting to plead a third position after summary judgment was entered against her. In so far as the further evidence sought was related to the amendments I have disallowed, I found that the first factor counted against admitting the further evidence.

[7] DWS at para 115.

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43 Second, and in any event, the second requirement was decisive. Given that I had dismissed the defendant's application to amend the DCC to plead the Running Account Defence, it followed that the evidence she sought to adduce via SUM 3266, which were to substantiate that defence, were irrelevant on the result of the appeal.

44 I accordingly dismissed SUM 3266.

Conclusion

45 For all of the reasons above, I allowed SUM 3265 in part and dismissed SUM 3266 in its entirety, with costs of $12,000 ordered in favour of the claimants.

46 I allowed the defendant 14 days from the date of my decision to file her amended Defence and Counterclaim, and the claimants 14 days thereafter to file their amended Defence to Counterclaim. RA 196 would be heard on a date to be fixed by the Registry.

47 Since my decision on 7 November 2023, the defendant sought permission to make further arguments through a letter dated 21 November 2023. I rejected her request and certified that I do not need to hear further arguments. In essence, I do not think that the defendant raised any further argument for my consideration.

48 Concurrently with her request to make further arguments, the defendant also sought an extension of time to file her amended Defence and Counterclaim "within 14 days after the final disposal of the Applications". Given that I have rejected the defendant's request to make further arguments, the Applications are presently finally disposed of. I therefore directed the defendant to file her

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amended Defence and Counterclaim by 30 November 2023, and for the hearing of RA 196 to remain as has been fixed by the Registry.

Goh Yihan
Judge of the High Court

Prakash Pillai, Koh Junxiang and Ng Pi Wei (Clasis LLC) for the claimants;
Vikram Nair, Foo Xian Fong and Liew Min Yi Glenna (Rajah & Tann Singapore LLP) for the defendant.

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