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

[2023] SGHC 356

Originating Application No 738 of 2023 (Registrar's Appeal No 215 of 2023)

In the matter of the Amended and Restated
Deed of Family Arrangement with effect from
the Effective Date being 25 July 2013 entered
between Lim Kim Chong and 8 others
(the "Amended Deed")

Between

Lim Soon Huat

… *Claimant*

And

(1) Lim Teong Huat
(2) Lim Tiong Joo
(3) Lim Boon Eng Julie
(4) Leong Quee Ching Karen
(5) Lim Soon Heng

… *Defendants*

Originating Application No 739 of 2023 (Registrar's Appeal No 216 of 2023)

In the matter of the Amended and Restated
Deed of Family Arrangement with effect from
the Effective Date being 25 July 2013 entered
between Lim Kim Chong and 8 others
(the "Amended Deed")

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Between

Lim Soon Heng

… *Claimant*

And

(1) Lim Teong Huat
(2) Lim Tiong Joo
(3) Lim Boon Eng Julie
(4) Leong Quee Ching Karen
(5) Lim Soon Huat

… *Defendants*

JUDGMENT

[Civil Procedure — Originating processes — Converting an originating application to an originating claim]

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Lim Soon Huat
v
Lim Teong Huat and others and another matter

[2023] SGHC 356

General Division of the High Court — Originating Application No 738 of 2023 (Registrar's Appeal No 215 of 2023) and Originating Application No 739 of 2023 (Registrar's Appeal No 216 of 2023)
Goh Yihan J
26 October 2023

22 December 2023 Judgment reserved.

Goh Yihan J:

1 These appeals are brought by Mr Lim Soon Huat ("Soon Huat") (in HC/RA 215/2023 ("RA 215")) and Mr Lim Soon Heng ("Soon Heng") (in HC/RA 216/2023 ("RA 216")) against the decision of the learned Assistant Registrar Beverly Lim (the "AR") in HC/SUM 2633/2023 and HC/SUM 2642/2023 (the "conversion applications") to allow the first to fourth defendants (collectively, the "defendants") to convert HC/OA 738/2023 ("OA 738") and HC/OA 739/2023 ("OA 739") (collectively, the "OAs") into originating claims ("OCs"). Because Soon Huat is also the fifth defendant in RA 216 and Soon Heng is also the fifth defendant in RA 215, in order to avoid any confusion, my reference to the defendants exclude Soon Huat and Soon Heng.

2 After considering the parties' submissions, I dismiss both RA 215 and RA 216 for the reasons below. In gist, I affirm the learned AR's decision because: (a) substantial disputes of fact that are material to OA 738 and OA 739 are likely to arise; (b) it is appropriate for OA 738 and OA 739 to be converted into OCs, considering the nature of such factual disputes; and (c) the conversions would be aligned with the Ideals under the Rules of Court 2021 (the "ROC 2021").

Background facts

3 OA 738 and OA 739 arose against the following background. The late Dato Lim Kim Chong ("Dato Lim") was a successful businessman. He carried on his business in Singapore through a group of companies held under Sin Soon Lee Realty Company (Private) Limited ("SSLRC"). Dato Lim's wife, Datin Ong Tin, died intestate on 3 May 2005.[1]

The various deeds and agreements

4 In or around 2013, Dato Lim started to make plans to distribute a portion of his assets among his eight children in Singapore. Indeed, members of the family also desired to reallocate their entitlements to the assets of Datin Ong Tin's estate. As part of these plans, Dato Lim set up Seng Lee Holdings Pte Ltd ("SLH") on 12 July 2013 to hold assets that he wished to distribute for the benefit of certain members of his family.

5 On 25 July 2013, Dato Lim and his children entered into a Deed of Family Arrangement (the "Original Deed") to, among other things, distribute a

[1] 1st Affidavit of Lim Soon Huat dated 25 July 2023 ("Soon Huat's 1st Affidavit") at paras 5, 9, and 20.

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portion of his assets to his eight children in Singapore. Pursuant to the Original Deed, Dato Lim allocated his eight children into two groups ("Group A" and "Group B"). Dato Lim then divided his various companies (and the properties they owned) between SSLRC and SLH. The Group A beneficiaries, which include Soon Huat, became shareholders of SSLRC and the beneficial owners of the assets held by SSLRC and its subsidiaries. The Group B beneficiaries, which include Dato Lim and Soon Heng, became shareholders of SLH and the beneficial owners of the assets held by SLH and its subsidiaries.[2]

6 Crucially for present purposes, cl 9.1 of the Original Deed provided as follows:[3]

> 9.1 The Group A Beneficiaries hereby irrevocably agree to procure SSLR:
>
> (a) to transfer the Properties to Group B Holding Company on the Transfer Date; and
>
> (b) to make a gift of a sum equivalent to the Net Income to Group B Holding Company.

In this regard, the "Properties" in cl 9.1 refer to a property at Geylang (the "Geylang Property"), as well as a property at Tamarind Road (the "Tamarind Road Property").[4]

7 After the Original Deed was signed, the parties involved made various asset transfers in a manner that differed from that provided in the Original Deed. To give effect to this change, all of the signatories to the Original Deed signed various letter-agreements (the "Letter-Agreements"). The Letter-Agreements provided for certain assets to be transferred in a manner that differed from the

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2 Soon Huat's 1st Affidavit at paras 28 and 31–32.

3 Soon Huat's 1st Affidavit at p 48.

4 Soon Huat's 1st Affidavit at p 44.

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Original Deed. In effect, the signatories to the Original Deed were agreeing to vary the terms of the Original Deed in the manners set out in the Letter-Agreements.[5]

8 Beyond the Letter-Agreements, the Original Deed was amended twice, in 2015 and 2019. Dato Lim proposed that the Original Deed be amended to provide some flexibility for how the assets would be distributed. To that end, a draft of the amendments was circulated to the signatories of the Original Deed. Eventually, on 28 February 2015, the members of the Lim family entered into an Amending and Restating Deed of Family Arrangement to amend certain terms of the Original Deed (the "Amended Deed"). Among other things, cl 9.1 was amended to provide as follows:[6]

> 9.1 The Group A Beneficiaries hereby irrevocably agree to procure SSLR:
>
> (a) to make a gift of or to otherwise transfer the Properties *to Group B Holding Company and/or its nominees* on the Transfer Date, or to otherwise dispose the Properties and make a gift of the proceeds from such disposals to Group B Holding Company and/or its nominees; and
>
> (b) to make a gift of or to otherwise transfer a sum equivalent to the Net Income *to Group B Holding Company and/or its nominees.*
>
> [emphasis added]

9 As for the reasons for these amendments, the defendants' position is that several discussions took place between the family members regarding the draft of the Amended Deed, but no notes were kept of those discussions. More specifically, at one such meeting in 2014 between Dato Lim and three of the

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5 Soon Huat's 1st Affidavit at paras 35–37.

6 Soon Huat's 1st Affidavit at paras 42–44 and p 76.

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defendants, the first defendant suggested that the amendments to the Original Deed should not detract from the original intention that the assets distributed under the Original Deed had to be kept within the family in Singapore and retained for the benefit of either the Group A or Group B beneficiaries. In response, Dato Lim supposedly told the first defendant not to worry and assured him that the amendments would not detract from such an intention. Thus, the defendants take the view that the inclusion of the phrase "and/or nominees" meant that a party nominated by a named beneficiary under the Amended Deed was to hold the asset for the benefit of and on the named beneficiary's behalf. This was said to introduce flexibility into the Amended Deed to allow entitles other than the named beneficiary to receive assets, but on the condition that they did so on behalf of the named beneficiary.[7]

10 Soon Huat and Soon Heng disagree with the defendants as to the reasons for this amendment to cl 9.1. Specifically, they claim to have been unaware of any discussions or any communications about those discussions. They therefore dispute the defendants' interpretation of the words "and/or nominees". In their view, the parties' intention behind the Amended Deed was not for any nominee to hold any of the assets as a trustee.[8]

11 Subsequently, on 11 January 2019, the parties to the Original Deed and the Amended Deed entered into a third deed (the "Third Deed"), to provide, among others, for the disposal and handling of certain shares in an asset in Australia (the "Australian Investment") to SLH. More specifically, following

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7 1st Affidavit of Lim Teong Huat dated 28 August 2023 ("Teong Huat's 1st Affidavit") at paras 41–44.

8 2nd Affidavit of Lim Soon Huat dated 11 September 2023 ("Soon Huat's 2nd Affidavit") at para 9; 2nd Affidavit of Lim Soon Heng dated 11 September 2023 ("Soon Heng's 2nd Affidavit") at para 15.

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the terms of the Amended Deed, cl 10 provided that the shares in the Australian Investment were to be transferred to SLH "and/or its nominees". The Australian Investment was eventually given to the family of Mr Lim Soon Joo (who is Dato Lim's third child and eldest son) by way of certain share transfers.[9]

The events leading to the commencement of HC/OC 158/2022

12 As will be recalled, cl 9.1 of the Amended Deed obliged the Group A Beneficiaries to procure SSLRC to: (a) transfer the Properties; and (b) pay the amount of $9m (which was the second tranche of the "Group B Assignment Amount" as referred to at cl 12.5 of the Amended Deed),[10] to SLH and/or its nominees. To this end, sometime in July 2020, Soon Heng and Soon Huat proposed that the remaining $9m of the Group B Assignment Amount that was due to be paid to SLH be transferred to Dato Lim, and for the Properties to be transferred to Soon Huat and his son, Mr Lim Yong Yeow Thomas ("Thomas"), respectively, purportedly as nominees of SLH.

13 Dato Lim then proposed a meeting between the Group A and Group B beneficiaries to resolve the transfers mentioned above. This meeting took place on 7 August 2020 and was attended by the parties and their lawyers. However, the meeting ended after just half an hour, as the parties and their lawyers could not resolve the issues at hand. In the days following 7 August 2020, the lawyers who attended the meeting exchanged email about the issues discussed at the meeting. However, the parties remained unable to resolve many of the issues.[11]

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9 Soon Huat's 1st Affidavit at paras 45–49 and pp 93–97.

10 Soon Huat's 1st Affidavit at p 78.

11 Soon Huat's 1st Affidavit at paras 52–55.

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14 On 27 July 2022, the fourth defendant, Ms Leong Quee Ching Karen ("Karen"), commenced HC/OC 158/2022 ("OC 158") against, among others, the majority shareholders of SLH, including Soon Huat and Soon Heng, for minority oppression. For present purposes, it suffices to state that one of the alleged oppressive acts was that Soon Huat and Soon Heng intended for Soon Huat and Thomas to receive the Properties instead of SLH. Thus, according to the defendants, one of the disputed issues in OC 158 relates to the interpretation of the words "and/or nominees" as set out in the Amended Deed. Further to OC 158, Karen also filed HC/SUM 2781/2022 ("SUM 2781"), where she sought, among others, injunctions to restrain the transfer of the Properties to Soon Huat and Thomas pending the final determination of OC 158 and any appeals therefrom.

15 Soon Huat and Soon Heng, along with the defendants in OC 158, applied to strike out OC 158 on the basis that Karen ought to have accepted a buy-out offer from Soon Huat. This striking out application was dismissed by an Assistant Registrar, and the resulting appeals were then dismissed by the High Court in *Leong Quee Ching Karen v Lim Soon Huat and others* [2023] 4 SLR 1133. OC 158 therefore remains to be determined pending the resolution of SUM 2781.

The filing of OA 738 and OA 739 and the conversion applications

16 After their striking out applications were dismissed, Soon Huat and Soon Heng raised, at a case conference on 23 May 2023, their intention to file OA 738 and OA 739 to determine the interpretation of cl 9.1 of the Amended Deed. Karen took the position that these OAs should be commenced by way of OCs. Despite Karen's views, Soon Huat and Soon Heng proceeded to file the OAs on

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25 July 2023. Under the OAs, Soon Huat and Soon Heng sought the following orders:[12]

(a) a declaration concerning the interpretation of the words "and/or nominees" under cl 9.1 of the Amended Deed; and

(b) an order that the Group A Beneficiaries procure SSLRC to transfer the Properties to Soon Huat and Thomas.

17 On 28 August 2023, the defendants in OA 738 and OA 739 filed the conversion applications to convert the OAs into OCs. The learned AR heard the conversion applications on 26 September 2023. She allowed the applications, holding as follows:[13]

> Having considered parties' submissions, I grant Order in Terms of prayers 1(a) and (b) of HC/SUM 2633/2023 and HC/SUM 2634/2023. I do so as I am satisfied that there are material disputes of fact concerning the interpretation of clause 9.1. I note that it is well established that the context surrounding a contract may be relevant in interpreting a contract and add that I do not accept that, at this stage, it can be said that the context relied on by the 1st to 4th defendants is inadmissible. Finally, I am satisfied that a conversion would be consistent with the ideals considering the number of parties involved, the alleged relative lack of documentary evidence, the time span involved, and that any prejudice caused to the claimants as a result of an increase in the ABSD can be addressed through the making of appropriate orders at the conclusion of these matters. …
>
> [emphasis in original omitted]

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12 HC/OA 738/2023 dated 25 July 2023 at para 2; HC/OA 739/2023 dated 25 July 2023 at para 2.

13 Certified Transcript 26 September 2023 at p 17 lines 20–32.

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The parties' cases

18 Soon Huat and Soon Heng adopted largely similar positions in their respective appeals. In brief, and turning first to Soon Huat, he submits preliminarily that there is no dispute in relation to the material facts that pertain to the interpretation of cl 9.1 of the Amended Deed. In this regard, Soon Huat observes that the defendants rely on two alleged conversations to show that there is a dispute of material facts. However, Soon Huat submits that these alleged conversations are not admissible for the interpretation of cl 9.1 of the Amended Deed. First, the disputed pre-contractual events do not satisfy the admissibility requirements. In particular, because no notes were taken at the alleged meeting between Dato Lim and three of the defendants in 2014, this evidence does not meet the procedural requirements to plead with specificity each particular fact relied upon.[14] Second, as to post-contractual conduct, the events which the defendants rely on are inadmissible.[15] Third, the defendants cannot rely on the alleged extrinsic evidence to contradict or vary the terms of the Amended Deed to import the terms of an express trust into cl 9.1. As such, there is no factual dispute in relation to the interpretation of cl 9.1.[16]

19 Further, even if the defendants are able to show that there is a dispute of material facts, the extent of those disputes does not warrant the conversion of the OAs into OCs. In this regard, Soon Huat makes a few points. First, the alleged factual disputes in the present case pertain merely to the two alleged conversations. The extent of the dispute therefore does not justify the cost, time, and expense of a trial. Second, the defendants are wrong to say that one of the

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14 Claimant's Written Submissions in OA 738 dated 19 October 2023 ("Soon Huat's WS") at paras 39–45.

15 Soon Huat's WS at paras 46–53.

16 Soon Huat's WS at paras 54–59.

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disputed issues in OC 158 is the interpretation of the phrase "and/or nominees" as set out in the Amended Deed. Instead, the core issue in OC 158, being an action for oppression, is whether the intention and transfer of the Properties to Soon Huat and Thomas is commercially unfair amounting to oppression. Third, it is not consistent with the Ideals as expressed in O 3 r 1(2) of the ROC 2021 to convert the OAs into OCs. Among other things, Soon Huat will be irremediably prejudiced by the time and expense of litigating the matter via an OC as opposed to an OA. This is because SLH nominated Soon Huat and Thomas to receive the Properties on 2 September 2020 to reduce SLH's exposure to Additional Buyers' Stamp Duty ("ABSD"). Given that ABSD has increased over time and may continue to do so, any unjustified delay will prejudice Soon Huat.[17]

20 As for Soon Heng, his primary argument is that the threshold requirement of a dispute of material facts is not met here. First, the defendants' allegation, that Dato Lim had intended for: (a) the Group A Beneficiaries to be the ultimate beneficial owners of the assets of SSLRC and its subsidiaries; and (b) the Group B Beneficiaries to be the ultimate beneficial owners of the assets of SLH and its subsidiaries, is not supported by any evidence, is inconsistent with company law, and is further not borne out by any of the deeds.[18] Second, there is no dispute as to the interpretation and effect of the Letter-Agreements, which speak for themselves.[19] Third, the alleged meeting between Dato Lim and three of the defendants in 2014 about the meaning of the phrase "and/or nominees" in cl 9.1 is a bare assertion with no evidential basis. Instead, cl 9.1

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17 Soon Huat's WS at paras 66–78.

18 Claimant's Written Submissions in OA 739 dated 19 October 2023 ("Soon Heng's WS") at para 46.

19 Soon Heng's WS at para 48.

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of the Amended Deed is not ambiguous and is akin to the usual nominee clause in options to purchase in property transactions. In any event, even if Dato Lim did have the above-mentioned discussion with three of the defendants, these were the subjective intentions of only some and not all of the parties prior to the execution of the Amended Deed. The discussion would therefore not be admissible extrinsic evidence to aid in the interpretation of cl 9.1.[20] Fourth, the Third Deed, which was signed four years after the Amended Deed, is irrelevant to the interpretation of cl 9.1 of the Amended Deed.[21] Fifth, the circumstances under which SLH came to nominate Soon Huat and Thomas to receive the Properties are not relevant to the question of what is meant by the word "nominee" in cl 9.1 of Amended Deed. Instead, the interpretation of cl 9.1 is to ascertain the meaning which it would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation they were at the time of the contract.[22]

21 Moreover, Soon Heng argues that even if the threshold requirement of there being a dispute of material facts is established, the court should not exercise its discretion to convert the OAs into OCs because, among other things, the nature of the alleged disputes of fact concerns only a narrow point. Further, the defendants have not suggested why they would need the OC production regime for there to be a fair determination of the OAs. Moreover, as to OC 158, the interpretation of cl 9.1 of the Amended Deed is at best a subsidiary question. This is because even if it is held that "nominee" simply means a person nominated by another and does not necessarily hold the asset for the nominator's benefit, the question of whether the fourth defendant has been

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20 Soon Heng's WS at paras 52–60.

21 Soon Heng's WS at paras 61–62.

22 Soon Heng's WS at paras 63–65.

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oppressed by SLH's nominations remains a separate inquiry. Finally, there will be further prejudice to Soon Heng if the adjudication of OA 739 is delayed as a result of the potential increases in ABSD.[23]

22 In response, the defendants raise three primary arguments as to why the OAs should be converted into OCs. First, from the parties' affidavits filed in the OAs, there are already substantial disputes of fact, and more are likely to arise.[24] Second, given the nature of the factual disputes, the OAs would benefit from the full suite of investigative tools available in the OC process.[25] Third, a conversion of these OAs into OCs will be consistent with the Ideals as this will help the parties achieve fair and practical results that suit their needs.[26]

The relevant principles

23 Having set out the parties' cases, I turn now to the relevant principles. The conversion applications were taken out under O 15 r 7(6)(*c*) of the ROC 2021. This provides as follows:

> **Hearing of originating applications and summonses (O. 15, r. 7)**
>
> …
>
> (6) Where the Court is of the view that *there are disputes of facts in the affidavits*, the Court may order any of the following:
>
> (*a*) the parties to file and serve further affidavits;
>
> (*b*) the makers of the affidavits to be cross-examined;

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23 Soon Heng's WS at paras 66–80.

24 Defendants' Written Submissions in OA 738 and OA 739 dated 19 October 2023 ("DWS") at paras 58–78.

25 DWS at paras 79–89.

26 DWS at para 90.

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> (*c*) the originating application to be converted into an originating claim, and with the necessary directions;
>
> (*d*) any other appropriate order.
>
> [emphasis added]

24 Further, O 6 r 1 of the ROC 2021 provides that:

> **Mode of commencing proceedings (O. 6, r. 1)**
>
> **1.**—(1) Unless these Rules or any written law otherwise provide, *a claimant may commence proceedings* by an originating claim or an originating application.
>
> (2) A claimant *must* commence proceedings by an originating claim where the *material facts are in dispute*.
>
> (3) A claimant must commence proceedings by an originating application where —
>
> (*a*) these Rules or any written law require it;
>
> (*b*) the proceedings concern an application made to the Court under any written law; or
>
> (*c*) the proceedings concern solely or primarily the construction of any written law, instrument or document or some question of law and the material facts are not in dispute.
>
> [emphasis added]

25 In the High Court decision of *Indian Trading Pte Ltd v De Tian (AMK 529) Pte Ltd* [2023] SGHCR 3 ("*Indian Trading*"), the learned AR Randeep Singh Koonar ("AR Koonar"), after a careful examination of the relevant predecessor provisions from the Rules of Court (2014 Rev Ed) (the "ROC 2014"), concluded that "while the ROC 2021 provisions are worded and structured slightly differently from the ROC 2014 provisions, the case law interpreting the ROC 2014 provisions remains relevant" (at [26]). I respectfully agree. In particular, I also agree that, under the ROC 2014 and the ROC 2021, the "overarching query in a conversion application is whether there are disputes of fact which ought to be determined after a full trial" (at [26]).

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26 Having regard to the case law in relation to the ROC 2014, which AR Koonar helpfully summarised in *Indian Trading* (at [25]), the principles that remain applicable to a conversion application under O 15 r 7(6)(*c*) of the ROC 2021 are as follows:

> (a) For the court to exercise its discretion to convert an originating summons under O 28 r 8(1), the threshold requirement under O 5 r 2 of the ROC 2014 must be met, that is, a substantial dispute of fact must be likely to arise: *Woon Brothers Investments Pte Ltd v Management Corporation Strata Title Plan No 461 and others* [2011] 4 SLR 777 ("*Woon Brothers*") at [27].
>
> (b) For disputes of fact to warrant conversion:
>
> > (i) There must be a controversy concerning the facts themselves, as opposed to whether those facts are sufficient to prove a cause of action or defence: *TDA v TCZ and others* [2016] 3 SLR 329 ("*TDA*") at [30].
> >
> > (ii) The disputes of fact must be relevant to the case at hand and accompanied by the existence of at least a credible matrix of facts: *Rainforest Trading Ltd v State Bank of India Singapore* [2012] 2 SLR 713 ("*Rainforest Trading (CA)*") at [42]; TDA at [31].
>
> (c) If the threshold requirement is met, the Court considers all the circumstances of the case to determine whether it is more appropriate for the proceedings to continue as a writ action instead of an originating summons. Relevant considerations include:
>
> > (i) The nature and range of the factual issues in dispute: *Woon Brothers* at [30]; *TDA* at [26]; *The Ngee Ann Kongsi v Teochew Poit Ip Huay Kuan* [2019] SGHC 256 ("*The Ngee Ann Kongsi*") at [40].
> >
> > (ii) The utility of the various interlocutory steps which would follow under the writ process, such as discovery and interrogatories: *Woon Brothers* at [32]; *The Ngee Ann Kongsi* at [37]–[39].
> >
> > (iii) The extent of cross-examination which may be required: *Woon Brothers* at [29].
>
> (d) Even if there are disputes of facts which might ordinarily warrant conversion, a party who fails to apply for conversion in a timely manner may be taken to have elected to forego the opportunity to apply for conversion: *LS Investment Pte Ltd v*

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> *Majlis Ugama Islam Singapura* [1998] 3 SLR(R) 369 at [54]–[56]; *Haco Far East Pte Ltd v Ong Heh Lai Francis* [1999] 3 SLR(R) 959 at [17]; *TDA* at [34]–[38].

27 In summary, to once again adopt AR Koonar's decision in *Indian Trading* (at [27]–[28]), a court should adopt a two-stage process in deciding whether to allow an application to convert an OA into an OC under O 15 r 7(6)(*c*) of the ROC 2021. First, the court must be satisfied, as a threshold requirement, that the material facts relating to the action are in dispute. Second, if the threshold requirement is satisfied, then the court is to decide whether to exercise its discretion to allow the conversion, based on all the circumstances of the case. In particular, having regard to the Ideals of the ROC 2021, the court must give effect to these Ideals as set out in O 3 r 1(2) of the ROC 2021. Ultimately, as AR Koonar put it elegantly in *Indian Trading* (at [29]), in considering whether to exercise its discretion, "no one factor can have a talismanic quality and the application of individual factors can point towards different outcomes", and that "[t]he court's role is ultimately to strike a fair balance where there are competing considerations".

My decision: the appeals are dismissed

28 With the relevant principles in mind, I dismiss RA 215 and RA 216.

There are likely to be substantial disputes of fact

29 As a threshold matter, I am satisfied that there are likely to be substantial disputes of fact arising from the OAs.

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The questions of contractual interpretation in the OAs are premised on substantial disputes of fact

30 To begin with, I am satisfied that there are likely to be substantial disputes of fact because the OAs concern questions of contractual interpretation. While I accept that the core issue in the OAs is a question of law (being the interpretation of cl 9.1 of the Amended Deed, *ie*, the effect of a contractual term (see the High Court decision of *Holland Leedon Pte Ltd (in liquidation) v Metalform Asia Pte Ltd* [2011] 1 SLR 517 at [11]), that by itself does not mean that the OAs cannot be converted into OCs. This is because O 6 r 1(3) of the ROC 2021, which provides when a claimant must commence proceedings by an OA, states the following as an example of such a situation: "the proceedings concern solely or primarily the construction of any written law, instrument or document or some question of law *and the material facts are not in dispute*" [emphasis added]. From a plain reading of O 6 r 1(3), it does not follow that a proceeding that concerns a question of law must necessarily be commenced by way of an OA. Rather, such a proceeding must be commenced by way of an OA only if, *in addition* to there being, among others, a question of law, "the material facts are not in dispute". Therefore, whether the material facts are in dispute is the crucial factor in determining whether a proceeding should be commenced by way of an OC.

31 In the present case, the interpretation of the words "and/or nominees" in cl 9.1 of the Amended Deed is founded on substantial disputes of fact. In this regard, it is trite that in interpreting a contractual provision, a court must determine the parties' objective intentions behind the words, as gleaned from: (a) the express terms of the agreement; and (b) the context in which the contract was entered into, and (c) where relevant, the parties' prior negotiations and subsequent conduct (see, in this regard, the recent Court of Appeal decision in

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Lim Siau Hing @ Lim Kim Hoe and another v Compass Consulting Pte Ltd and another appeal [2023] SGCA 39 at [96]–[97]). While Soon Huat and Soon Heng have placed some emphasis on the apparent clarity of the express text of cl 9.1, it needs to be recalled that contractual interpretation does not start and end with just the contractual text. Thus, as the Court of Appeal stated in the seminal case of *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Ong Puay Koon and others and another appeal* [2018] 1 SLR 170 ("*CIFG*") (at [19]):

> …
>
> (a) The starting point is that one looks to the text that the parties have used (see *Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 at [2]).
>
> (b) At the same time, it is permissible to have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties (see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [125], [128] and [129]).
>
> (c) The reason the court has regard to the relevant context is that it places the court in "the best possible position to ascertain the parties' objective intentions by interpreting the expressions used by [them] in their proper context" (see *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [72]).
>
> (d) In general, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear (see, *eg*, *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [31]).

32 As can be seen, the Court of Appeal did not hold that contractual interpretation stops once the court ascertains that the contractual text is clear. Instead, the court held that while the starting point of contractual interpretation is the text, it is permissible, "at the same time", to have regard to the relevant context so long as the threefold admissibility requirements in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") are satisfied. In my view, the

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court's use of the expression "at the same time" signifies clearly that the starting point of looking at the text does not displace the possibility of looking at the context.

33 More broadly, this is consistent with the oft-cited principle that contracts are to be interpreted contextually. The courts have placed much emphasis on the fact that contracts are not made in a vacuum, and that words are at times "penumbral". Because the context is all-important, the extrinsic evidence admissible under the Evidence Act 1893 (2020 Rev Ed) (the "EA") can assist the court in coming to the objectively correct meaning of the contractual language, especially where the contractual language is ambiguous or capable of having more than one meaning. Indeed, a determination that the contractual text is "clear" is, by itself, an exercise of interpretation. This is because such a determination imports general context in the form of common knowledge as to the widely accepted meanings of certain words, in contrast to more specific context particular to the parties concerned.

34 In this regard, Vinodh Coomaraswamy J's comparison in *HSBC Trustee (Singapore) Ltd v Lucky Realty Co Pte Ltd* [2015] 3 SLR 885 (at [59], [61], and [67]) of the context of a contract to a series of concentric circles of meaning is very helpful in understanding the essence of the contextual approach. In the learned judge's view, the contextual approach starts with the innermost of the concentric circles of meaning: the natural and ordinary meaning of the words, phrases and sentences chosen by the parties to express their contractual intention in the document. But contractual interpretation does not necessarily end there. The contextual approach could transition from the internal context (*ie*, the other terms in the contract) to the external context if the extrinsic evidence was admissible. If, however, no extrinsic evidence aids to construction were available, the court would be left with nothing but the words the parties

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themselves chose. This largely reproduces the effect of ss 95 to 99 of the EA, which places primacy on the plain meaning of the contractual words, but not solely so. Of course, at the end of the day, as the Court of Appeal also explained in *CIFG* (at [19]), the meaning that is eventually ascribed to the contractual provision concerned must be one that the words used by the parties can reasonably bear.

35 Seen in this light, it is clear that the factual context which led to the inclusion of the words "and/or its nominees" in the Amended Deed is important to the interpretation of cl 9.1. As a preliminary matter, even if the expression "and/or its nominees" has a commonly accepted meaning, that does not preclude a recourse to extrinsic evidence to interpret its meaning. This is all the more so since the Amended Deed is a bespoke document as opposed to a standard form commercial document, for which the Court of Appeal observed in *Zurich Insurance* (at [110]) may require a different treatment, such as involving a presumption that the meaning of its terms adhere to the commonly accepted meaning. No such presumption arises in the present case as the Amended Deed, as with the other documents, were individually negotiated between the parties and then drafted specially for their purposes.

36 In any event, I agree with the defendants that there is controversy surrounding certain material issues that will affect the proper interpretation of cl 9.1 of the Amended Deed. In the first place, there is a need to determine Dato Lim's intention behind dividing the family members into Group A and Group B, and in allocating assets between the two groups. In this regard, the defendants' position is that Dato Lim had intended for the Group A beneficiaries to be the ultimate beneficial owners of the assets held by SSLRC and its subsidiaries, and for the Group B beneficiaries to be the ultimate

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beneficial owners of the assets held by SLH and its subsidiaries.[27] However, Soon Heng and Soon Huat deny this account.[28] Following from this, there is a need to ascertain if there was a change in Dato Lim's intention. In this regard, the defendants' position is that Dato Lim had told the first defendant that the amendments to the Amended Deed would not detract from the intention of keeping the assets within the family in Singapore, and that any redistribution of the assets would continue to benefit either the Group A or Group B beneficiaries collectively.[29] Again, Soon Heng and Soon Huat deny this account. Instead, their position is that they are unaware that Dato Lim provided any such assurance. Rather, the addition of the words "and/or its nominees" was to provide the beneficiaries the right to nominate other persons to receive or be given what they were to receive under the Amended Deed. This therefore amounts to a controversy in a material fact that will affect the proper interpretation of cl 9.1 of the Amended Deed.

37 In addition to the above core disputes, there are other disputes of fact that may be relevant in the proper interpretation of cl 9.1. For example, despite the inclusion of the words "and/or its nominees" in the Amended Deed, it is questionable why the parties executed the Third Deed instead of having SLH nominate Mr Lim Soon Joo and/or his family to receive the Australian Investment. In this regard, the defendants' position is that SLH could not have nominated any other party to hold the Australian Investment under cl 10 of the Amended Deed, because such party would be holding the asset on trust for SLH. As it was intended for Mr Lim Soon Joo and/or his family to own the Australian

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27 Teong Huat's 1st Affidavit at para 44.

28 Soon Huat's 2nd Affidavit at paras 7–9; Soon Heng's 2nd Affidavit at paras 12 and 15–16.

29 Teong Huat's 1st Affidavit at para 44.

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Investment absolutely, the parties had to enter into the Third Deed. According to the defendants, this strengthens their interpretation of the words "and/or nominees".[30] Again, this therefore amounts to a controversy on a material fact that will affect the proper interpretation of cl 9.1 of the Amended Deed.

38 As such, I am satisfied that there are likely to be substantial disputes of fact that have a determinative bearing on the proper interpretation of cl 9.1 of the Amended Deed.

It is premature to decide on the admissibility of extrinsic evidence for the purposes of contractual interpretation at this stage

39 However, as against this, Soon Huat and Soon Heng raise the objection that the extrinsic evidence as constituted by the various conversations cannot be admitted for the purposes of contractual interpretation. As will be recalled, their position is that such evidence does not satisfy the threefold requirements of admissibility as set out in *Zurich Insurance*.[31] In my view, the simple answer is that it is premature at the stage, when the court is considering the conversion applications, to rule determinatively whether such evidence is admissible.

40 In the High Court decision of *The Ngee Ann Kongsi v Teochew Poit Ip Huay Kuan* [2019] SGHC 256 ("*Ngee Ann Kongsi*"), the court considered (at [32]) that the context and surrounding circumstances may assist the court in interpreting the trust documents concerned. While the court referred to the *Zurich Insurance* requirements, it did not descend into a determination of whether the extrinsic evidence was admissible. In my respectful view, this must be correct. It would not be right for the court, at this stage, to descend into a

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30 DWS at para 66.

31 Soon Huat's WS at paras 39–59; Soon Heng's WS at paras 52–60.

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detailed determination of whether the extrinsic evidence raised can be admitted eventually. For one, as in the present case, the applicant for conversion may not have a proper opportunity to respond to any challenges on admissibility. Also, it is more proper for a trial judge, who would have the advantage of more detailed facts, to rule determinatively on the admissibility of such extrinsic evidence. For example, while Soon Huat contends that Dato Lim's conversation with three of the defendants in 2014 was not reasonably available to him (and Soon Heng) as they were not present at the said meeting (even if it had taken place),[32] the defendants' case is that Dato Lim had raised this conversation (or at least material aspects of it) to Soon Huat and Soon Heng.[33] If Dato Lim had done so, then it might be said that the conversation was reasonably available to Soon Huat and Soon Heng. Yet, as would be evident, it is premature to decide whether Dato Lim had conveyed this based on conflicting affidavit evidence alone. Without deciding on this point of fact, it is not possible to ascertain whether the reasonable availability requirement under the *Zurich Insurance* admissibility requirements is satisfied. Nor should the court be drawn into such an exercise at this stage, which would necessarily involve making findings of fact.

41 As such, for all of Soon Huat's and Soon Heng's efforts in submitting why the extrinsic evidence here ought not to be admitted, the fact is that they are making such arguments without the benefit of fuller facts that may emerge in due course. Above all, if there is a need to determine admissibility at this stage, then it must follow, as a matter of principle, that a court considering a conversion application must also determine the admissibility of all evidence at the same time. This has not been done, nor is there any good practical sense in

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32 Soon Huat's WS at paras 43–44.

33 Teong Huat's 1st Affidavit at para 44.

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bringing forward, what ought to be done at trial, to the conversion application stage.

42 Accordingly, consistent with the approach taken in *Ngee Ann Kongsi*, it is not necessary for a court considering a conversion application to consider the admissibility of extrinsic evidence that is said to be relevant in the interpretation of the contractual provisions concerned. Rather, all that is needed is for the court to be satisfied that such extrinsic evidence, if admitted, would have a bearing on the interpretation of the contractual provision. If so, and there is likely to be substantial disputes of fact flowing from such extrinsic evidence, then that would be a strong point in favour of allowing the conversion.

The defendants are not seeking to add to, vary, or subtract from the words in the Amended Deed

43 I turn finally to the point that Soon Huat and Soon Heng make about how the defendants ought not to infringe the parol evidence rule by seeking to vary and/or introduce additional terms into the Amended Deed, being the terms of the alleged trust on which the nominees are to hold the assets under cl 9.1. In this regard, the parol evidence rule, simply put, prohibits the introduce of parol and other extrinsic evidence to add to, vary, or contradict a written instrument or contract. The practical effect of the rule is that the express terms of the contract are to be found in the written contract itself. This formulation of the parol evidence rule therefore distinguishes between the use of extrinsic evidence to: (a) add to, vary, or contradict the terms of a written contract and (b) interpret the meaning of the terms of a written contract. In the latter sense, "[t]he extrinsic evidence does no more than assist in [the writing's] operation by assigning a definite meaning to terms capable of such explanation or by pointing out and

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connecting them with the proper subject-matter" (see *Zurich Insurance* at [44]). In Singapore, the parol evidence rule is codified in ss 93 and 94 of the EA.

44 In my judgment, the defendants' contended-for interpretation of cl 9.1 of the Amended Deed does not offend the parol evidence rule. While there may be a thin line between addition and interpretation, in that an addition to a contract may be effected under the guise of interpretation, I am satisfied that this is not the case here. In this regard, Soon Huat argues that by the defendants' interpretation of the words "and/or nominees", the parties must have intended to create an express trust, in that the nominee under cl 9.1 is to hold the Properties on trust as a trustee and not as beneficial owner.[34] Soon Huat goes on to argue that this offends the parol evidence rule because this would necessitate the implication of further terms into cl 9.1 to provide for, among other things, the terms of the trust on which the "nominees" would hold the Properties, as well as the object of such an alleged trust.[35] However, the simple answer to these points is that the defendants have not sought to add any other term into the Amended Deed. Rather, all they seek is to attribute a particular meaning to the words "and/or nominees". Further, it is open for a court to later find that the defendants' contended-for interpretation cannot lead to the outcome they desire because there is a deficiency in the terms of the Amended Deed. However, that is quite different from saying that the defendants are in breach of the parol evidence rule.

45 Accordingly, for all the reasons discussed, I am satisfied, as a threshold matter, that there are likely to be substantial disputes of fact arising from the OAs. I turn now to consider whether to exercise my discretion to allow the

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[34] Soon Huat's WS at paras 54–55.

[35] Soon Huat's WS at paras 57–59.

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conversions sought, based on all the circumstances of the case, as well as the Ideals found in the ROC 2021.

It is appropriate to exercise my discretion to allow the conversions sought

The circumstances make it appropriate to exercise my discretion to allow the conversions sought

46 I am satisfied that the circumstances make it appropriate to exercise my discretion to allow the conversions sought. First, given the apparent lack of documentary evidence, it is clear that the parties will primarily need to rely on oral evidence. Second, the defendants are entitled, as are Soon Huat and Soon Heng, to make use of the investigative tools in the OC process to discover further documentation that is relevant to the dispute. Third, Soon Huat and Soon Heng will have to plead and particularise their claims and allegations more fully in an OC, so as to allow the defendants the opportunity to know the case that they have to meet. Finally, it is clear from the foregoing discussion that evidence will need to be gathered over a relatively lengthy period from 2013 to 2020. While this period is certainly not as long as in certain cases that Soon Heng and Soon Huat cite, what matters is not so much the quantitative length of time, but the degree of complexity. On the present facts, there are a number of signatories to the various deeds and Letter-Agreements whose evidence might be relevant in discerning the proper interpretation of the words "and/or nominees".

47 As to the potential prejudice caused to Soon Huat and Soon Heng by the conversions, I agree with the learned AR that these can be addressed with the appropriate orders at the end of the trial.

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It is consistent with the Ideals to exercise my discretion to allow the conversions sought

48 Finally, it would be consistent with the Ideals set out in the ROC 2021 for me to exercise my discretion to allow the conversions sought. In the High Court decision of *Dai Yi Ting v Chuang Fu Yuan (Grabcycle (SG) Pte Ltd and another, third parties)* [2023] 3 SLR 1574, the court explained the Ideals in the following terms (at [13]–[14]):

> 13 … These Ideals are "akin to constitutional principles by which the parties and the Court are guided in conducting civil proceedings" and they are "to be read conjunctively" (see *Civil Justice Commission Report* (29 December 2017) at ch 1, para 3 (Chairman: Tay Yong Kwang)). The court is empowered to do what is right and necessary based on the facts of the case before it to ensure that justice is done, provided it is not prohibited from doing so and its actions are consistent with the Ideals (see *Singapore Civil Procedure 2022* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2022) at para 3/1/4, citing *Public Consultation on Civil Justice Reforms*: *Recommendations of the Civil Justice Review Committee and Civil Justice Commission* (26 October 2018) at para 21).
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> 14 At this juncture, it suffices to note that these Ideals relate to the promotion of expeditious (O 3 r 1(2)(*b*)) and cost-effective proceedings (O 3 r 1(2)(*c*)) that are achieved by the efficient use of court resources (O 3 r 1(2)(*d*)), and are all ultimately tailored towards the achievement of fair and practical results (O 3 r 1(2)(*e*)), which ensures the fair access to justice (O 3 r 1(2)(*a*)).

49 While the Ideals undoubtedly refer to the importance of expeditious and cost-effective proceedings, that cannot mean that the OA process is preferred to the OC process. First, as a general principle, even if there is always a need to ensure expediency in the conduct of proceedings, this must not be at the expense of denying a party the fullest means of resolving the dispute at hand. Second, and more specifically, this is especially so when a party has demonstrated that there are substantial disputes of fact that warrant a more thorough investigation. Third, and most fundamentally, expediency and cost-effectiveness do not

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equate to a wholesale preference of the OA process over the OC process. Indeed, it is possible to achieve expediency even in a more thorough investigation of the facts within the OC process. In sum, the Ideals cannot be read as preferring one form of proceedings over another, and what matters ultimately is a careful consideration of the circumstances of each case to determine the proper course of action that ensures the fair access to justice in an expeditious and cost-effective manner.

50 Considering all of the circumstances of the present case, and principally due to the substantial disputes of fact that will affect the interpretation of cl 9.1 of the Amended Deed, it would be consistent with the Ideals to allow the conversions sought.

Conclusion

51 For all the reasons above, I affirm the decision of the learned AR below and dismiss RA 215 and RA 216.

52 Unless the parties are able to agree on the costs of these appeals, they are to make submissions on the appropriate costs orders within 14 days of this decision, limited to seven pages each.

Goh Yihan
Judge of the High Court

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Sarbjit Singh Chopra, Roshan Singh Chopra and Yuen Zi Gui (Selvam LLC) for the claimant in HC/RA 215/2023 and the fifth defendant in HC/RA 216/2023;
Tan Teng Muan and Loh Li Qin (UniLegal LLC) for the claimant in HC/RA 216/2023 and the fifth defendant in HC/RA 215/2023;
Ng Ka Luon Eddee, Tnee Zixian Keith, Lee Pei Hua Rachel and Foo Yiew Min (Tan Kok Quan Partnership) for the first to fourth defendants in HC/RA 215/2023 and HC/RA 216/2023.

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