IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(I) 21

Originating Application No 15 of 2023 (Summons No 1 of 2024)

Between

(1) Hii Yii Ann
(2) Alliance Lumber (PNG) Limited

…*Claimants*

And

(1) Tiong Thai King
(2) Everrise Cooperation Pte Ltd

…*Defendants*

And

Tiong Thai King

…*Claimant in counterclaim*

And

(1) Hii Yii Ann
(2) Alliance Lumber (PNG) Limited
(3) Everrise Cooperation Pte Ltd

…*Defendants in counterclaim*

JUDGMENT

[Civil Procedure — Striking out]

Hii Yii Ann and another
v
Tiong Thai King and another and another matter

[2024] SGHC(I) 21

Singapore International Commercial Court — Originating Application No 15 of 2023 (Summons No 1 of 2024)
Thomas Bathurst IJ
21 March 2024

10 July 2024 Judgment reserved.

Thomas Bathurst IJ:

Introduction

1 By a summons filed on 5 January 2024, SIC/SUM 1/2024 ("SUM 1"), the second defendant, Everrise Cooperation Pte Ltd (the "Second Defendant") seeks orders striking out of the entirety of the counterclaim brought against it in the Defence and Counterclaim of the first defendant, Mr Tiong Thai King (the "First Defendant") dated 15 June 2023 ("Counterclaim").

Background

2 The Claimants, Mr Hii Yii Ann ("Mr Hii" or the "First Claimant"), and Alliance Lumber (PNG) Limited (the "Second Claimant") (collectively, the "Claimants"), brought proceedings in the main action, SIC/OA 15/2023, against the First and Second Defendants (the "Defendants") arising out of a dispute

between the Claimants and the Defendants in respect of an agreement dated 3 November 2018 (the "Logging Agreement"). In summary, the Logging Agreement provided for the First Defendant to fell and extract logs from an area TP 10-01 in Papua New Guinea. The Logging Agreement provided in effect that the proceeds would be applied to pay an agreed contractor's fee to the First Defendant and after payment of that amount and various other expenses, the balance was to be paid to a joint venture company established pursuant to the Logging Agreement and paid to the Claimants and the First Defendant in the proportions of 60% and 40%, respectively.

3 The Second Defendant was the joint venture company. The First Claimant, Mr Hii, held 60% of its shares while the First Defendant held 40%. Mr Hii has three nominees ("Mr Hii's Nominee Directors") on the Board of Directors (the "Board"), whilst the First Defendant has two ("Mr Tiong's Nominee Directors").

4 Two shipments of logs were made pursuant to the Logging Agreement. In respect of the first, the Second Defendant assessed the Claimants' share of the net proceeds to be US$196,291.28 and the First Defendant's share to be US$130,860.85. These were paid to the Claimants and the First Defendant in the agreed proportions.

5 The Second Defendant also received the proceeds of the second shipment and assessed the Claimants' share to be US$155,468.98 and the First Defendant's to be US$103,645.98. In the original statement of claim dated 14 November 2022 it was asserted the First Claimant's share of the proceeds was paid to him. However, in its amended statement of claim filed on 5 June 2023 ("Statement of Claim") it was alleged that the payment of the Second

Claimant's share of the profits was made to the First Claimant with the knowledge and agreement of the First Defendant.

6 The Statement of Claim then alleges various breaches of the Logging Agreement by the First Defendant. It is unnecessary to set out the alleged breaches or the various defences raised.

7 The Claimants claimed damages from the First Defendant as against the Second Defendant. The Statement of Claim pleads the relief sought by the Claimants, namely:

> 56. The 1st Claimant and/or the 2nd Claimant therefore claim against the 2nd Defendant:
>
> 56.1 A declaration that the 2nd Defendant is obliged, under the Trust Agreement, to assess and deduct from the revenue generated by the 1st and 2nd Shipments, the sums which the 1st Claimant and/or the 2nd Claimant was entitled to be reimbursed, as a result of the 1st Defendant's breaches of the Logging Agreement (as pleaded above at paragraph 46) (the "**Reimbursable Sums**"), *before* the 2nd Defendant assessed and allocated amounts to which the 1st Claimant and the 1st Defendant may be entitled under the Logging Agreement.
>
> 56.2 A declaration that the 2nd defendant is obliged, under the Trust Agreement, to pay the Reimbursables Sums to the 1st Claimant and/or the 2nd Claimant before the 2nd Defendant assessed and allocated amounts to which the 1st Claimant and the 1st Defendant may be entitled under the Logging Agreement.
>
> 56.3 An order that the 2nd Defendant pays the 1st Claimant and/or the 2nd Claimant the sum of US$103,645.98 (as pleaded at paragraph 44.5 above).
>
> 56.4 An order restraining the 2nd Defendant from directly or through its agents, proxies, representatives, employees, or otherwise indirectly, taking steps to pay, transfer or howsoever convey the beneficial interest in the sum of US$103,645.98 (as pleaded at paragraph 44.5 above) or any part thereof to the 1st Defendant or his nominees.
>
> [emphasis in original]

8 The Second Defendant did not file a notice of intention to contest or not contest by the stipulated deadline. Accordingly, the Claimants applied on 4 January 2023 for a judgment in default of notice of intention to contest or not contest, in respect of its claim against the Second Defendant, which was granted on 10 March 2023 *vide* HC/JUD 85/2023 (the "default judgment"). Prior to dealing with the First Defendant's Counterclaim against the Second Defendant it is convenient to set out the circumstances in which that default judgment was obtained.

The default judgment

9 It appears the First Defendant was served with the original statement of claim on 16 December 2022. In an affidavit sworn on 24 January 2024 in opposition to the orders sought by the Second Defendant in SUM 1, the First Defendant stated that he proceeded to engage his current solicitors, Allen & Gledhill LLP, to defend the claim and file a counterclaim against the Second Defendant for the sum of US $103,645.98.

10 An associate of the First Defendant, Daniel Ling Teck Hsin ("Mr Ling"), who was one of Mr Tiong's nominees on the Board of the Second Defendant, also filed an affidavit in opposition to this application to strike out the Counterclaim. He deposed that on 16 December 2022 he was made aware that the First Defendant had been served with a Statement of Claim and that a Registrar's Case Conference ("RCC") was scheduled on 21 December 2022.

11 Mr Ling deposed that as the First Defendant was not able to attend the RCC and it was impossible for him to engage Singapore solicitors, he requested his colleague to arrange for Huang & Co Advocates ("Huang & Co"), a law firm

in Sarawak, Malaysia, to request the Claimants' solicitors to reschedule the RCC for a later date.

12 Mr Ling states that on 28 December 2022, Ms Hii Hun Kuong, one of Mr Hii's representatives on the Board of the Second Defendant, had written to Huang & Co requesting they refrain from representing to third parties that they acted for the Second Defendant in the action.

13 Mr Ling stated that in light of that email he had realised that Huang & Co had inadvertently informed the Claimants' solicitors that they were also instructed by Second Defendants and that in the circumstances he was prepared to leave the appointment of the solicitors for the Second Defendant to Mr Hii's nominees on the Board. He stated he was cognisant of the fact that Mr Hii's Nominee Directors formed the majority at the Board level.

14 In these circumstances, Mr Ling sent an email in the following terms to Ms Hii on the same day:

> "Dear Ms Hii Hun Kuong,
>
> We regret to inform you that the appointment of Huang & Co. Advocates was done due to miscommunication and in haste. My sides (the 2 shareholders & directors of Everrise Cooperation Pte Ltd) were only notified of this Originating Claim a day before the case conference.
>
> I sincerely apologize for our honest oversight in this matter. Regarding the suit against Everrise Cooperation Pte Ltd in which the plaintiff through his nominees have the majority stake, we will just leave it in your good hands.
>
> Thank you.
>
> -Daniel"

15 Mr Ling denies that in writing that email, he was asserting that he was content to leave the management of the dispute in the control of the rest of the

directors. Rather, he stated that he was only referring to issue of the appointment of solicitors to deal with the claim brought by the Claimants against the Second Defendant.

16 The First Defendant in an affidavit sworn by him on 24 January 2024 stated that it had never been agreed by him, whether directly or through his Nominee Directors, that Mr Hii's Nominee Directors would have the sole discretion to decide whether or not to defend the claim brought by the Claimants against the Second Defendant.

17 At this juncture it bears restating the chronology of events that took place in the lead up to the making of the default judgment:

(a) The Second Defendant failed to file a Notice of Intention to Contest or Not Contest the Claimants' case against it and on 4 January 2023, the Claimants applied for default judgment against the Second Defendant.

(b) On 2 February 2023, the First Defendant filed a counterclaim against the Second Defendant.

(c) On 9 March 2023, the Claimants requested the application for default judgment be dealt with urgently.

(d) On 10 March 2023, the Registrar granted default judgment. The default judgment was in the same terms as the relief sought in the Statement of Claim (see [7] above).

18 It should be noted that in an affidavit filed in support of the summons to strike out the Counterclaim, Mr Hii contended first, that the Second Defendant

had breached the Logging Agreement by failing to deduct from the First Defendant's share of shipments the amount he was entitled to be reimbursed as a result of the First Defendant's breach of the Logging Agreement. Perhaps more importantly for present purposes, Mr Hii asserted that it was clear to him from a plain reading of Mr Ling's email that:

> having received advice and no doubt having considered the merits of the claims against Everrise, Tiong and his nominees were content to the leave the management of the dispute in the control of the rest of the directors … and explicitly informed us of that decision.
>
> [emphasis in original]

19 It should be noted that there is a significant dispute both as to the meaning and effect of Mr Ling's email and (subject to the default judgment) the Claimants' entitlement to the First Defendant's share of the second shipment.

The First Defendant's Counterclaim

20 As originally filed, the Counterclaim simply asserted that the failure of the Second Defendant to pay the sum of US$103,645.98 to the First Defendant constituted a breach of the Logging Agreement.

21 In the amended Counterclaim filed on 15 June 2023, it was pleaded in addition that the refusal by the Second Defendant to pay the sum of US $103,645.98 to the First Defendant constituted a breach of trust. It also pleaded that the First Claimant dishonestly assisted the Second Defendant to act in breach of trust. It also asserted as an alternative that the First Claimant induced the Second Defendant to breach its contractual obligations to the First Defendant.

The relevant rules

22 Order 16 rule 4 of the Singapore International Commercial Court Rules 2021 ("SICC Rules"), which substantially mirrors Order 9 rule 16 of the Rules of Court 2021 ("ROC"), provides as follows:

> **16.—**(1) The Court may, on the application of a party, order any or part of any Originating Application, pleading, or memorial to be struck out or amended, on the ground that -
>
> (*a*) it discloses no reasonable cause of action or defence;
>
> (*b*) it is an abuse of the process of the Court; or
>
> (*c*) it is in the interests of justice to do so,
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly.
>
> (2) No evidence is admissible on an application under paragraph (1)(a).
>
> (3) The Court may order any affidavit, witness statement or other document filed in Court to be struck out or redacted on the ground that -
>
> (*a*) the party had no right to file the affidavit, witness statement or document;
>
> (*b*) it is an abuse of the process of the Court; or
>
> (*c*) it is in the interests of justice to do so.

23 In the present case, the Second Defendant relied upon O16 r 4(1)(*b*) and (*c*) of the SICC Rules in support of its application.

24 The relevant principles were not in dispute which are set out in *Iskandar bin Rahmat v Attorney General* [2022] 2 SLR 1018 ("*Iskandar bin Rahmat*") where it was pointed out (at [18]) that the test under O 9 r 16(1)(*b*) of the ROC for whether the pleadings constituted an abuse of process of the Court is whether the process of the Court has been used properly in good faith, and is grounded

in public policy and the interests of justice to prevent improper use of its machinery and the judicial process as a means of vexation and oppression.

25 The court also pointed out at [19] that the test under Order 9 r 16(1)(*c*) is whether it is in the interests of justice to strike out the pleading. This gives effect to the Court's inherent jurisdiction to prevent injustice such as where it is clear the claim is plainly unsustainable.

The parties' submissions

The Second Defendant

26 In the introduction to its skeletal submission, the Second Defendant submitted that the evidence unequivocally demonstrated that the First Defendant was notified of the claim and had ample opportunity to assist the Court in resolving the issues surrounding the US$103,645.98 and/or to stake its claim but failed to do so. It was submitted that the conduct was deliberate and intended. It was submitted that the First Defendant was effectively attempting to seek the assistance of the Court to mount a collateral attack on its decision.

27 In support of these contentions, the Second Defendant submitted that Mr Ling's interpretation of his email did not sit squarely with the facts and circumstances of the case. It submitted that Mr Ling knew that the First Claimant and his interests held the controlling majority of the company and control of the Board. It was submitted that Mr Ling has not explained what he meant in stating he consented to the majority of the Board appointing solicitors "to deal with the Claimants' claim" only. It was submitted that if he meant that he expected the majority shareholders to appoint solicitors and instruct them to inform the Court that the Second Defendant took no position on the merits, it

was submitted no reasonable man could make such an assumption for "one of the claimants for the claim against the Company is Hii himself".

28 If the money was held on trust as alleged by the First Defendant, or if the First Defendant was contractually entitled to it, the Second Defendant should have defended the claim.

29 The Second Defendant noted that Mr Ling admitted in his affidavit that after the deadline for filing a Notice of Intention to Contest or Not Contest (the "notice") had expired, he had become aware that the company had failed to appoint solicitors. It submitted that he also became aware that no notice had been filed. The submissions noted that the First Defendant admitted that he became aware that no notice had been filed and that no solicitors were appointed. It was further noted that that Mr Ling never conveyed his expectation to the majority shareholders that the company should take a neutral position, nor was there any basis for the assumption that the company would do so. Further, it submitted that the failure to appoint a solicitor or file a notice points to the conclusion that the company would be admitting the claim as opposed to taking a neutral position.

30 It was also submitted that the First Defendant did not say in his affidavit that he was unaware of Mr Ling's email. It was further submitted that if the First Defendant truly believed the US$103,645.98 belonged to him he would have instructed the Second Defendant to file a defence.

31 The Second Defendant submitted that the following matters were not in dispute and needed to be taken into account in considering whether O 16 rr 4(*b*) or (*c*) of the SICC Rules applied in the present case:

(a) First, the US$103,645.98 ordered by the Court to be paid to the Claimants pursuant to the default judgment was the same sum as that claimed by the First Defendant in its Counterclaim.

(b) Second, the First Defendant and Mr Ling knew that the Second Defendant had not appointed solicitors.

(c) Third, no Board meeting or shareholders' meeting had been convened to deal with the issues surrounding the Claimants' claim.;

(d) Fourth, the First Defendant had not conveyed to the other directors of the Second Defendant that the company ought to take a neutral position.

(e) Lastly, it was submitted that the First Defendant appreciated the consequences of failing to file any notice, had all the material facts in hand to decide whether the company ought to defend the claim and knew that the majority shareholders were effectively not a "neutral party".

32 The Second Defendant submitted that in these circumstances the First Defendant's Counterclaim should be struck out in the interests of justice. It submitted that the First Defendant is seeking to have a second bite of the cherry to see if he can reverse the decision made against him.

33 That rather begs two questions. First, could he be said to be having a second bite at the cherry in circumstances where he filed his original counterclaim dated 2 February 2023 prior to the default judgment and second, could it be said, in a substantive sense, that the First Defendant's rights were finally determined.

34 The SecondDefendant contended that it is unequivocal that the default judgment finally dealt with and disposed of the issues of the parties' obligations under the Logging Agreement. It submitted first that it is trite that a default judgment may be treated as a final and conclusive judgment until it is set aside. It pointed to the declarations and orders obtained by the Claimants (see [7] above), it submitted the declarations and orders that made it clear the Court has conclusively made a determination on the following issues:

(a) the First Defendant breached its obligations under the Logging Agreement;

(b) the Claimants are entitled to damages as a result of the First Defendant's breach;

(c) the Second Defendant had an obligation under the Logging Agreement to assess and deduct from the revenue generated by the first and second shipments the sums which the Claimants were entitled to be reimbursed as a result of the First Defendant's breaches of the Logging Agreement;

(d) the Second Defendant had breached that obligation; and

(e) the Second Defendant was to pay US$103,645.98 to the Claimants.

35 It may be that on its face it seems surprising that an undefended application brought by the Claimants against a company controlled by them could finally dispose of those matters adversely to the First Defendant without considering his defence or counterclaim.

36 The Second Defendant also relied on the extended doctrine of *res judicata* generally said to be based on the judgment of Wigram VC in *Henderson v Henderson* [1843-60] All ER Rep 378. It contended that the First Defendant neglected and/or refused to bring forward his entire claim on the US$103,645.98 issue.

37 It submitted first that "having regard to the substance and the reality of the earlier action" the First Defendant ought to have reasonably raised the issues concerning the US$103,645.98 which he is now attempting to raise in his Counterclaim at the material time before the Claimant obtained default judgment. The difficulty with the submission is that the matters were raised in the original defence and counterclaim dated 2 February 2023 which alleged breaches by the Claimant and counterclaimed that the Second Defendant breached the agreement by failing to pay the US $103,645.98 to him. It should, however, be noted that the original defence and counterclaim did not allege breach of trust or knowing participation in such a breach.

38 It was also submitted that the First Defendant ought to have had recourse to what was described as the established remedy of a derivative action pursuant to s 216A of the Companies Act 1967 (2020 Rev Ed) ("Companies Act") which, it was submitted, would have resulted in a stay of the order against the company and, if successful, could have led to the minority shareholder taking over the conduct of the action against the company. It submitted that by bringing a personal claim, the First Defendant was attempting to circumvent the legal and procedural hurdles put in place to ensure that only genuinely aggrieved minority interests are brought before the Court. It was also submitted that the Counterclaim was a collateral attack on a prior decision submitting it should not be considered an impediment to a finding of abuse of process that the First Defendant was not, strictly speaking, a party to the litigation between the

Claimants and the Second Defendant. It was submitted that the First Defendant had ample opportunity to present his case but persisted in attempting to relitigate his case in another guise. It was submitted that although it was not an abuse of process per se, it was an abuse of process when the First Defendant had previously consented to the majority shareholders handling the litigation in any manner they thought fit.

39 It was also submitted that although the First Defendant was not a direct party, the default judgment conclusively dealt with the parties' rights and effectively deposed of the issues and the Counterclaim is a collateral attack on that decision.

The First Defendant

40 In submissions filed on behalf of the First Defendant it was pointed out that the First Defendant had filed a counterclaim against the Second Defendant on 2 February 2023. It was also pointed out that it was only on 9 March 2023 when the First Defendant's solicitors received a letter from the Claimants' solicitors that the First Defendant became aware that the Claimants had already filed for default judgment.

41 The First Defendant pointed out that the threshold for striking out a claim under O 16 rr 4(1)(*b*) or (*c*) of the SICC Rules was a high one. Referring also to *Iskandar bin Rahmat* at [18]-[19], he submitted that to succeed in an application under O 16 r 4(1)(*b*) an applicant is required to prove that there has been an improper use of the Court's machinery, such as the claim not being brought *bona fide* or for some other ulterior or collateral purpose, whilst O 16 r 4(1)(*c*) gives effect to the Court's jurisdiction to prevent injustice and applies where a claim is plainly or obviously unsustainable.

42 The First Defendant submitted that the default judgment did not give rise to any form of estoppel, whether cause of action or issue estoppel which would prevent the First Defendant from pursuing the Counterclaim. It was submitted that there was no cause of action estoppel created by the default judgment as the default judgment was a matter which concerns the Claimants and the Second Defendant only.

43 It was submitted, on authority of *Turf Club Auto Enterprises Pte Ltd v Yeo Boong Hua* [2017] 2 SLR 12 at [87] ("*Turf Club Auto*") and *Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No.301* [2005] 3 SLR(R) 157 at [14]-[15], that it was well established that an issue estoppel arises only on the following requirements being met:

(a) First, there must be a final and conclusive judgment on the merits.

(b) Second, the judgment must be of a court of competent jurisdiction.

(c) Third, there must be identity between the parties to the two actions that are being compared.

(d) Fourth, there must be an identity of subject matter in the two proceedings.

44 The First Defendant accepted that a default judgment can give rise to an estoppel *per rem judicatam* but submitted it was only for what "necessarily and with complete precision" had been determined. It referred in that context to the decision of the Privy Council in *Kok Hoong v Leong Cheong Kweng Mines Ltd* [1964] AC 993 ("*Kok Hoong*") in which the Privy Council pointed out there was

a grave danger if the Court was to preclude parties from ever reopening issues relating to a default judgment. It also referred to the decision of the High Court in *Syed Ahmad Jamal Alsagoff v Harun bin Syed Hussain Aljunied* [2011] 2 SLR 661 where the court referring to *Kok Hoong* stated it was necessary to scrutinise the judgment carefully to see what it actually decided (at [35]) and that it was necessary in reaching that conclusion to look at the history of the litigation in some detail (at [46]).

45 It was submitted that in the present case it could not be said that the default judgment determined any of the issues in the Counterclaim.

46 The First Defendant also submitted that there was no identity of parties submitting that the First Defendant was not given an opportunity to respond to or was even given notice of the Claimants request to enter default judgment. It referred, in particular, to *Gleeson v J Wippell & Co Ltd* [1977] 1 WLR 510 ("*Gleeson v J Wippel & Co*") in which Megarry VC concluded that an estoppel cannot arise when a party is not a party to the decision and had no voice in the matter. The First Defendant referred, in particular, to the following statement from the Vice Chancellor's judgment at [518]:

> "Even if one leaves on one side collusive proceedings and friendly defendants, it would be wrong to enable a plaintiff to select the frailest of a number of possible defendants, and then to use the victory against him not merely in terrorem of other and more stalwart possible defendants, but as a decisive weapon against them."

47 It may be said that the Second Defendant fell within the category of friendly defendants referred to by the Vice Chancellor.

48 The First Defendant also noted that the decision in *Gleeson v J Wippell & Co* was approved by the Court of Appeal in *Ching Mun Fong v Liu Cho Chit* [2000] 1 SLR(R) 53 at [27]-[28].

49 It was submitted that in those circumstances the fact that the Counterclaim is "directly in opposition to the default judgment" has no legal significance.

50 It was also submitted that the First Defendant did not waive his rights against the Second Defendant. It was submitted that Mr Ling's email could not be construed as authorising Mr Hii's Nominee Directors on the Board of the Second Defendant not to oppose the entry of default judgment against it.

51 It was also submitted that nothing could be made of the First Defendant's decision not to make an application under s 216A of the Companies Act to bring proceedings in the name of the Second Defendant to set aside the judgment and to defend the Claimants' claim. It was submitted that irrespective of whether Mr Hii's Nominee Directors of the Second Defendant breached their fiduciary duties in failing to oppose the default judgment (a matter not before me), the First Defendant was entitled to select his cause of action. Referring to the decision of the Court of Appeal in *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 at [54] it was submitted that when a party has elected to exercise a right it cannot be said to have abandoned any other rights which it may have except to the extent those rights are inconsistent with each other.

52 It was submitted that the failure by the First Defendant to seek to bring a derivative action cannot be said to constitute an acknowledgement that the

Second Defendant was entitled not to defend the claim brought against it by the Claimants.

Consideration

53 I have set out the parties' submissions in detail and in those circumstances my conclusion and the reasons for it can be set out shortly.

54 In *Turf Club Auto* the Court of Appeal stated (at [82]) that the doctrine of *res judicata* consisted of three conceptionally distinct but interrelated principles namely, cause of action estoppel, issue estoppel and what is known as the extended doctrine of *res judicata* or the defence of abuse of process.

55 In its submissions the Second Defendant placed substantial reliance on the email of Mr Ling to Ms Hii to which I have referred at [14]. If in fact that email could be construed as authorising the majority directors of the Second Defendant to deal with the action brought against it as they thought fit including not defending it and that this was done with the authority of the First Defendant then it may be argued the First Defendant waived its claim to the disputed sum. However, Mr Ling denied this was its intended effect and denied in his affidavit (at paragraph 39) that he had any authority to waive the First Defendant's claim. The First Defendant in his affidavit denied that he agreed directly or indirectly to Mr Hii's nominees on the Board of the Second Defendant defending or not defending the claim as they saw fit.

56 What was said by Mr Ling and the First Defendant is at least consistent with the fact that the First Defendant filed a notice of intention to contest the Claimants' claim on 4 January 2023 and filed his original counterclaim seeking payment of the disputed sum on 2 February 2023.

57 In these circumstances, whatever be the position after a contested hearing, it is inappropriate to determine this issue in the present Summons. To the extent the Second Defendant relies on Mr Ling's letter in support of its application, it must fail.

58 It is not entirely clear whether the Second Defendant is relying on cause of action estoppel, issue estoppel or both. As was pointed out in *Turf Club Auto Enterprises* at [83], cause of action estoppel holds that when a cause of action has been determined by a court of competent jurisdiction to exist or not to exist between the same parties, that decision may not be challenged by either party in subsequent proceedings.

59 The first problem in the present case is that the First Defendant was not a party to the default judgment and appears to have had no notification that it was being sought.

60 In its written submissions the Second Defendant asserted that although the First Defendant is not a direct party, the judgment conclusively dealt with the party's rights.

61 Although I accept a default judgment can give rise to both a *res judicata* and an issue estoppel, I accept the First Defendant's submission that it was necessary to determine with complete precision what has been decided and to do so having regard to the history of the litigation (see [43] above). This history includes the fact that the First Defendant prior to the entry of default judgment had filed a defence to the Claimants' claim putting in issue the question of the entitlement to the disputed sum and filed a counterclaim against the Second Defendant for that amount. It seems to me inconceivable that the judgment

should be considered as dealing with these matters without any regard to that defence and counterclaim and without any notification to the First Defendant.

62 There are similar difficulties with the First Defendant's application to the extent it is based on issue estoppel. I have set out the necessary elements at [58] above. For the same reasons as those to which I have referred in dealing with cause of action estoppel, it seems to me that in the circumstances of the present case, there was neither a final or conclusive judgment against the First Defendant nor any identity of parties. The application, so far as at is based on the doctrine of issue estoppel, has not been made out.

63 The Second Defendant finally relied on the extended doctrine of *res judicata* contending it was an abuse of process to bring the Counterclaim having regard to the default judgment.

64 There may be force in this argument if it could be established that the First Defendant agreed or acquiesced in the Second Defendant not defending the claim. However, that is a matter which, as I have pointed out, is plainly a disputed issue between the parties. It cannot be determined in an application of the present nature. Absent such agreement or acquiescence, it cannot be said to be an abuse of process to assert a claim or right which was not dealt with in the application leading to the default judgment.

65 Finally, it was suggested that in some way it was an abuse of process for the First Defendant to bring its Counterclaim rather than bringing an application under s 216A of the Companies Act. There is no reason, in my view, why the First Defendant should be compelled to bring that application as distinct from seeking to enforce his personal rights. If the First Defendant had made an application under s 216A for an order that he be entitled to defend the

Claimants' claim in the name of the Second Defendant, that would not be inconsistent with asserting his personal rights.

66 For these reasons, the summons should be dismissed. I make the following orders:

(a) SIC/SUM 1/2024 is dismissed.

(b) The Second Defendant is to pay the First Defendants the costs of the summons. The parties are to put in written submissions not exceeding two pages on the issue of costs within 14 days of this judgment.

(c) The parties are to agree with the Registry a suitable time and date for a further Case Management Conference.

Thomas Bathurst KC
International Judge

Teo Yi Hui (Pointer LLC) for the 2nd Defendant;
Ong Boon Hwee William, Xu Jiaxiong, Daryl, Su Jin Chandran, Nicholas Kam Xuan Wei and Matthew Soo Yee (Allen & Gledhill LLP) for the 1st Defendant.