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

**[2024] SGHC 180**

Originating Claim No 490 of 2023 (Registrar's Appeal No 80 of 2024)

Between

Zhang Jinhua

… *Appellant*

And

Yip Zhao Lin

… *Respondent*

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# JUDGMENT

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[Civil Procedure — Judgments and orders]
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# v
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7 June 2024

12 July 2024 Judgment reserved.

**Mohamed Faizal JC:**

1 This is an appeal from the decision of the learned Assistant Registrar ("the learned AR") to set aside a default judgment obtained by the Appellant in HC/JUD 359/2023 ("JUD 359"). The default judgment in JUD 359 finds its genesis in a deed that was entered into by the Respondent ostensibly in his personal capacity on 3 October 2019 ("the Deed"), in which he promised to fully repay a sum of RMB38.04m by the end of 2019, failing which the amount would be due at a rate of 15% interest with the Respondent liable for costs.[1]

2 Although the main issue on appeal related to whether a default judgment granted against the Respondent ought to be set aside on grounds that the Respondent possesses a *prima facie* defence suggestive of triable issues, the

[1] Affidavit (Zhang Jinhua) dated 9 April 2024 at pp 20–27.

matter before me, as well as the journey it has traversed, also highlights the importance of selecting methods of substituted service that would be most likely to be effective in providing notice of the proceedings to the other party in each case.

**Facts**

3 On 31 July 2023, the Appellant commenced HC/OC 490/2023 ("OC 490") which sought payment as agreed in the Deed. The parties agree that between the time the Deed was signed, and the time OC 490 was commenced, the Respondent did not make any payment in satisfaction of the purported debt as set out in the Deed.

4 The Appellant averred that personal service was unsuccessful and impractical given that the Claimant had attempted to visit the Respondent's registered address in Singapore twice and he had not been around either time.[2] Subsequently, on or around 14 August 2023, the Appellant obtained an order for substituted service to serve the cause papers for OC 490 ("the Cause Papers") on the Respondent by way of registered post to the Respondent's residential address and via his Singpass inbox.[3] Such forms of service were subsequently undertaken and thereafter, as the Respondent did not file any notice of intention to contest in line with the prescribed timelines, the Appellant obtained JUD 359 on 18 September 2023.[4]

5 On the back of JUD 359, the Appellant commenced bankruptcy proceedings against the Respondent sometime in February 2024. The

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2 1st Affidavit (Kang Kok Boon Favian) dated 11 August 2023 at paras 5–9.

3 HC/ORC 3755/2023 ("ORC 3755").

4 HC/JUD 359/2023.

bankruptcy application was, according to the Appellant's counsel in the proceedings before me, filed on 15 February 2024, and served the next day.[5] It was common ground that the parties had communicated on 16 February 2024 *via* WeChat to meet up, and that the papers in support of the bankruptcy proceedings were personally served on the Respondent then.[6]

6 On 29 February 2024, the Respondent filed HC/SUM 552/2024 ("SUM 552") to set aside JUD 359. In gist, the Respondent contended that he only became aware of JUD 359 when he was served with the papers for the bankruptcy application on 16 February 2024.

**The learned AR's decision**

7 The learned AR dealt with three issues:

(a) whether the service of the Cause Papers on the Respondent pursuant to ORC 3755 was irregular because the Respondent had not in fact been notified of the proceedings in OC 490;

(b) whether the Respondent demonstrated a *prima facie* defence that raises arguable or triable issues to the claim under the Deed; and

(c) if so, whether JUD 359 is to be set aside in the circumstances of this case.

***Whether the service of the Cause Papers on the Respondent was irregular***

8 The Respondent's arguments on the matter of whether service was irregular were as follows. The Respondent did not speak and understand

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5 Minute Sheet dated 7 June 2024 at pp 8–9.

6 Minute Sheet dated 7 June 2024 at pp 6 and 9.

English, and the Appellant knew this. Further, the parties had always been communicating by WeChat. Indeed, cl 5 of the Deed even provided that the Respondent "shall remain contactable at all times on WeChat". Despite this, the Appellant chose to serve the Cause Papers by other means, *ie*, registered post and Singpass inbox, the latter of which the Respondent claims to have no working knowledge. The Respondent thus only became *factually* aware of OC 490 after he was personally served with the papers for the bankruptcy application.

9 The Respondent therefore argued that notwithstanding the Cause Papers being served pursuant to ORC 3755, notice of the proceedings in OC 490 had not been brought to his attention, and the court should thus set aside JUD 359 pursuant to O 3 r 2(8)(*a*) of the Rules of Court 2021 ("ROC 2021"). For ease of reference, O 3 r 2(8)(*a*) ROC 2021 provides as follows:

> (8) The Court may, on its own accord or upon application, if it is in the interests of justice, revoke any judgment or order obtained or set aside anything which was done —
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> (*a*) without notice to, or in the absence of, the party affected;
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> (*b*) without complying with these Rules or any order of Court;
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> (*c*) contrary to any written law; or
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> (*d*) by fraud or misrepresentation.

10 The learned AR held that the reference to "anything which was done without notice to… the party affected" in O 3 r 2(8)(*a*) of the ROC 2021 does not refer to a situation where legal proceedings were not brought to the "notice" (in the literal sense of that word) of the other party. Instead, it referred to judgments or orders obtained on an *ex parte* basis.[7]

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7 Oral Judgment dated 19 April 2024 at [9].

11 The learned AR opined that in a "without notice" application for an order for substituted service, a claimant is required to satisfy the court that the methods of substituted service sought is sufficient to bring the proceedings in question to the defendant's attention (para 65(1) of the Supreme Court Practice Directions 2021). However, once the order for substituted service is issued, service in accordance with the methods identified in the order is *deemed* effective in giving notice to the defendant: *Oversea-Chinese Banking Corp Ltd v Frankel Motor Pte Ltd and others* [2009] 3 SLR(R) 623 ("*Frankel Motor*") at [11]. The learned AR opined that "if it were open to a defendant to subsequently complain that the proceedings had not been brought to his attention pursuant to substituted service despite him not having set aside the underlying order for substituted service, it would effectively render the entire regime of substituted service nugatory". Hence, the learned AR observed that, as the High Court held in *Frankel Motor* at [14], a defendant who seeks to set aside a default judgment on the basis that it was an irregular default judgment must first apply for the order for substituted service to be set aside, before having the default judgment set aside on the basis of irregularity.[8]

12 While the learned AR accepted that it was "odd" for the Appellant to not have included substituted service via WeChat as one of the methods of substituted service, the Appellant was nonetheless "bound to pursue other methods of substituted service that he considers are capable of bringing OC 490 to the defendant's attention, apart from messaging by WeChat".[9] Moreover, the Respondent did not apply to set aside the substituted service order and there was accordingly no basis on which the substituted service of the Cause Papers

8 Oral Judgment dated 19 April 2024 at [10].

9 Oral Judgment dated 19 April 2024 at [11].

pursuant to that substituted service order could be impugned.[10]

13 The learned AR thus held that JUD 359 was a regular default judgment. This was significant because, as the learned AR rightly observed, the Court of Appeal in *Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 ("*Mercurine*") at [43] made plain that distinct standards apply for the setting aside of *regular* judgments as against *irregular* judgments.

(a) In the former situation involving regular judgments, the legal burden would be on the defendant to show that it can establish a *prima facie* defence in the sense of there being triable or arguable issues. This is then to be balanced against all other relevant considerations, including any delay in bringing the setting-aside application and the explanation for such delay: *Mercurine* at [60] and [65].

(b) In the latter situation involving irregular judgments, the starting point is that the defendant is entitled to set aside the default judgment as of right. This would especially be so in cases where there has been egregious procedural injustice suffered by the defendant. One such case is where the claimant fails to give the defendant proper notice of the proceedings: *Mercurine* at [76]. Where there has been no egregious procedural injustice, the court must consider whether to nonetheless set aside the irregular judgment on some other basis. For instance, if the defendant is "bound to lose" were the default judgment to be set aside and the matter re-litigated, the court should ordinarily uphold the default judgment subject to any variations or conditions which the court deems fit to make or impose respectively: *Mercurine* at [76]–[77], [92] and [96].

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10 Oral Judgment dated 19 April 2024 at [11].

14 Given that the learned AR found that this was a regular default judgment, he turned to consider the secondary matter of whether the Respondent was able to establish a *prima facie* defence.

***Whether the Respondent demonstrated a* prima facie *defence***

15 In the proceedings below, on the matter of whether there was a *prima facie* defence, the Respondent had raised the defence of duress and/or unconscionability. According to the Respondent, the Appellant had, through the General Manager of the Respondent's company, one Mr Chen, invested in the Respondent's business venture. This business venture subsequently failed.[11] The Respondent alleged that the Appellant as well as other investors then pressured him and Mr Chen to repay the investment, including by using harassment, threats and instances of physical harm. Out of fear, the Respondent agreed to enter into the Deed. The Deed was therefore entered into under circumstances of fear and pressure and was consequently unenforceable. This would then amount to a *prima facie* defence which raises triable issues.[12] The Respondent claims to have made police reports regarding these circumstances at the material time and was trying to locate these reports when his affidavit for SUM 552 was affirmed.

16 The Respondent also made the following points which he claims illustrates the inequality of the bargain in the Deed.:

(a) The agreement for the Respondent to repay the Appellant's investment sums took the form of a deed where there is no requirement for contractual consideration. The Respondent contended that but for the

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11 Affidavit (Yip Zhao Lin) dated 28 February 2024 at paras 22−23.

12 Oral Judgment dated 19 April 2024 at [12].

pressure exerted, he would not have entered into the Deed.

(b) The Respondent had assumed personal liability for a very significant sum of money that the Appellant had invested in the company by which the business venture was conducted, and for which the Respondent otherwise would have had no personal liability.

The Respondent says that the above points suggest that the Deed was procured under circumstances of considerable pressure.

17 The Appellant denied these allegations and contended that there was no defence on the facts. For one, he noted the existence of a series of WeChat messages sent by the Respondent to him after the Deed had been entered into. In those messages, while sending Chinese New Year greetings to the Appellant, the Respondent appeared to accept that it was incumbent on him to repay the investments. The Appellant contended that this was somewhat at odds with the Respondent's claim that he entered into the Deed out of fear and pressure. For another, the Deed had been signed in a solicitors' office and in the presence of a solicitor as a witness. If the Respondent was truly feeling threatened or pressured, he could have asked for assistance during the signing of the Deed but he did not do so. Finally, the Appellant pointed out that the Respondent is an experienced businessman so it would have been quite unlikely that he could have been pressured or threatened into signing the Deed.

18 After considering the respective arguments, the learned AR was of the view that the Respondent demonstrated a *prima facie* defence of duress or unconscionability that gave rise to triable issues. In the learned AR's view, the crucial question pertaining to the defences of duress or unconscionability was whether there was proof of the Respondent's state of mind at the time when he

entered into the Deed. On this point, the learned AR opined that the veracity of the Respondent's assertions as to his state of mind at the time had to be tested by cross-examination of the various individuals involved, including the ostensible witnessing solicitor.

19 There was also nothing on the face of the Respondent's assertions which suggested to the learned AR that his defence was to be disbelieved. In this regard, the factors pointed out by the Appellant were not inconsistent with the Respondent labouring under threats or pressure at the time of the Respondent signing the Deed:

(a) The fact that the Respondent was an experienced businessman did not mean that he would not be victim to the alleged pressure and threats placed upon him.

(b) The Respondent's failure to adduce the police reports also was not detrimental to his case – the Respondent was only required to show triable issues and not necessarily adduce all evidence to strengthen his case at this juncture.

(c) That the Respondent continued communicating with the Appellant via WeChat and even sent him Chinese New Year greetings did not in and of itself show that he did not face pressure and threats when the Deed was entered into. The messages in particular did not reveal what the Respondent's state of mind was when the Deed was signed.

(d) The fact that the Deed had been signed in a solicitors' office and with a solicitor as a witness did not mean that the Respondent would not have felt pressured or threatened when he signed the Deed. Importantly,

it did not appear that the Respondent had the benefit of legal advice at the time he signed the Deed.

(e) The fact that the Respondent did not seek legal advice immediately after signing the Deed was a neutral factor. He could have omitted to do so for reasons only known to himself. Whether this undermined his underlying defence was a matter that could only be properly ascertained at trial.

(f) The Respondent's WeChat messages constituting his admission of liability and acceptance that it was incumbent on him to pay was also a neutral factor. First, there was no dispute that the Appellant did invest substantial sums into the Respondent's company. In this context, the Respondent's admission of liability was not significant. Second, even if the Respondent did admit to personal liability, this did not affect his defence. His defence was not that he did not enter into the Deed but had entered into the Deed under distressing or unconscionable circumstances.

20 The learned AR thus found that the Respondent had demonstrated a *prima facie* defence which raises triable issues.

***Whether JUD 359 should be set aside***

21 Having found that there was a *prima facie* defence, the learned AR then turned to balance these matters with the interrelated considerations of the Respondent's delay in pursuing the setting aside application, and the Respondent's explanation for the delay.

22 The Respondent had contended that he only knew of OC 490 on

16 February 2024 when the papers for the bankruptcy application were personally served on him. This was because he did not know about the SingPass inbox and did not understand English, so the substituted service of the Cause Papers failed to bring OC 490 to his attention. The Appellant disputed this, saying that on 8 March 2024, the Respondent had sent a WeChat message to him which stated that he had mentioned "two months ago" to have their respective lawyers "start communicating". This, the Appellant said, meant that the Respondent must have been aware of OC 490 by sometime in January 2024 (*ie*, two months prior to that message being sent) at the latest. The Appellant further alleged that the Respondent had been aware of JUD 359 all along and deliberately ignored it until the Appellant brought the bankruptcy application against him.

23 The learned AR held that an interlocutory proceeding like SUM 552 was not the appropriate forum to resolve these conflicting accounts. There was no evidence that could lead the learned AR to prefer one account over the other. The learned AR further noted that even if the Respondent had deliberately chosen not to set aside JUD 359 until he knew about the bankruptcy application against him, that delay could be dealt with through other means including the imposition of costs.

24 Given that the Respondent had demonstrated a *prima facie* defence showing triable issues, the fact that there had been a significant period of delay was not a reason against the setting aside of JUD 359. The learned AR accordingly set aside JUD 359.

25 The Appellant appealed against the decision of the learned AR, contending that he had erred in concluding that there was a *prima facie* defence such that JUD 359 ought to be set aside. In the alternative, the Appellant took

the view that even if JUD 359 were set aside, only conditional leave to defend ought to be granted in view of the purportedly shadowy defence on the part of the Respondent, and that, in particular, the Respondent should be ordered to provide security in the sum of S$1m[13] (for context, the principal sum of RMB 38.04m claimed approximates to about S$7m). It was in this context that the matter came before me.

## My decision

### *The Respondent has raised a* prima facie *defence showing triable issues*

26 The primary issue raised on appeal and the primary focus of the parties' submissions before me was whether the learned AR was correct in his assessment that the Respondent had a *prima facie* defence, such that the setting aside of JUD 359 was warranted. For the reasons set out below, I agree with the learned AR's assessment that there was indeed a triable issue on the facts.

27 In the decision of *Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 ("*Mercurine*"), the Court of Appeal held (at [60]) that "in deciding whether to set aside a regular default judgment, the question for the court is whether the defendant can establish a *prima facie* defence in the sense of showing that there are triable or arguable issues". Nonetheless, leave to defend will not be granted on the basis of a defendant's mere assertions alone; instead, the court will consider the complete account of events put forth by both the claimant and the defendant, and decide whether the defence is credible: *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 at [25], citing *Microsoft Corporation v Electro-Wide Limited* [1997] FSR 580 at 593–594.

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[13] Claimant's written submissions dated 9 May 2024 at paras 58−63 and 68.

28 The court also may also set aside default judgments in the interests of justice. O 3 r 2(8)(*a*) ROC 2021 provides:

> (8) The Court may, on its own accord or upon application, if it is in the interests of justice, revoke any judgment or order obtained or set aside anything which was done —
>
> > (*a*) without notice to, or in the absence of, the party affected;
>
> …

I agree with the learned AR that O 3 r 2(8)(*a*) ROC 2021 allows the court to revoke or set aside anything arising from an *ex parte* application, if it is in the interests of justice to do so. Since JUD 359 was obtained *ex parte*, this court would have the power to set it aside if the interests of justice require it.

29 In my view, the learned AR was correct in his assessment that there was a *prima facie* defence indicating the presence of triable issues. Based on the evidence before me, including the defence filed in relation to OC 490 on 10 May 2024, the Respondent's detailed narrative of the circumstances in which he signed the Deed suggested that the deed was signed in an oppressive setting and in circumstances where he was not even aware of its contents. In particular, the defence related to circumstances in which, just prior to signing the deed, the Appellant and associated parties sent a litany of threats and undertook numerous acts of harassment against him and Mr Chen, with a view to pressuring the Respondent and Mr Chen to repay the investments that had been made pursuant to the failed business venture.[14] The Defendant contends that the threats were of such a grave nature and continued for so long after the Deed was signed, that Mr Chen elected to take his own life in 2022.[15]

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14 Defence (Merits) at paras 5(d)−(e).

15 Defence (Merits) at para 8.

30 The Appellant seeks to portray the defence as outlandish, implausible and contradicted by objective evidence. In particular, the Appellant contends that the Respondent was "an experienced businessman" and would not have been "pressured or threatened into signing a deed".[16] As I have mentioned (see [17] above), the Appellant relied on selected conversations over WeChat between the parties that postdated the Deed, in which they appeared to be discussing repayment using a respectful tone. This, according to the Appellant, not only suggests that the Respondent saw himself as obliged to repay the Appellant the monies owed, but also shows that there must have been no duress or coercion of any form that surrounded the signing of the Deed. The Appellant further argues that it was all too convenient that the issues surrounding the Deed were only surfaced by the Respondent after bankruptcy proceedings were filed – this, the Appellant contends, suggests that the Respondent is merely seeking to manufacture a factual dispute at this stage to avoid a possible bankruptcy.[17]

31 As I had indicated to the Appellant's counsel during oral submissions before me, the problem with his case lies in the fact that while the contentions he has advanced (as summarised in the preceding paragraph) were fair inferences, they were by no means the only inferences that could be drawn from the evidence. I accept that there is some force to the Appellant's point that as a savvy businessman, it would be somewhat curious for the Respondent to cave in to pressure, and further, that even if he did so, that he did not disavow his acts committed under such pressure at the earliest opportunity once he was no longer subject to that pressure. Nonetheless, it is also plausible that a savvy businessman would assume that the pressure and threats would only continue if he kept seeking to explicitly disavow the Deed, and figured that rather than

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16 Claimant's written submissions dated 9 May 2024 at para 52.

17 Minute Sheet dated 7 June 2024 at p 4.

doing that, it would be strategically sensible to not mention the Deed anywhere in the subsequent WeChat conversations in which the parties were trying to resolve their underlying issues. This would especially be so if the Respondent were, as he claims, unaware of the specific contents of the Deed and was therefore not in a position to specifically disavow the contents of a document that he was not intimately familiar with. In the context of a continuing relationship, it would also be understandable if the Respondent felt it inappropriate to explicitly disavow the Deed if no legal action was being taken and it was, in that sense, still possible for the dispute to be resolved informally.

32 Furthermore, the argument that the Respondent was a savvy businessman cuts both ways. After all, as I pointed out to the Appellant's counsel, the evidence before me suggests that the initial investments made by the Appellant to the Respondent in 2016 were in the form of payment for shares in the company. Put another way, from the documents adduced by the Appellant, it would appear that what the Appellant sought to do was to buy equity in the Respondent's company. Significantly, the Appellant did not dispute this. If this were so, then it would follow that the Respondent had no personal liability in relation to the debt owed by his company since it is trite that a company is a separate legal entity from its directors and shareholders. Why then would any "savvy businessman" in the right frame of mind be willing to sign the Deed and, in the process, accept *personal* legal liability for which he otherwise did not have to be responsible, to the tune of millions of dollars?

33 Against this, the Appellant's counsel contended before me that it is common for directors of companies to incur personal liability to procure financing.[18] In my view, this does not assist the Appellant in any way, given that

[18] Minute Sheet dated 7 June 2024 at p 3.

it is not in dispute that the Deed was not, as the above chronology of events would highlight, signed for the purpose of procuring any means of financing. It was not, for example, as if the Deed were signed in exchange for further *additional* equity being placed in the Respondent's company. Therefore, the question of why the Respondent would have willingly agreed to personally take on such inordinate liability for which he otherwise would not have been responsible, remains. The only conclusion must be that there were indeed extraneous considerations that led him to sign the Deed. I accept that these extraneous considerations could possibly have been benign in nature, but if that were the case, what these reasons might be were not readily apparent from the evidence before me. In the absence of any evidence as to why the Appellant would enter into such a disadvantageous financial arrangement, it was clear that I would not be able to rule summarily that the Respondent's version of events was indisputably false.

34 The Appellant further argues that the Respondent's defence was "bare" and not supported by evidence.[19] I disagree. It is worth noting that the Deed is quite disadvantageous to the Respondent, to the point of making him responsible to bear interest at the exacting rate of 15% for non-compliance with the payment terms in the Deed, for a debt which was not even his to begin with. This, in my view, coupled with the fact that the Respondent was taking personal liability for something he otherwise did not need to, makes the Respondent's defence plausible.

35 It is, in my view, necessary to assess the circumstances of the Deed in order to properly consider the veracity and credibility of the Respondent's claims, and more broadly, to understand what precisely transpired that resulted

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19 Claimant's written submissions dated 9 May 2024 at para 27.

in the signing of the Deed. It follows that such an assessment would require parties' testimonies to be adduced, and then stress-tested by way of cross-examination. Without a trial, it would be impossible for the court to make a proper finding on those matters.

36 If so, then the question that falls on me to further consider is whether such facts, if they are eventually proven at trial, would likely suffice to afford the Respondent a defence of duress and/or unconscionability. On this front, it is quite clear that the answer must be in the positive. In this regard, I agree with the AR's summary of the law on these areas:[20]

> …Economic duress that is capable of operating as a vitiating factor required two elements: (a) first, pressure amounting to compulsion of the will of the victim; and (b) secondly, the illegitimacy of the pressure exerted (see *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners*) [2011] 2 SLR 232 at [51]). As for the doctrine of unconscionability, a party can invoke it by showing that he was suffering from an infirmity that the other party had exploited in procuring the transaction, and thereupon it was for the other party to demonstrate the transaction was fair, just and reasonable (see *BOM v BOK and another appeal* [2019] 1 SLR 349 at [142]).

If the Respondent's account in his defence is ultimately assessed to be true, then barring any additional facts, the purported threats and harassment against the Respondent would appear, in my view, to satisfy the requirements of duress and unconscionability needed to vitiate the Deed, thereby negating any liability under it.

37 I am accordingly in agreement with the learned AR that a *prima facie* defence has been disclosed. I also agree that the Respondent's period of delay in applying to set aside the default judgment does not, on balance, warrant that

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[20] Oral Judgment dated 19 April 2024 at [16].

the default judgment be upheld – the delay would be better dealt with through costs (see [23]–[24] above). I thus agree with the learned AR that the default judgment should be set aside.

38 On this point, I also note that, in the alternative, the Appellant suggests that if I were minded to set aside the Default Judgment, the Respondent should be required to furnish security on the basis of being granted only conditional leave to defend.[21] Conditional leave is typically given when the Court opines that the defence, while not entirely bereft of hope, is sufficiently implausible such that some demonstration of commitment to the defence in question on the part of the defendant is warranted: see *Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 at [43] and [44].

39 In my view, it would not be appropriate to order that the Respondent only be granted conditional leave to defend. For the reasons I have already set out above, I am of the view that there are serious questions to be had about the circumstances surrounding the signing of the Deed, and the Respondent's state of mind at the material time. The Respondent's defence was not incredible or otherwise implausible such that it would be appropriate to impose conditions on the Defendant's leave to defend.

***JUD 359 is an irregular judgment in any event***

40 The above reasoning suffices to dispose of this matter and would necessitate a dismissal of this appeal.

41 Nonetheless, as noted above, the learned AR assessed the matter on the

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[21] Claimant's written submissions at paras 58–68; Minute Sheet dated 7 June 2024 at p 6.

premise that the judgment recorded was a regular judgment as opposed to an irregular one. I have some reservations with the learned AR's conclusion that this amounted to a "regular" default judgment, and to my mind, this would serve as an alternative, equally valid, reason to dismiss the appeal.

42 To recapitulate, the learned AR held that as long as the substituted service order is in place, the defendant is deemed to have notice of the underlying action. Hence, if a defendant wishes to set aside a default judgment due to an irregularity in substituted service, that defendant must first apply for the order for substituted service to be set aside, before applying to set aside the default judgment: see [11]–[13] above.

*The law*

43 It has been said that a court ordinarily cannot set aside a default judgment based on the mere fact that the defendant has not had notice of the proceedings; to do so would be to circumvent the order for substituted service. It has also been said that as long as a claimant effects service according to the methods specified in the substituted service order, the law deems that actual service has been effected. These propositions stem from *Watt v Barnett* (1878) 3 QBD 363, in which the court held the following:

> The Court, when an application for leave to effect substituted service is made, decides as to the propriety of granting it, and ***if service is effected according to the order of the Court*** *it is, while the order remains undischarged,* ***equivalent for all purposes to actual service***. I agree, however, with both the learned judges that, though the service may have been regular according to the order, still the Court has power to set aside the judgment where that is necessary for the purpose of doing substantial justice. The mere fact that the defendant has not had notice of the proceedings is not of itself sufficient; *to hold it to be so would in fact be* ***setting aside the order for substituted service***. But if he shews that he had no notice, and that he has a good ground of defence, it is reasonable that he

> should be let in to defend. The first question then is whether the Court is satisfied that there is a good defence on the merits, if not, leave to come in ought to be refused.
>
> [emphasis added]

The above propositions were endorsed in *Frankel Motor* at [12].

44 I agree with the learned AR that substituted service done according to a relevant substituted service order should ordinarily be deemed to be effective service. However, I do not agree that in *all* circumstances the court may only set aside a default judgment whose irregularity arises from defective substituted service after *a defendant* has set aside the order for substituted service. The court, after all, may set aside an order for substituted service *on its own accord*, pursuant to O 3 r 2(8)(*a*) ROC 2021. For convenience, I reproduce O 3 r 2(8) ROC 2021 once more:

> (8) The Court may, on its own accord or upon application, if it is in the interests of justice, revoke any judgment or order obtained or set aside anything which was done —
>
> (*a*) without notice to, or in the absence of, the party affected;
>
> (*b*) without complying with these Rules or any order of Court;
>
> (*c*) contrary to any written law; or
>
> (*d*) by fraud or misrepresentation.

Since substituted service orders are generally obtained *ex parte*, they fall under limb (*a*) of O 3 r 2(8). Hence, it is open for the court, if it is in the interests of justice on the facts of a case, to set aside an order for substituted service and then set aside a default judgment arising therefrom. The court could then, among other things, rely on a defendant's submission to the jurisdiction of the court (*eg*, if the defendant files its defence to court) to re-establish its jurisdiction over the dispute: see s 16(1) SCJA. If there is such submission, that would obviate

the need for a claimant to effect fresh service.

45 In my judgment, where a party is not candid about the methods of substituted service which he ought to know would be effective in bringing the document in question to the other party, a court should be entitled to scrutinise such conduct and consider whether this should result in a setting aside of any subsequent default judgment that is obtained.

46 Such a stance is consonant with the purpose of service in general, as well as that of substituted service. This is because the very premise of service is to communicate or give notice of a court document or process (*eg*, an application) such that the recipient may address the matter, respond and state his position (if he wishes to do so): Jeffrey Pinsler SC, *Singapore Court Practice* (LexisNexis Singapore, 2024) ("*Singapore Court Practice*") at para 7.1.3. This necessarily implicates concerns of natural justice, specifically, that of giving every party the opportunity to be heard: see *Paulus Tannos v Heince Tombak Simanjuntak and others and another appeal* [2020] 2 SLR 1061 at [42]–[44]. In particular, service of an originating process is such a fundamental tenet of our litigation process that it is a primary basis for establishing the jurisdiction of the court: see *Singapore Court Practice* at para 7.1.3 and s 16(1)(*a*) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"). Personal service has traditionally been viewed as the most effective means of ensuring that the recipient is notified of the document, as it generally involves physical delivery of the document to the recipient. Personal service is therefore required for circumstances where notification to the recipient is critical to the integrity of the litigation process: *Singapore Rules of Court: A Practice Guide* (Chua Lee Meng ed-in-chief, Paul Quan gen ed) (Academy Publishing, 2023) ("*Singapore Rules of Court: A Practice Guide*") at para 07.004.

47 An originating process is usually required to be served personally (see O 6 r 4 ROC 2021), because it is the document which initiates the action, and notification to the recipient regarding the action is thus critical. Nonetheless, in some cases, personal service may be impracticable or impossible. It may be that the recipient may be intentionally avoiding service, or simply that the recipient's whereabouts are unknown: *Singapore Rules of Court: A Practice Guide* at para 07.033. It may also be, for some reason or other, that it is simply impractical to facilitate personal service. To deal with these issues, the court has the discretion to order substituted service. Order 7 r 7 ROC 2021 provides as follows:

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

48 As can be seen from O 7 r 7, there are two conditions to the grant of substituted service: first, that it is impractical for any reason to serve the document personally; and second, that the mode of substituted service is effective in bringing the document to the person to be served. Regarding the second condition, the proposed mode of substituted service must be probably effective in bringing the document in question to the notice of the person to be served: see also para 65(1) of the Supreme Court Practice Directions 2021 ("SCPD 2021"). The cases clarify the standard of probability that the claimant must meet: the proposed method of service must "in all reasonable probability, if not certainty, be effective to bring knowledge of the writ… to the defendant": *Storey, David Ian Andrew v Planet Arkadia Pte Ltd and others* [2016] SGHCR

7 ("*Storey*") at [9], referring to *Porter v Freudenberg* [1915] 1 KB 857 at 889.

49 From the above, and *in the context of service of an originating process*, it is clear that while substituted service serves as a proxy for personal service where it is impractical to effect the latter, the aim of the substituted service mechanism is ultimately to create the *highest possible chance* that a defendant would be notified about the proceedings through a reasonable means of service. In other words, the cornerstone of substituted service is efficacy at bringing notice: *Storey* at [9]. This is why a claimant is required to propose methods of substituted service that would *in all reasonable probability* be effective to bring knowledge of the proceedings to the defendant. Where there is a failure to do this, *and the defendant is unaware of the proceedings as a result*, this would make a mockery of not only the purpose of substituted service but also the fundamental rule of natural justice that a every party should be given an *opportunity* to be heard: see [46] above. In this regard, some (non-exhaustive) factors that point toward setting aside a substituted service order and, by extension, a default judgment obtained therefrom, include:

(a) a claimant proposing methods of substituted service that he knows or ought to know would be unlikely to bring knowledge of the proceedings to the defendant;

(b) a claimant failing to propose a method that is self-evidently more effective in notifying the defendant than the proposed methods; and/or

(c) a claimant being less than candid about other methods which it ought to know would be effective in notifying the defendant.

This approach is also consistent with the rule that on an *ex parte* application, a party's failure to give full and frank disclosure is a ground for the court to

exercise its discretion to set aside a discretionary order or remedy obtained by that party: see *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 ("*Vasiliy Golovnin*") at [83]. In deciding whether to set aside such an order or remedy, the court will conduct "a measured assessment of the material facts as well as the circumstances in which the application has been made": *Vasiliy Golovnin* at [84].

50 Where the court sets aside an offending substituted service order, a default judgment arising from that substituted service order is treated as an irregular default judgment. This is because once the substituted service order is set aside, it follows that the defendant could not have been deemed to have been properly received service of the proceedings. Therefore, on these facts, if the order for substituted service were set aside, then at the time JUD 359 was issued, the court would have had *no jurisdiction* over this dispute (see s 16(1)(*a*) SCJA), such that JUD 359 should not have been issued at all. In any event, the effect of setting aside the substituted service order is that the defendant *did not have notice* of the proceedings, which is a ground to set aside a default judgment for irregularity: see *Mercurine* at [76].

*Application to the facts*

51 I turn now to the facts. Pursuant to the points above, two interrelated questions arise:

(a) One, why did the Appellant, who was in correspondence with the Respondent, decide not to inform the latter that he was seeking to file a suit against him, and inform him that he was unable to effect personal service and to ask for information on how best to do so (or at least to put him on notice that this was being done)?

(b) Two, why did the Claimant not seek to apply for substituted service by way of social messaging, *ie*, service via WeChat, given that this was effectively the mode of communications agreed upon between the parties, and, given their constant discussions there, would be a platform where the Appellant could in all reasonable probability notify the Respondent of the intended suit?

These questions are especially pertinent given that the Deed itself makes it clear that communications in relation to the Deed should be done *via* WeChat. In particular, cl 5 of the Deed explicitly sets out that the Respondent "shall remain contactable at all times on WeChat [at his mobile number]".[22] If the primary modus of communication for matters pertaining to the Deed was contemplated to be WeChat, it is even more anomalous that the Appellant avoided using WeChat when it was time for the Appellant to effect service pursuant to the purported breach of that Deed.

52 Such unresolved concerns are further amplified once one appreciates the manner in which the bankruptcy application (set out at [5] above) was served. For the bankruptcy application, both sides confirmed during the hearing before me that the parties conversed over WeChat (the specifics of which, admittedly, are unclear) and mutually arranged a time to meet up, at which the Respondent was personally served with the bankruptcy application.[23] Shortly after being served such documents, the Respondent called his present set of lawyers,[24] and filed this application to vacate the default judgment. From this, one may surmise that the Appellant likely conversed with the Respondent on WeChat to prepare

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22 Affidavit (Zhang Jinhua) dated 9 April 2024 at p 22.

23 Minute Sheet dated 7 June 2024 at pp 6 and 9.

24 Minute Sheet dated 7 June 2024 at p 6.

the Respondent to receive personal service of the bankruptcy application papers. One immediate question that arises then is why the Appellant did not do the same for OC 490. This is incredibly puzzling because the Appellant's conduct pertaining to the service of the bankruptcy application reveals not only that the Appellant clearly knew or ought to have known that he could reach the Respondent via WeChat for legal matters, but also that the Respondent was always contactable on that platform and that WeChat could be used to arrange personal service. Indeed, one could take the point further and contend that all this proves that personal service was by no means "impractical", and that the Appellant had not "made all reasonable efforts and used all available means in its power to personally serve" the Cause Papers, contrary to the Appellant's averments in his affidavit seeking substituted service.[25]

53 Nonetheless, even if one looks past that and assumes that substituted service was appropriate, the points in the preceding paragraph also show that the Appellant ought to have proposed WeChat as an additional method of substituted service. During the hearing before me, the Appellant contended that the choice of SingPass and registered mail as substituted service options were informed by the following considerations:[26]

(a) that it is not unheard of for individuals to feign being uncontactable on social media platforms, so any attempt to try and include service on that basis may ultimately be futile; and

(b) that SingPass and registered mail would be effective since it would be almost a given that everyone checks their SingPass.

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25 1st Affidavit (Kang Kok Boon Favian) dated 11 August 2023 at para 9.

26 Minute Sheet dated 7 June 2024 at p 5.

54 With respect, these arguments do not take the Appellant very far:

(a) First, the concerns that some individuals may feign being uncontactable on social media platforms are hypothetical and speculative, especially since there has been no evidence that the Respondent has ever feigned ignorance of any messages. Indeed, the fact that the Appellant incorporated a clause insisting that the Respondent be answerable to him at all times on WeChat suggests that even the Appellant does not think it likely that the Respondent would be unresponsive on that platform. I would only add that the Respondent's responsiveness in personally receiving the documents pertaining to the bankruptcy application clearly proves his willingness to be contacted, and to co-ordinate the process of personal service, on that platform.

(b) Second, while not detracting from the utility of the SingPass app generally as a tool for effecting service, there does not appear to be any specific reason why the Appellant would be confident that the Respondent would have obtained service via SingPass. For instance, there was nothing which suggested that the Appellant knew whether the Respondent used SingPass for his daily activities. Indeed, in the Appellant's affidavit filed for these proceedings, he avers that "I do not know how the [Respondent] goes about his daily life and how he allegedly receives and reads his mail and uses his SingPass application."[27] If so, then it is difficult to understand the Appellant's position that this would represent the best form of substituted service. In the application for substituted service, the Appellant claimed to believe that "it is highly probable that the [Respondent] would have downloaded

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27 1st Affidavit (Zhang Jinhua) dated 9 April 2024 at para 16.

> the SingPass application given that the SingPass application is widely used nowadays".[28] This may be so, but on the present facts, the obvious comeback is that it is also an *absolute certainty* that the Respondent has downloaded and used WeChat, given that he was actively using it for correspondences with the Appellant. In light of this, the Appellant had no reason not to have utilised WeChat as a mode of substituted service. To be clear, my point is not that the Appellant should have applied for substituted service via WeChat to the *exclusion* of other forms of substituted service, but that he ought to have proposed service by WeChat *in addition* to the other proposed modes of service: see *Storey* at [14(a)], where the court commented that electronic means of substituted service should be accompanied by either posting on the front door or AR registered post.

55 Accordingly, *on the facts*, the Appellant's failure to raise WeChat as a method of substituted service stultified the purpose of substituted service, deprived the Respondent of the opportunity to be heard, and thus caused prejudice to him. In my view, the Appellant should not be allowed to reap the benefits of his own curious reasoning process.

56 To avoid doubt, I am not suggesting that the Appellant acted *mala fides* in effecting substituted service in the manner that he did. I do not have to make any finding on this. Instead, my point is simply that the Appellant should have sought, at the very least, if he decided to go down the route of substituted service, to have effected it by WeChat, above and beyond any of the conventional means by which a party seeks to file substituted service. Why he failed to do so, and what his underlying motivations might have been, do not

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[28] 1st Affidavit (Kang Kok Boon Favian) dated 11 August 2023 at para 12(1).

feature significantly in that equation.

57 I am also not suggesting that a claimant has, or should have, a freestanding duty to probe all the different means of service and to ensure that any such means that they elect would be the most effective one. Indeed, in many cases, a claimant will simply not know, or not have the means to know, what forms of service would be most effective. If so, then the court cannot and should not use hindsight to interrogate the reasoning process of a claimant in relation to their proposed methods of substituted service. However, where it is self-apparent to a claimant, or the claimant ought reasonably to have known at the time of applying for substituted service, that there are obvious and simple means to bring documents to the notice of the person to be served, then the court should not hesitate to require the provision of good reasons as to why such means of communication were not explored at all.

58 For completeness, I address the Appellant's argument that there is some evidence to suggest that the Respondent may have had actual notice of OC 490. The Appellant bases this argument on the fact that in the course of their subsequent discussions post the service of the bankruptcy application, on 8 March 2024, part of the Respondent's WeChat conversation to the Appellant, sent by the Respondent, read as follows ("the WeChat message"): "I said on the phone two months ago to have our lawyers on both sides start communicating."[29] The Appellant contends that this must mean that the Respondent had notice of OC 490 two months prior to the message, *ie*, 8 January 2024, and since the Appellant had not yet served the papers of the bankruptcy application on the Respondent, it must mean that the Respondent effectively had notice of OC 490 from the onset after substituted service. With respect, this

[29] Claimant's written submissions dated 9 May 2024 at para 58.

argument does not stand up to scrutiny. For one, the record before me shows that the only phone call between the parties around that time was on 9 February 2024, when the Appellant was seeking to serve the bankruptcy application on the Respondent. For another, the Appellant himself does not testify on affidavit that such a phone call in fact took place on or about 8 January 2024, which means that the Appellant himself does not have particulars of such a phone call that the Respondent alludes to. It appears therefore that the Respondent was, in the WeChat message, really referring to the conversations between the parties around the time the bankruptcy application was served on him. Given the relative informality of WeChat as a messaging modality as compared to other forms of communications such as email or legal communications, one should not expect forensic accuracy or exactitude in dates and durations conveyed in the way one would have expected in the setting out of dates and timelines in more formal settings. The use of the phrase "two months ago" in the WeChat message therefore seems to me to just be imprecise language to refer to a discussion that had taken place some time back.

59 For the foregoing reasons, if there had been no *prima facie* defence, it would have been open to me to set aside the substituted order, and accordingly hold that JUD 359 is an irregular judgment under the *Mercurine* framework. It follows that the *ex debito justitiae* rule would apply, such that the Respondent would be entitled to set aside the default judgment as of right. There are admittedly some exceptions to the *ex debito justitiae* rule (see *Mercurine* at [76]) but it is clear that none of the exceptions apply in this case. Indeed, the Court of Appeal opined that the court will be particularly ready to set aside an irregular default judgment where the defendant had no notice of the proceedings against him, as that would be one of the "plain instances of injustice that offend the essence of due process": *Mercurine* at [76]. As I explained earlier at [50],

this serves as a basis upon which to set aside JUD 359.

60 Nonetheless, as JUD 359 has already been set aside on the ground that the Respondent has raised a *prima facie* defence, it is unnecessary for me to set aside the substituted service order in this case.

**Conclusion**

61 The appeal is therefore dismissed. To sum up, I concur with the learned AR's assessment that the Respondent has shown a *prima facie* defence which indicates the presence of triable issues. Although I dismiss the appeal on that ground alone, it would have been open to me to set aside the substituted service order and hold that JUD 359 is irregular. JUD 359 would similarly have warranted being vacated on that basis. Nonetheless, since the Respondent has established a *prima facie defence*, I do not set aside the substituted service order.

62 On costs, both parties were broadly aligned, in that the Appellant took the position that the winning party should get costs of S$9000 all-in, while the Respondent took the view that the costs should be in the range of S$8000 to S$10,000. I agree broadly with the positions taken by both sides on this front. I therefore order costs of S$9000 all-in for the Respondent given the outcome of this appeal.

63 The need to exert reasonable efforts to put a party on notice of a court document lies at the heart of my observations above. Despite the conventionally prosaic nature of the service of court documents, it serves as one of the cornerstones of procedural justice in our courts. The proper service of documents ensures that all parties can meaningfully participate in the judicial process in the cases in which they are cited as a party, and ensure that their rights are protected and, where the facts allow for it, vindicated. The failure to effect

proper service can potentially result in profoundly grave consequences, and, for that reason, runs the risk of undermining the integrity of the legal and judicial process.

Mohamed Faizal
Judicial Commissioner

Kang Kok Boon Favian (Adelphi Law Chambers LLC) for the appellant;
Liew Yik Wee and Mariel Benicia Luz Nonis (Rev Law LLC) for the respondent.

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