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

[2024] SGHC 38

Originating Claim No 193 of 2022 (Registrar's Appeal No 243 of 2023)

Between

(1) Envy Asset Management Pte Ltd (in liquidation)
(2) Envy Management Holdings Pte Ltd (in liquidation)
(3) Envy Global Trading Pte Ltd (in liquidation)
(4) Bob Yap Cheng Ghee
(in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)
(5) Tay Puay Cheng
(in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)
(6) Toh Ai Ling
(in her capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)

… *Claimants*

And

(1) Lau Lee Sheng
(2) Teo Wei Wen, Benjamin
(3) Shen Xuhuai
(4) Koh Hong Jie (Xu Hongjie)
(5) Edmund Chan Pak Kum

(6) Guo Yujia
(7) Ang Wen Min, Daniel
(8) Chua Wei Jian, Jordan

… *Defendants*

Counterclaim of 1st Defendant

Between

Lau Lee Sheng

… *Claimant in Counterclaim*

And

(1) Envy Asset Management Pte Ltd (in liquidation)
(2) Envy Management Holdings Pte Ltd (in liquidation)
(3) Envy Global Trading Pte Ltd (in liquidation)
(4) Bob Yap Cheng Ghee
(in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)
(5) Tay Puay Cheng
(in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)
(6) Toh Ai Ling
(in her capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)

… *Defendants in Counterclaim*

Counterclaim of 2nd Defendant

Between

Teo Wei Wen, Benjamin

… *Claimant in Counterclaim*

And

(1) Envy Asset Management Pte Ltd (in liquidation)
(2) Envy Management Holdings Pte Ltd (in liquidation)
(3) Envy Global Trading Pte Ltd (in liquidation)
(4) Bob Yap Cheng Ghee
(in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)
(5) Tay Puay Cheng
(in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)
(6) Toh Ai Ling
(in her capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)

… *Defendants in Counterclaim*

Counterclaim of 4th Defendant

Between

Koh Hong Jie (Xu Hongjie)

… *Claimant in Counterclaim*

And

(1) Envy Asset Management Pte Ltd (in liquidation)
(2) Envy Management Holdings Pte Ltd (in liquidation)
(3) Envy Global Trading Pte Ltd (in liquidation)
(4) Bob Yap Cheng Ghee
(in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)
(5) Tay Puay Cheng
(in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)
(6) Toh Ai Ling
(in her capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)

… *Defendants in Counterclaim*

Counterclaim of 6th Defendant

Between

Guo Yujia

… *Claimant in Counterclaim*

And

(1) Envy Asset Management Pte Ltd (in liquidation)
(2) Envy Management Holdings Pte Ltd (in liquidation)

(3) Envy Global Trading Pte Ltd (in liquidation)
(4) Bob Yap Cheng Ghee
(in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)
(5) Tay Puay Cheng
(in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)
(6) Toh Ai Ling
(in her capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd)

… Defendants in Counterclaim

JUDGMENT

[Civil Procedure — Pleadings — Striking out]
[Civil Procedure — Pleadings — Amendment]

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Envy Asset Management Pte Ltd (in liquidation) and others
v
Lau Lee Sheng and others

[2024] SGHC 38

General Division of the High Court — Originating Claim No 193 of 2022
(Registrar's Appeal No 243 of 2023)
Goh Yihan J
15 January 2024

8 February 2024 Judgment reserved.

Goh Yihan J:

1 This is an appeal by the first and second defendants in HC/OC 193/2022 ("OC 193") against the decision of the learned Assistant Registrar Jacqueline Lee ("AR Lee") to refuse their application in HC/SUM 2893/2023 ("SUM 2893") for the striking out of the whole or part of the claimants' claim against them for certain amounts (referred to hereafter as the "Overwithdrawn Sums"). In the alternative, the first and second defendants seek an order from the court directing the claimants to make appropriate amendments to their pleadings to clarify that the claimants have relinquished any claim to certain sums (referred to hereafter as the "Internal Transfers").[1]

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[1] 1st and 2nd Defendants' Written Submissions in HC/RA 243/2023 dated 24 November 2023 ("DWS (RA)") at para 20.

2 Having taken some time to consider the matter, I dismiss the first and second defendants' appeal for the reasons below.

Background facts

3 I begin with the background facts as formulated for the purpose of the present application. From early 2016 to early 2020, the first claimant, Envy Asset Management Pte Ltd ("EAM") purported to be in the business of nickel trading. It did so by supposedly purchasing quantities of nickel at a discount, and then reselling the nickel at a profit. Investors invested in EAM's purported nickel trading by entering into Letters of Agreement ("LOAs") with EAM. In brief, under the terms of the LOA, investors would invest a principal sum with EAM, and upon the maturity date of the LOA, they would be entitled to a return of their principal investment along with profits paid out from EAM's profits from its purported nickel trading business.[2]

4 Subsequently, it emerged that EAM's purported nickel trading was non-existent. Instead, profits were paid out to earlier investors from the invested funds of subsequent investors.[3] After the scheme unravelled, EAM and its related companies (collectively, the "Envy Companies"), the second and third claimants, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd, respectively, were compulsorily wound up.[4]

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2 8th Affidavit of Bob Yap Cheng Ghee in HC/SUM 2893/2023 dated 18 October 2023 ("Yap's 8th Affidavit") at paras 2.1.2–2.1.3

3 Yap's 8th Affidavit at para 2.1.7.

4 Yap's 8th Affidavit at para 2.1.9

5 OC 193 is an action brought by the liquidators of the Envy Companies to recover certain sums that were paid to the defendants, who are former employees of the Envy Companies, in connection with the non-existent nickel trading.[5]

6 For the purposes of SUM 2893 and the present appeal therefrom, only the claim in respect of the Overwithdrawn Sums is relevant.[6] The Overwithdrawn Sums represent the fictitious profits from the non-existent nickel trading that were paid out to the first, second, and fifth to eighth defendants (the "relevant defendants"), who received the said sums not strictly as employees of the Envy Companies but as investors. As mentioned above, the Overwithdrawn Sums were paid out from the invested funds of other investors.

7 The claimants have sought to claw back the Overwithdrawn Sums through various causes of action: (a) transactions defrauding creditors under s 73B of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA") and/or s 438 and s 439(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"); (b) transactions at an undervalue under s 224 of the IRDA; (c) unfair preferences under s 225 of the IRDA; and (d) unjust enrichment.

8 To compute the quantum of the Overwithdrawn Sums that are claimed against the relevant defendants, the claimants have applied a "running account" approach. This entails setting out all inflows and outflows in respect of each of the relevant defendants' purported nickel trading accounts with the Envy

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5 Yap's 8th Affidavit at para 2.2.1.

6 Yap's 8th Affidavit at para 2.2.2.

Companies (based on the records available to the claimants).[7] From this, the claimants have derived the quantum of the Overwithdrawn Sums which is the net of aggregating the inflows and outflows.[8]

The parties' arguments

The first and second defendants' arguments

9 The first and second defendants sought in SUM 2893 to strike out the whole or part of the claimants' claim for the Overwithdrawn Sums in OC 193. The principal objection that the first and second defendants raised is the claimants' inclusion of a specific category of transfers as relevant outflows in their computations pursuant to the running account approach.[9] This impugned category of transfers is the aforementioned Internal Transfers (at [1] above), which refer to transfers from the relevant defendants' purported nickel trading accounts to the accounts of other investors.

10 In essence, the first and second defendants argued that since the claimants' pleaded case is that the Internal Transfers do not entail any actual withdrawal of moneys out of the Envy Companies, the claimants' claim for the Overwithdrawn Sums must fail in as much as they include the Internal Transfers.[10] This is because, as the first and second defendants argued, for any

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7 Yap's 8th Affidavit at para 3.1.2.

8 Yap's 8th Affidavit at para 3.1.3.

9 Yap's 8th Affidavit at para 3.1.4; 3rd Affidavit of Lau Lee Sheng in HC/OC 193/2022 ("Lau's 3rd Affidavit") dated 21 September 2023 at paras 13–15; 3rd Affidavit of Teo Wei Wen, Benjamin in HC/OC 193/2022 dated 21 September 2023 ("Teo's 3rd Affidavit") at paras 13–15.

10 1st and 2nd Defendants' Written Submissions in HC/SUM 2893/2023 dated 19 October 2023 ("DWS (SUM)") at para 9.

transaction to be the subject of a clawback action[11] or unjust enrichment claim, it must be shown that the transaction led to a dissipation of assets from the estate of the relevant company.[12] Since the Internal Transfers did not lead to such dissipation of assets, the claimants' reliance on the Internal Transfers is not sustainable as a matter of fact[13] and law.[14]

11 Furthermore, the first and second defendants also argued that it is impermissible for the claimants to rely on the Internal Transfers to derive the total Overwithdrawn Sums claimed against the relevant defendants. Rather, the court must consider the derived quantum of Overwithdrawn Sums if the Internal Transfers were to be excluded from the computation. In this respect, as regards the first defendant, because the Internal Transfers exceed the amount being claimed against him, the computation of the Overwithdrawn Sums would produce a net negative figure. This would result in the claimants' claim against him being dismissed entirely. As for the second defendant, while the Internal Transfers do not exceed the amount being claimed against him, striking out the Internal Transfers would result in a lower computed quantum of the Overwithdrawn Sums, and therefore a lower claim against him.[15]

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11 DWS (SUM) at paras 32–33; Certified Transcript in HC/SUM 2893/2023 (25 October 2023) ("CT (SUM)") at p 9.

12 CT (SUM) at p 11.

13 DWS (SUM) at para 24.

14 DWS (SUM) at p 13.

15 DWS (SUM) at para 10.

12 The first and second defendants maintain these positions before me.[16] In addition, as I mentioned at the outset of this judgment, they now also seek, for the first time, on appeal, that the claimants be directed to make appropriate amendments to their pleadings to clarify that they are not seeking to claw back the sums constituting the Internal Transfers.[17] The first and second defendants argue that the claimants should not be permitted to defeat the striking out application by their concession that they do not intend to claw back the Internal Transfers.[18] According to them, the claimants have a duty to plead their case in as clear and precise a fashion as possible. As such, if the claimants truly do not intend to claim for the Internal Transfers, they should state so clearly in their pleadings.[19]

The claimants' arguments

13 In response, the claimants argue that the first and second defendants' complaint essentially pertains to the methodology used by the claimants in calculating the Overwithdrawn Sums. Any dispute over methodology should be determined at trial.[20]

14 In response to the first and second defendants' allegations that the Internal Transfers do not entail any actual withdrawal of moneys out of the Envy Companies, the claimants make the following submissions. First, the Internal

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16 DWS (RA) at paras 13–15; Minute Sheet in HC/RA 243/2023 dated 15 January 2024 ("Minute Sheet (RA)") at pp 1–3.

17 DWS (RA) at para 12.

18 DWS (RA) at para 19.

19 DWS (RA) at para 19.

20 Claimants' Written Submissions in HC/RA 243 dated 24 November 2023 ("CWS (RA)") at para 2.1.1.

Transfers may have been subsequently transferred out of the Envy Companies, and may therefore not necessarily remain within the Envy Companies' bank accounts.[21] This possibility is not precluded by the mere fact that the Internal Transfers were transfers to the bank accounts of other investors.[22] Second, even if the moneys remain within the Envy Companies' bank account, the relevant defendants could still have received consideration and/or been enriched by the Internal Transfers.[23] At the hearing, Ms Lee Ping, who appeared on behalf of the claimants, further submitted that it is self-evident that the claimants are not claiming for the Internal Transfers. In this regard, she pointed to the fact that while the Internal Transfers amount to over $7m, the claimants' pleaded claim for the Overwithdrawn Sums is roughly only $584,700. There was therefore no defect or ambiguity in the pleadings to justify a striking out or requiring any amendment to be made.[24]

My decision: the appeal is dismissed

15 Having considered the parties' arguments, I dismiss the first and second defendants' appeal for the reasons below.

The applicable law

16 To begin with, the first and second defendants' application in SUM 2893 to strike out the claimants' claim in OC 193 was based on O 9 r 16(1) of the Rules of Court 2021 (the "ROC 2021"), which provides that:

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21 CWS (RA) at para 4.1.6.

22 CWS (RA) at para 4.1.6(c).

23 CWS (RA) at para 4.1.7.

24 Minute Sheet (RA) at pp 5–6.

> **Striking out pleadings and other documents (O. 9, r. 16)**
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> **16.**—(1) The Court may order any or part of any pleading to be struck out or amended, on the ground that —
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> (*a*) it discloses no reasonable cause of action or defence;
>
> (*b*) it is an abuse of 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.

However, and this is a point that I will return to below, the first and second defendants do not make clear in their written submissions for this appeal which limb in O 9 r 16(1) that they are relying on.

17 In the High Court decision of *Leong Quee Ching Karen v Lim Soon Huat and others* [2023] 4 SLR 1133 ("*Karen Leong*"), the court made the following general observations on the law on striking out (at [25]–[26]):

> 25 First, it is trite that the bar for succeeding in a striking out application is a high one. Thus, it has been said in *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another and another appeal* [2009] 2 SLR(R) 814, where the Court of Appeal cited its previous decision in *Ko Teck Siang v Low Fong Mei* [1992] 1 SLR(R) 22, which in turn endorsed the English Court of Appeal case of *Wenlock v Moloney* [1965] 1 WLR 1238, (at [172]) that the power to strike out is "very sparingly exercised, and only [applied] in very exceptional cases" and would not be justified "merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved". …
>
> 26 Second, pursuant to the above, the applicant in a striking out application bears the burden of proving that the claim is "obviously unsustainable, the pleadings [are] unarguably bad and it must be impossible, not just improbable, for the claim to succeed before the court will strike it out" (see the High Court decisions of *Koh Kim Teck v Credit Suisse AG, Singapore Branch* [2015] SGHC 52 at [21] as well as *Bank of China Ltd, Singapore Branch v BP Singapore Pte Ltd and others* [2021] 5 SLR 738 at [21]).

18 As for the first ground in O 9 r 16(1)(*a*), the Court of Appeal explained (albeit in relation to its predecessor provision) in *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 ("*Gabriel Peter*") (at [21]) that the guiding principle in determining what constitutes a "reasonable cause of action" is whether the pleadings demonstrate some chance of success or raise a question fit to be decided at trial. Similarly, the Court of Appeal explained in *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 ("*Iskandar*") (at [17]) that the test under O 9 r 16(1)(*a*) is whether "the action has some chance of success when only the allegations in the pleadings are concerned". Thus, a cause of action will not be struck out just because the case is weak and is not likely to succeed. In assessing the viability of an action, a court will presume the pleaded facts to be true in favour of the claimant since this is properly a question of law (see the High Court decision of *Tan Eng Khiam v Ultra Realty Pte Ltd* [1991] 1 SLR(R) 844 at [29]).

19 Turning now to the two grounds in O 9 rr 16(1)(*b*) and 16(1)(*c*), the High Court has held (albeit in relation to the predecessor provisions) that there would be an abuse of process (which is the ground under r 16(1)(*b*)) if a claimant knowingly pursues a case that is "doomed to fail" (see *Kim Hok Yung and others v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank) (Lee Mon Sun, third party)* [2000] 2 SLR(R) 455 ("*Kim Hok Yung*") at [17]). In such a case, the claimant would, in effect, be wasting the court's time and this would amount to an abuse of process as the proceedings serve no useful purpose (see *Karen Leong* at [28]). Further, the Court of Appeal explained in *Iskandar* (at [18]) that this ground "includes considerations of public policy and the interests of justice", in that "the process of the court must be used *bona fide* and properly and must not be abused". Therefore, the

emphasis is on preventing the "improper use of [the courts'] machinery and the judicial process from being used as a means of vexation and oppression in the process of litigation" (see *Iskandar* at [18], referring to *Gabriel Peter* at [22]).

20 As for the broad ground under r 16(1)(*c*), Professor Jeffrey Pinsler SC has observed that this is a new provision that has no counterpart in O 18 r 19 of the Rules of Court (2014 Rev Ed). The learned author comments that this provision is "residuary in nature and is intended to empower the court to terminate an action or dismiss a defence or make any other appropriate order if this outcome is necessary to achieve the interests of justice". Thus, the inclusion of this provision means that "if there are circumstances which do not fall within paras (a) and (b) of r 16(1), they may be caught by para (c) of r 16(1)" (see Jeffrey Pinsler, *Singapore Civil Practice* (LexisNexis, 2022) at para 24−113).

The first and second defendants are relying primarily, if not only, on the ground in O 9 r 16(1)(a)

21 While the first and second defendants do not make clear in their submissions for this appeal which of the grounds in O 9 r 16(1) they are relying on, it appears that they are relying on ground (*a*) given their characterisation of the claimants' "cause of action" as being "unsustainable" or "untenable".[25] In my view, counsel should clearly specify which limb of O 9 r 16 they are invoking, and to particularise their arguments according to the legal standard for that limb. This ensures conceptual clarity in their arguments.

22 To be fair to the first and second defendants, they did state in their written submissions before AR Lee that they were relying on all three grounds

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[25] DWS (RA) at para 15.

in O 9 r 16(1).[26] However, even then, their submissions below largely centred on how the claimants' case is "unsustainable in law".[27] In this appeal, without specifying which limb of O 9 r 16 they are invoking, the first and second defendants state, in a heading to a particular section in their written submissions, that "[i]t is legally and factually unsustainable, *and* an abuse of process, for the Claimants to seek to claw back the Overwithdrawn Sums …" [emphasis added].[28] The first and second defendants therefore appear to have collapsed grounds (*b*) and (*c*) in O 9 r 16(1) into ground (*a*). In effect, they seem to be saying that because the claimants are pursuing a case that discloses no reasonable cause of action, the claimants must, by extension, be abusing the process of the court, and that it must also be in the interests of justice to strike out the claimants' claim.

23 As a matter of principle, I am hesitant to collapse the three grounds in O 9 r 16(1) in the manner that the first and second defendants seem to be doing. In the first place, the three grounds in O 9 r 16(1) are framed in the alternative to each other. This connotes that they are separate and distinct. If the first and second defendants' logic were correct, every striking out application that succeeds on ground (*a*) would also succeed on grounds (*b*) and (*c*). This would defeat the purpose of setting out three separate grounds for striking out. More broadly, and on a slightly different point, I respectfully agree with Hri Kumar Nair J's observations in the High Court decision of *Asian Eco Technology Pte Ltd v Deng Yiming* [2023] SGHC 260 (at [18]) that "the grounds of 'abuse of process' and 'interests of justice' under O 9 r 16 of the ROC 2021 should not

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26 DWS (SUM) at para 19.

27 DWS (SUM) at pp 13–18.

28 DWS (RA) at p 9.

be construed too widely" because "[a]n overly liberal interpretation of the grounds under O 9 r 16 may invite a deluge of striking out applications and appeals arising out of these applications".

24 As such, I do not think that a claimant who pursues a case (or part of a case) that discloses no reasonable cause of action is necessarily one who has abused the court's process. Instead, the emphasis of the ground in O 9 r 16(1)(*b*), as the Court of Appeal held in *Iskandar* (at [18]), is on matters of public policy. One policy concern encompassed by O 9 r 16(1)(*b*) is that a claimant, who *knowingly* pursues a case that is "doomed to fail", should have its claim struck out. In this sub-category of cases, however, the focus is on the mental state of the claimant, and not the mere fact that the claimant happens to have brought a case that turns out to be unsustainable.

25 Indeed, this understanding of O 9 r 16(1)(*b*) is borne out by *Kim Hok Yung*, which was concerned with its predecessor provision in the prevailing Rules of Court at the time. In *Kim Hok Yung*, the plaintiffs were recruited by the defendants to help the latter set up, operate, and carry on the business of investment banking. When the defendants ceased their investment business and terminated the plaintiffs' employment (as they were contractually entitled to), the plaintiffs brought claims for misrepresentation in tort and under statute pursuant to s 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed). The alleged misrepresentations included, among others, that the defendants had taken steps to establish an investment banking business and the plaintiffs' expertise was required to participate in this business (at [3]). The High Court seems to have found that the plaintiffs could not have, and must have known that they had not, relied on the purported misrepresentations (at [15] and [18]). Therefore, in suing for misrepresentation, the plaintiffs were bringing an action

that they *knew*, or must have known, could not succeed. In doing so, they were making a frivolous and vexatious claim, thereby, abusing the process of court (at [17]). This is thus consistent with my view that O 9 r 16(1)(*b*) is concerned with, among others, claimants who *knowingly* pursue a case that is "doomed to fail".

The claimants' case on the Internal Transfers is not without a reasonable cause of action

26 Taking the first and second defendants' reliance to be primarily on the ground in O 9 r 16(1)(*a*), I find that the claimants have shown a reasonable cause of action in their case on the Internal Transfers.

27 First, I agree with the claimants that it is not necessarily the case that the Internal Transfers remained within the Envy Companies' bank accounts, and that the mere fact that the Internal Transfers were transfers to the bank accounts of other investors does not preclude the possibility that they were later transferred out of the Envy Companies.[29] What has eventually become of the moneys that were the subject of the Internal Transfers is something for the claimants to prove at trial.

28 Second, I also agree with the claimants that, even if the Internal Transfers remain within the Envy Companies' bank accounts, this does not necessarily preclude the claimants from claiming for the underlying sums. The claimants may be able to establish, on the facts and in law, that the relevant defendants had received consideration and/or were enriched. For instance, the claimants have pointed out the possibility that the relevant defendants may have

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[29] CWS (RA) at para 4.1.6.

nominated third parties to receive the Internal Transfers.[30] Again, this is something for the claimants to prove at trial. This argument also potentially responds to the first and second defendants' argument (at [10] above) that for the claimants' claim to the Overwithdrawn Sums to succeed, they must prove either a dissipation of the Envy Companies' assets, or a benefit enjoyed by the Envy Companies. Given what I have said above, the claimants' case is not unarguable. It certainly cannot be said that the claimants are so plainly wrong that their case in relation to the Overwithdrawn Sums should be struck out.

29 Third, and more broadly, the claimants have pleaded the material facts at length. They have also provided an account of their calculation of the Overwithdrawn Sums paid to the relevant defendants.[31] In this regard, the claimants have provided a line-by-line account of the inflows and outflows of the defendants' respective purported nickel trading accounts with the Envy Companies.[32] Thus, while the first and second defendants say that they cannot be left to guess which transactions from the line entries led to the Overwithdrawn Sums the claimants are claiming, it is clear from the pleadings that the claimants are not claiming for the Internal Transfers. In any event, I find that there is also a factually and legally sustainable claim under O 9 r 16(1)(*c*) when one looks beyond the pleadings to the affidavit evidence (which would not have been permitted under the ground in O 9 r 16(1)(*a*); see the High Court decision of *Peloso, Matthew v Vikash Kumar and another* [2023] SGHC 308 at [26]). Indeed, in the relevant affidavit evidence,[33] the claimants clearly define

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30 CWS (RA) at para 4.1.8.

31 Statement of Claim dated 12 August 2022 ("SOC"), para 4.5.3 and Annex E.

32 In the various Annexes to the SOC.

33 Yap's 8th Affidavit at para 3.1.8.

the Overwithdrawn Sums as "monies in excess of the principal amounts which are in the nature of purported profits from the Purported Nickel Trading paid to [the relevant defendants]."[34] It should therefore be clear to the first and second defendants the case that they have to meet. In any event, I agree with the claimants that the essence of the first and second defendants' complaint is really about the methodology that the claimants have used in arriving at the Overwithdrawn Sums. But this does not mean that the claimants' case on the Overwithdrawn Sums is so wrong as to be struck out for not disclosing a reasonable cause of action.

30 Fourth, as I indicated to counsel for the first and second defendants, Mr Daniel Liu ("Mr Liu"), at the hearing, I have difficulty in striking out a claim in its entirety that, on the first and second defendants' best argument, is overinclusive.[35] The first and second defendants' case is only that the Internal Transfers, being part of the claimants' calculation of the quantum of the Overwithdrawn Sums (or so they argue), should be struck out for not disclosing a reasonable cause of action. Yet, their prayers are for all references to the Overwithdrawn Sums to be struck out.[36] Thus, to strike out such references would be overinclusive as it would also strike out line entries that are not Internal Transfers, which are not – on the first and second defendants' own case – without a reasonable cause of action. In so far as the first and second defendants suggest that the Overwithdrawn Sums are derived from, among others, taking into account the Internal Transfers, that is an argument that goes

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34 Yap's 8th Affidavit at para 3.1.8.

35 Minute Sheet (RA) at p 5.

36 HC/SUM 2893/2023, Prayers 1(a)(i), 1(a)(iii)–(vii) and 2(a)(ii) –(v).

towards the claimants' methodology, as opposed to any fundamental flaw in the claimants' case that warrants a striking out at this stage.

31 Accordingly, it cannot be said that the claimants' case in relation to the Internal Transfers fails to demonstrate some chance of success or raise questions fit to be decided at trial. For these reasons, I dismiss the first and second defendants' appeal against AR Lee's decision below.

The first and second defendants' new prayer for the pleadings to be amended is not allowed

32 For completeness, I also dismiss the first and second defendants' new prayer for an order that the pleadings be amended by the claimants. While the first and second defendants do not specify the provision which they are relying on in the ROC 2021 for this prayer, it appears to me that this ought to be O 9 r 16(1). This is because this is a case of a *defendant* asking for the claimant's pleadings to be amended, as opposed to a claimant taking the initiative, as is the usual case, to seek permission to amend its pleadings (see O 9 r 14(1) of the ROC 2021).

33 To begin with, this is a fresh point on appeal. To be fair to the first and second defendants, Mr Liu clarified at the hearing that this new point has only been taken up on appeal in light of the claimants' allegedly new position before AR Lee[37] that they would not be claiming for the Internal Transfers.[38] Nevertheless, the point remains that the claimants could not meaningfully

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37 CT (SUM) at p 15 lines 9–13.

38 Minute Sheet (RA) at p 3.

respond to this fresh prayer because they only had sight of it after the exchange of the written submissions for this appeal.

34 More substantively, it appears to me that, as a matter of logic, if a defendant's application to strike out a pleading for a particular reason under O 9 r 16(1) fails as a result of that reason not being established, then their application for amendment will likely not succeed under the same provision, if the reason proffered for the amendment is the same as that advanced to support the unsuccessful striking out application. In this regard, O 9 r 16(1) provides the grounds not only for striking out but *also for amendments*. This much is clear from the wording of O 9 r 16(1): "[t]he Court may order any or part of any pleading to be struck out *or amended* on the ground that …" [emphasis added]). As such, once a court concludes that all the grounds in O 9 r 16(1) have not been established by the reason advanced by a defendant in support of a striking out, then it should generally follow that those same grounds in O 9 r 16(1) are also not established by the same reason in support of an amendment. However, these observations should also be read subject to the Court of Appeal's observations in *Ching Mun Fong (executrix of the extate of Tan Geok Tee, deceased) v Liu Cho Chit and another appeal* [2000] 1 SLR(R) 53 (at [12]), that "[i]n general, the court's approach to an application to strike out the statement of claim is to consider if the deficiency or defect therein, on the basis of which the application was made, could be cured by an amendment, and would prefer to allow an amendment rather than to take the drastic course of striking it out".

35 In the present case, it is important that the first and second defendants have essentially relied on the same reason to support both their prayer for striking out and their prayer for amendment, which is that the claimants have no basis to include the Internal Transfers in their claims. In this regard, implicit in

my dismissal of the first and second defendants' application to strike out the affected pleadings based on this reason, is a finding that they have also failed to establish any of the grounds for amendment under O 9 r 16(1) in respect of those pleadings for the same reason. Therefore, it must follow that the first and second defendants' new prayer for the same pleadings to be amended for the same reason must be dismissed.

Conclusion

36 For all the reasons discussed above, I dismiss the first and second defendants' appeal.

37 Unless the parties can agree, they are to submit their respective written submissions on the appropriate costs order, limited to seven pages each, within 14 days of this decision.

Goh Yihan
Judge of the High Court

Chan Ming Onn David, Lee Ping, Zhang Yiting, Ryan Mark Lopez and Lai Wei Kang Louis (Shook Lin & Bok LLP) for the claimants;
Koh Swee Yen SC, Liu Zhao Xiang Daniel, Claire Lim, Victoria Liu Xin Er and Toh Yong Xiang (WongPartnership LLP) for the first, second and fourth defendants;
The third, fifth, sixth, seventh and eight defendants absent and unrepresented.