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

[2024] SGHC 79

Originating Application No 1214 of 2023 and Summons No 195 of 2024

In the matter of Legal Profession Act

Between

Victory International Holdings Pte Ltd

… *Claimant*

And

(1) Cosimo Borrelli
(2) Clifford Chance Pte Ltd

… *Defendants*

JUDGMENT

[Companies — Receiver and manager — Accounts — Whether receiver owes duty to account to mortgagor]
[Companies — Receiver and manager — Duties to mortgagor — Duties to chargor]
[Companies — Receiver and manager — Production of documents by receiver — Whether production of documents should be ordered — Whether production of documents determined by ownership or "need to know"]
[Civil Procedure — Costs — Taxation — Party requesting taxation neither client nor party chargeable — Party requesting taxation contractually liable to indemnify legal fees — Whether party liable to pay bill to party chargeable — Section 120(1) Legal Profession Act]

[Civil Procedure — Costs — Taxation — Allegation of overcharging — Party lacks control over legal fees — Whether special circumstances exist — Section 122 Legal Profession Act]

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v
Borrelli, Cosimo and another and another matter

[2024] SGHC 79

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Goh Yihan J
7 February 2024

19 March 2024 Judgment reserved.

Goh Yihan J:

1 The claimant, Victory International Holdings Pte Ltd ("Victory"), has commenced this originating application, HC/OA 1214/2023 ("OA 1214"), against the first defendant, Mr Cosimo Borrelli ("Mr Borrelli") and the second defendant, Clifford Chance Pte Ltd ("CCPL") (collectively, the "defendants"). In particular, Victory seeks the production of various documents and information from Mr Borrelli, and the assessment and taxation of the legal fees incurred by Mr Borrelli's solicitors, CCPL.

Introduction

2 I first set out, for broad context, how the parties came to be in dispute with each other. At the outset, Victory and OPV Pharma Holdings Ltd ("Navis") were shareholders in OPV Pharmaceutical Holdings Pte Ltd ("OPV SG"). Victory was the minority shareholder, holding 3.5m shares in OPV SG, which

represented a 35% shareholding (the "Victory Shares"). Navis held the remaining 6.5m shares.

3 Victory and Navis signed a shareholders' agreement in relation to their shareholding in OPV SG. The shareholders' agreement provided for Navis, as the majority shareholder, to have drag-along rights. In June 2021, Navis sold its shareholding to a third party and exercised its drag-along rights. This meant that Victory was compelled to sell the Victory Shares to that same third party on the same terms as Navis. As Victory refused to do so, Navis appointed Mr Borrelli as the receiver of the Victory Shares, to complete the drag-along sale of the Victory Shares. He was the receiver when I heard the parties.

4 Victory has brought OA 1214 against Mr Borrelli and CCPL to seek various orders, which I set out very broadly according to the following categories:

(a) Production of the Minority SPA: that Mr Borrelli furnishes a copy of the executed drag-along sale and purchase agreement in respect of the Victory Shares, between Victory and the third party (the "Minority SPA").

(b) Account of sale proceeds: that Mr Borrelli furnishes a full account of the sale proceeds received under the Minority SPA.

(c) Provision of a report: that Mr Borrelli furnishes a report setting out and explaining several matters concerning the circumstances in which the Minority SPA was executed.

(d) Assessment of legal fees: that Mr Borrelli and/or CCPL file a bill of costs for legal fees incurred, pursuant to ss 120, 124, and 125 of the Legal Profession Act 1966 (2020 Rev Ed) ("LPA").

For the avoidance of doubt, these are not exact quotations of the orders that Victory seeks. I will set out the orders that Victory seeks more comprehensively below.

5 In addition, Victory also sought, in HC/SUM 195/2024 ("SUM 195"), permission to cross-examine Mr Borrelli.

6 At the hearing on 7 February 2024, I first heard the parties on SUM 195. After considering their submissions, I dismissed SUM 195. Accordingly, I proceeded to hear the parties on OA 1214, for which the parties had made written submissions on the premise that cross-examination would not be allowed. Having taken some time after the hearing to consider OA 1214, I allow OA 1214 to the limited extent that I order Mr Borrelli to furnish a copy of the Minority SPA to Victory. I do not make any of the other orders which Victory had sought in OA 1214.

7 I now explain my reasons for my decisions in SUM 195 and OA 1214.

The parties

8 I turn first to describe the parties. Victory is a company incorporated in Singapore. The party to whom the Victory Shares were sold is RV Healthcare

Pte Ltd ("RV Healthcare"). The sale was executed on 5 October 2023[1] and completed on 26 October 2023.[2] For completeness, Navis's shares (in OPV SG) were sold to RV Healthcare on 8 June 2021.[3]

9 Mr Borrelli and Mr Patrick Bance (collectively, the "Receivers") were appointed as the receivers of the Victory Shares by Navis. This was done pursuant to a Deed of Appointment of Receivers dated 13 August 2021 (the "Deed of Appointment"). Mr Bance resigned as receiver on 5 October 2023. This leaves Mr Borrelli as the sole receiver of the Victory Shares.

10 Finally, CCPL are Mr Borrelli's solicitors. CCPL have been instructed by the Receivers in respect of their duties as receivers of the Victory Shares.

Background facts

The Facility Agreement and the Share Pledge

11 I turn now to elaborate more fully on the relevant background facts. The dispute can be traced back to 13 June 2017, when Victory and Navis entered into a facility agreement (the "Facility Agreement"). Navis was to loan Victory the sum of US$2.5m under the Facility Agreement.[4] To secure Victory's repayment of this loan, Victory and Navis entered into a share pledge on the

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1 1st Affidavit of Nguyen Suong-Hong dated 1 December 2023 ("NSH-1") at para 39; Defendants' Written Submissions for HC/OA 1214/2023 dated 31 January 2024 ("DWS") at para 23.

2 NSH-1 at p 380.

3 NSH-1 at pp 29−81.

4 NSH-1 at para 10.

same day, by which Victory assigned and charged the Victory Shares to Navis[5] (the "Share Pledge"). The loan under the Facility Agreement was to be repaid by Victory to Navis on 19 June 2020, being three years after the drawdown date of 19 June 2017.[6] Victory did not repay the loan.[7]

Navis issues the Drag Notice and an event of default notice to Victory

12 On 6 July 2021, Navis exercised its drag-along rights provided for in OPV SG's shareholders' agreement and constitutional documents to compel Victory to sell the Victory Shares to RV Healthcare.[8] Navis did so by issuing a drag-along notice (the "Drag Notice") pursuant to cl 16.6 of OPV SG's shareholders' agreement and Art 24 of OPV SG's memorandum and articles of association.[9] This compelled Victory to transfer the Victory Shares to RV Healthcare on the same terms by which Navis sold its shares in OPV SG to RV Healthcare. These terms are listed in the schedule to the sale notice dated 8 June 2021.[10] However, Victory did not comply with the Drag Notice.[11]

13 On 8 July 2021, Navis issued an event of default notice to Victory, pursuant to the Facility Agreement. In this notice, Navis stated that an event of default had arisen under cl 12.1 of the Facility Agreement as Victory had not repaid "the Loan together with accrued interest when due on 19 June 2020 (the

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5 NSH-1 at para 12.

6 DWS at para 12; NSH-1 at para 13.

7 DWS at para 12.

8 DWS at para 13.

9 NSH-1 at para 15.

10 NSH-1 at para 15.

11 DWS at para 13.

Final Repayment Date)". Navis demanded that Victory repay the sum of US$3,724,455.03 by the next day, 9 July 2021.[12]

The Minority SPA

14 On 26 July 2021, Navis sent a letter to Victory's solicitors to state that the sale of Navis's shares in OPV SG to RV Healthcare had been completed. Navis therefore asked for Victory's confirmation, by 27 July 2021, that it would comply with the Drag Notice. In this same letter, Navis also enclosed a draft Minority SPA for the sale of the Victory Shares to RV Healthcare.[13] There are three matters about the draft Minority SPA that warrant some elaboration. These concern, loosely, additional sums that remain outstanding under the Minority SPA.

15 First, while Mr Borrelli had received the initial purchase price of US$3,237,500 at completion of the Minority SPA on 26 October 2023, there still remained an outstanding deferred purchase price of US$262,500 (the "Deferred Purchase Price") that was to become due and payable under the terms of the draft Minority SPA. Cavenagh Law, who represent the defendants in this application, confirmed the existence of the Deferred Purchase Price, and the conditions upon which it would become due and payable, in a letter dated 14 November 2023.[14] Pursuant to the relevant terms, the Deferred Purchase Price would become due and payable upon the earlier of:
(a) OPV Pharmaceutical Joint Stock Company ("OPV VN") and Otsuka

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12 NSH-1 at para 16.

13 NSH-1 at para 18.

14 NSH-1 at p 402.

Pharmaceutical Vietnam Joint Stock Company ("Otsuka") entering into a mutual agreement on the termination of the long-term sublease agreement dated 11 March 2003; or (b) Otsuka vacating or handing over the premises leased under, and the termination of, the said long-term sublease agreement.[15]

16 Second, the draft Minority SPA provided that there was to be a loan adjustment amount (the "Loan Adjustment Amount"). The material details behind the Loan Adjustment Amount are as follows. The sum loaned under the Facility Agreement by Navis to Victory (as defined at [11] above) was itself an onward loan from OPV SG to Navis under a loan agreement between OPV SG and Navis (the "Navis Loan Agreement").[16] In this regard, cl 6.7 of the draft Minority SPA provided that "following the payment or repayment to [OPV SG] of any amounts under the [Navis] Loan Agreement … an amount equal to [Victory's] Equity Proportion of such Loan Repayment shall be paid by [RV Healthcare] into [Victory's] Account".[17] Under Schedule 3 of the draft Minority SPA, Victory's "Equity Proportion" was stated to be 35%.[18] This corresponded to its shareholding in OPV SG.

17 Third, the draft Minority SPA provided for a "price adjustment upon the completion of the sale of the Land" (the "Sale of the Surplus Land").[19] Cavenagh Law confirmed as such in its letter dated 14 November 2023. The "Land" refers to two parcels of surplus land owned by OPV VN that will eventually be

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15 NSH-1 at p 402.

16 NSH-1 at para 11.

17 NSH-1 at p 167.

18 NSH-1 at p 197.

19 NSH-1 at p 403.

disposed of.[20] Under the draft Minority SPA, 65% of the proceeds of the Sale of the Surplus Land would be distributed to Navis and the remaining 35% would be distributed to Victory. This division is in accordance with Navis's and Victory's respective shareholdings in OPV SG. Victory asserts that, according to a valuation that it previously obtained, the Land is valued at US$6,595,177.[21]

The appointment of the Receivers

18 Having set out the pertinent details of the draft Minority SPA, I move on to discuss the events following its disclosure to Victory. On 8 September 2021, Navis confirmed, in a letter sent to Victory's solicitors, that it had appointed the Receivers as joint receivers over the Victory Shares pursuant to the Deed of Appointment.[22] Pursuant to cl 3 of the Deed of Appointment, Navis appointed the Receivers "jointly and severally to be receivers of all the Security Assets".[23] Further, cl 5 provided that "the Receivers shall be the joint and several agent of [Victory]".[24] According to Mr Borrelli, the Receivers were appointed to complete the drag-along sale in circumstances where: (a) Victory had defaulted on its repayment obligations to Navis; and (b) Victory had refused to comply with the Drag Notice.[25]

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20 NSH-1 at p 200.

21 Claimant's Written Submissions dated 31 January 2024 ("CWS") at para 71.

22 NSH-1 at para 22.

23 NSH-1 at p 83.

24 NSH-1 at p 83.

25 DWS at para 16. Also, see generally 1st Affidavit of Cosimo Borrelli dated 5 January 2024 ("CB-1").

Victory's subsequent legal actions against Navis and correspondence with the Receivers

19 Subsequently, Victory commenced an action in the High Court against Navis in relation to the Share Pledge. Victory also sought an injunction to restrain the Receivers and Navis from selling the Victory Shares.[26] After the High Court proceedings were stayed in favour of arbitration, Victory commenced arbitration proceedings against Navis in relation to the Facility Agreement and sought a similar injunction to restrain the Receivers and Navis from selling the Victory Shares. On 25 July 2023, the arbitral tribunal declined to grant Victory's application for an interim injunction. Given the arbitral tribunal's decision, Victory accepted that the Receivers could proceed to sell the Victory Shares.[27]

20 From 31 July 2023 to 28 September 2023, Victory's solicitors and CCPL exchanged correspondence regarding, among other things, the progress of the negotiations with RV Healthcare on the sale of Victory Shares, the allegedly undue delay in the execution of the Minority SPA, communications with RV Healthcare, and the Loan Adjustment Amount. Victory alleges that it had pressed the Receivers four times on questions relating to the sale of the Victory Shares but that its queries went largely unanswered.[28]

21 On 5 October 2023, CCPL informed Victory's solicitors by letter that the Minority SPA had been signed on the same day, with the completion on

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26 NSH-1 at paras 24−25.

27 NSH-1 at paras 26−29.

28 CWS at para 23.

26 October 2023.[29] It had therefore taken the Receivers over nine weeks from 25 July 2023 to sign the Minority SPA, which was when the arbitral tribunal dismissed Victory's application for an interim injunction. The Receivers did not provide Victory with a copy of the signed Minority SPA.[30] From 6 October 2023 to 14 November 2023, Victory's solicitors and CCPL also exchanged correspondence regarding, among other things, the signed Minority SPA and the Loan Adjustment Amount.[31]

22 In any event, Victory alleges that its requests for information went largely unanswered. This is despite CCPL having sent a letter to Victory's solicitors on 31 October 2023 that enclosed a statement of account.[32] This statement of account was summary in nature and lacked details and calculations. Indeed, Victory alleges that Mr Borrelli has still not provided any updates on the Loan Adjustment Amount, the Deferred Purchase Price, and the Sale of the Surplus Land. However, Mr Borrelli has explained that this statement of account sent on 31 October 2023 was an interim one.[33] Indeed, he envisages that a further statement of account will eventually be provided following the receipt and application of any further payment, including the Loan Adjustment Amount to be received from RV Healthcare.[34] But because there have been no further

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29 NSH-1 at para 39.

30 NSH-1 at para 39.

31 NSH-1 at paras 41−50.

32 NSH-1 at pp 393−395.

33 CB-1 at para 44.

34 CB-1 at para 44(c).

updates in relation to any further payment, Mr Borrelli has not provided a further statement of account.[35]

Victory's prayers

23 Against this background, Victory commenced OA 1214 on 1 December 2024. At the risk of repetition, I elaborate further on the substantive orders which Victory seeks against Mr Borrelli and CCPL:

(a) Production of the Minority SPA: that Mr Borrelli furnishes Victory with a copy of the executed drag-along sale and purchase agreement between Victory and RV Healthcare in respect of the Victory Shares, *ie*, the Minority SPA.

(b) Account of sale proceeds: that Mr Borrelli furnishes Victory with a full account of the sale proceeds received from RV Healthcare under the Minority SPA (the "Sale Proceeds"), as well as the application of the Sale Proceeds against the secured liability under the Facility Agreement, with a detailed calculation of costs, expenses, and interest accrued.

(c) Provision of a report: that Mr Borrelli furnishes Victory with a report stating, among other things: (a) when the Receivers were first made aware that they could proceed with the sale of the Victory Shares after Victory's injunction application was dismissed by the arbitral tribunal on 25 July 2023; (b) the reasons why the Minority SPA was only signed on 5 October 2023; and (c) the steps that the Receivers had

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[35] 2nd Affidavit of Cosimo Borrelli dated 31 January 2024 ("CB-2") at paras 33−34.

taken to sell the Victory shares in OPV SG under the Share Pledge. For convenience, I shall term this intended report as the "Report".

(d) Assessment of legal fees: that Mr Borrelli and/or CCPL file a bill of costs for legal fees incurred in connection with the Share Pledge, pursuant to ss 120, 124, and 125 of the LPA).

24 Additionally, Victory also asked, through prayer 4, that if this court finds Mr Borrelli and/or Mr Bance "negligent in carrying out their duties as receivers, that this [court] grant any consequential relief for losses incurred by [Victory] as a result". For convenience, I shall term this as the "Consequential Relief Prayer". For reasons I elaborate on below at [63]−[64], I eventually allowed Victory to withdraw the Consequential Relief Prayer.

25 Finally, in SUM 195, Victory sought permission (pursuant to O 15 r 7(6)(*b*) of the Rules of Court 2021 ("ROC 2021")) to cross-examine Mr Borrelli.

Whether Victory should be allowed to either hold SUM 195 in abeyance or withdraw SUM 195

Victory's requests in relation to SUM 195

26 Before I consider the substantive merits of OA 1214, I turn first to SUM 195, for which the parties tendered extensive written submissions. One day before the hearing on 7 February 2024, Victory's solicitors wrote into court to request that SUM 195 be held in abeyance or, in the event that the court refuses that request, that they be allowed to withdraw SUM 195 (collectively,

the "Requests"). In its letter, Victory's solicitors pointed out that Victory's application to cross-examine Mr Borrelli is premised on three areas, namely:[36]

> a. The over 9-week delay that the Receivers took to sign the Minority SPA;
>
> b. The unsatisfactory statement of account provided by [Mr Borrelli] to [Victory] on 31 October 2023; and
>
> c. The silence from the Receivers over the three sums of money due to [Victory], that is, the Deferred Purchase Price, the Loan Adjustment Amount and the sale of surplus land, which are all part of the consideration under the Minority SPA.

27 Victory's solicitors then wrote that the "[c]ross-examination of [Mr Borrelli] on these three areas may be better conducted after the substantive merits of OA 1214 are decided". Thus, "[i]f [Victory] prevails in OA 1214, cross-examination may still be necessary if the full account and/or the full report provided by [Mr Borrelli] is unsatisfactory in the above three areas". As such, Victory requested that "the [c]ourt hold SUM 195 in abeyance until after the substantive merits of OA 1214 are decided". Finally, Victory stated that if the court did not allow SUM 195 to be held in abeyance, then it would request for leave to withdraw SUM 195 with costs to follow the event.[37] Before me, Mr Jimmy Yim SC ("Mr Yim"), who appeared for Victory, explained that he had not known that SUM 195 was to be heard before OA 1214. As such, according to him, it was only after I had indicated to the parties via letter that SUM 195 was to be heard first, that he could make Victory's Requests. This supposedly justified why the Requests were made so late in the day.

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36 Letter from D&N to Court dated 6 February 2024, para 5.

37 Letter from D&N to Court dated 6 February 2024, paras 6−8.

28 As I said to Mr Yim, it was not possible that Victory did not know that SUM 195 was to be heard before OA 1214. In this regard, the Registrar's Notice dated 17 January 2024 provided that the parties were to file, among others, "(ii) written submissions for OA 1214, limited to 35 pages (including the cover page and any tables of contents); these written submissions are to address the issues in OA 1214 assuming that cross-examination is not allowed" [emphasis in original]. This direction would only have made sense if SUM 195 was to be heard before OA 1214, because only then would it be sensible to provide for the contingency that cross-examination was not allowed.

29 In sum, I found Victory's conduct and requests in relation to SUM 195 to be troubling. First of all, Victory was late in tendering its written submissions for SUM 195 (and OA 1214) despite being notified by the court of the deadlines well in advance. Second, Victory waited until one day before the hearing of SUM 195 to make its Requests. Indeed, this was after all parties, as well as the court, had spent time and effort preparing for the hearing. Third, the reasons offered by Victory in support of its Requests are essentially arguments that the defendants advanced in their written submissions.

The applicable law

30 Victory's request to withdraw SUM 195 was ostensibly made pursuant to O 16 r 6 of the ROC 2021, which is framed identically to O 21 r 6 of the Rules of Court (2014 Rev Ed) ("ROC 2014"). Order 16 r 6 of the ROC 2021 provides that "[a] party who has taken out a summons in a cause or matter may not withdraw it without the permission of the Court". There is little, if any, by way of case law on O 16 r 6 of the ROC 2021 and its predecessor, O 21 r 6 of the ROC 2014. However, it has been noted that the purpose behind O 16 r 6 of the ROC 2021 is that "[p]ermission of the court is necessary for the withdrawal

of a summons because a party seeks relief from the court by way of the summons. *Frivolous or unnecessary applications are discouraged*" [emphasis added] (see *Singapore Rules of Court: A Practice Guide, 2023 Edition* (Chua Lee Ming and Paul Quan eds) (Academy Publishing, 2023) ("*Singapore Rules of Court*") at p 485). It is further noted that a court is likely to grant such permission to withdraw the summons before it has been served. However, if the summons has been served and a hearing date fixed, "the court may require parties to attend at the hearing, where the issue of costs of the withdrawal would be dealt with" (see *Singapore Rules of Court* at p 485).

31 In my view, the fact, that the court's permission is needed under O 16 r 6 of the ROC 2021 before a party can withdraw a summons, must necessarily mean that a court is imbued with the discretion to decide whether to grant such permission or not. In the absence of directly applicable case law to O 16 r 6 of the ROC 2021, a court exercising this discretion can have regard to the body of case law and principles that have been developed in relation to the court's discretion to order that an action or claim be discontinued pursuant to O 16 r 3 of the ROC 2021, which is identical to O 21 r 3 of the ROC 2014. These provisions constitute a complete code on the subject of withdrawal and discontinuance of the whole or part of an action, defence, and counterclaim (see *Singapore Civil Procedure 2021* (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 21/5/1). The broad purpose behind them is that "[a] party must not assume that he can simply disengage from the court process at whim, particularly if he is responsible for its initiation of the step he wishes to revoke" (see Jeffrey Pinsler, *Singapore Civil Practice* (LexisNexis, 2022) at para 16.1.2). Indeed, these provisions, as has been said in the context of O 16 r 6 of the ROC 2021, are meant to discourage frivolous and unnecessary applications (see *Singapore Rules of Court* at p 483).

32 More specifically, the particular rationale for these provisions was explained by Chitty LJ in the English Court of Appeal decision of *Fox v Star Newspaper Company* [1898] 1 QB 636 (at 639):

> … The principle of the rule is plain. It is that after the proceedings have reached a certain stage the plaintiff, who has brought his adversary into court, shall not be able to escape by a side door and avoid the contest. He is then to be no longer *dominus litis*, and it is for the judge to say whether the action shall be discontinued or not and upon what terms. …

33 In Singapore, the Court of Appeal in *Rohde & Liesenfeld Pte Ltd v Jorg Geselle and others* [1998] 3 SLR(R) 335 ("*Rohde & Liesenfeld*") (at [13]), in interpreting O 21 r 3(1) of the ROC 2014, endorsed Graham J's formulation of the relevant principles in the English High Court decision of *Covell Matthews & Partners v French Wools Ltd* [1977] 1 WLR 876 ("*Covell Matthews*") (at 879):

> The principles to be culled from these cases are [that the court will normally] allow a plaintiff to discontinue if he wants to, provided no injustice will be caused to the defendant. It is not desirable that a plaintiff should be compelled to litigate against his will. The court should therefore grant leave, if it can, without injustice to the defendant, but in doing so should be careful to see that the defendant is not deprived of some advantage which he has already gained in the litigation and should be ready to grant him adequate protection to ensure that any advantage he has gained is preserved.

The Court of Appeal further added that in granting leave to withdraw a claim, the "public interest, where appropriate, should also be considered" (see *Rohde & Liesenfeld* at [13]).

34 As I have said above, the principles governing a court's discretion whether to allow a party to withdraw a summons can be adapted from the existing case law and principles in relation to O 16 r 3 of the ROC 2021 and

O 21 r 3 of the ROC 2014 (the latter being the predecessor provision to the former). They can be broadly summarised as follows. First, since no party should be compelled to proceed with a summons against its will, a court should generally give permission for a party who had brought the summons (the "applicant") to withdraw it. Second, however, a court can depart from this general approach if such a withdrawal would cause injustice to the counterparty. This is especially crucial in the context of O 16 r 6 of the ROC 2021 because it appears that a court generally lacks the power to impose conditions on a party's withdrawal of a summons, such as precluding the applicant from bringing a fresh summons at a later stage. After all, O 16 r 6 of the ROC 2021, unlike O 16 r 3(1) of the ROC 2021, does not expressly provide that a court can impose conditions if it allows a summons to be withdrawn.

35 As for what "injustice" to the counterparty could entail, *Covell Matthews* suggests (at 879) that such prejudice could include the deprivation of an "advantage" in the litigation that the counterparty had already enjoyed. In my view, such "advantage" includes, for example, the counterparty having a clearly superior case to the applicant as may be objectively ascertained. In some cases, the superiority may be marked to such an extent that the applicant effectively concedes that, if the summons were determined, it would not succeed in the summons. Concurrently, or in other cases, the superiority may arise from the fact that the applicant's stated reasons for withdrawing the summons effectively mirror the reasons advanced by the counterparty for resisting the summons.

36 In such situations, where the counterparty is on the cusp of victory, it would be clearly prejudicial to allow the applicant to withdraw the summons. This is because the practical effect of a discontinuance or withdrawal is that the plaintiff remains free to bring another action for the same claim (see

Rohde & Liesenfeld at [11]). Additionally, the counterparty would suffer further prejudice if the applicant indicated its desire to withdraw the summons close to the hearing date. This is because the counterparty would not only have tendered extensive submissions to resist the summons, but the party who brought the summons would have had the benefit of reading those submissions. Further, in so far as the public interest may be relevant (see *Rohde & Liesenfeld* at [13]), it is more likely that the court would have also made substantive preparations towards the hearing of the summons.

My decision: Victory is not allowed to hold in abeyance or withdraw SUM 195

37 With these principles in mind, I decided, at the hearing before me, to reject Victory's Requests. I now explain my reasons for doing so.

38 First, I rejected Victory's request to hold SUM 195 in abeyance of OA 1214. In my view, given that Victory had chosen to bring SUM 195 *before* OA 1214 was decided on its substantive merits, Victory cannot be allowed to postpone the determination of SUM 195 until *after* OA 1214 was determined. Victory has to contend with the consequences of its decision to bring SUM 195 now.

39 Second, I also rejected Victory's request to withdraw SUM 195. In my view, to allow Victory to do so now, after the parties have made extensive written submissions on the matter, would be clearly prejudicial to the defendants, who seek a clear ruling on whether Mr Borrelli should be cross-examined at this point. Also, Victory had proceeded with SUM 195 on the very basis that it wanted to cross-examine Mr Borrelli now in support of the consequential reliefs that it seeks. Yet, the fact that it is seeking consequential

reliefs has now turned out to the *very* reason Victory subsequently advanced to withdraw SUM 195. A litigant cannot be allowed to blow hot and cold with ill-considered applications, and then seek to withdraw the same based on the same reasons that it brought the application in the first place. Indeed, what is especially telling is that the reasons that Victory advanced to support its request to withdraw its summons are effectively the same as those that the defendants advanced to resist SUM 195. It cannot be right for Victory, despite effectively conceding that SUM 195 has no real merit (considering the defendants' arguments), to be able to avoid a detrimental judgment (and its attendant consequences) by withdrawing SUM 195 at the last possible moment. In short, it would be prejudicial to allow Victory to escape defeat. Therefore, Victory has to contend with the consequences of its decision to bring SUM 195 now.

40 For all these reasons, I did not give Victory permission to withdraw or hold in abeyance SUM 195.

Whether Victory should be allowed to cross-examine Mr Borrelli

The parties' arguments

41 After deciding on Victory's Requests in relation to SUM 195, I proceeded to consider the merits of SUM 195, *ie*, whether Victory should be allowed to cross-examine Mr Borrelli. In this regard, Victory made four primary submissions.

42 First, Victory argued that the factual disputes in OA 1214 directly impact the remedies that Victory can obtain. In this regard, Victory made three sub-points. One, its prayer for consequential relief, which I have referred to as the "Consequential Relief Prayer" above, is premised on the Receivers' alleged

delay of over nine weeks in signing the Minority SPA. In this regard, Victory alleged that the Receivers ought to have taken no longer than one week to sign the Minority SPA. Victory therefore wanted to cross-examine Mr Borrelli as to what happened during those nine weeks.[38] Two, in furtherance of its prayers for an account of sale proceeds and the assessment of legal fees, Victory needed to cross-examine Mr Borrelli as to how its moneys had been used. Three, in furtherance of its prayer for the Report, Victory needed further details from Mr Borrelli as to the status of the Loan Adjustment Amount, Deferred Purchase Price, and Sale of the Surplus Land. It asserted that Mr Borrelli's account, that there simply had been no updates on these matters, was "sorely lacking".[39]

43 Second, Victory argued that the factual disputes have had a bearing on its financial health. In essence, Victory is an impecunious company and has taken out OA 1214 "as a last resort in the face of seemingly uncooperative Receivers".[40] As such, it should be "given the opportunity to test [Mr Borrelli] as receiver through cross-examination".[41]

44 Third, Victory did not expect cross-examination to delay the convenient and speedy resolution of OA 1214. In its solicitors' view, the cross-examination of Mr Borrelli, if allowed to proceed, will not take more than one day. Arguments on the substantive merits of OA 1214 would take just another day.

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38 Claimant's Written Submissions for Leave to Cross-Examine ("CWS-SUM 195") at paras 10−14.

39 2nd Affidavit of Nguyen Suong-Hong dated 24 January 2024 ("NSH-2") at para 23.

40 CWS-SUM 195 at para 25.

41 CWS-SUM 195 at para 26.

As such, given that counsel have kept dates in March in reserve, Victory pointed out that OA 1214 would be resolved within four months from when it was filed.

45 Fourth and finally, Victory argued that OA 1214 is intended to be a full and final resolution of the parties' rights. Since there is no trial to follow, the High Court's concern in *Tan Sock Hian v Eng Liat Kiang* [1995] 1 SLR(R) 730 ("*Tan Sock Hian*"), that cross-examination in an interlocutory matter might give the parties a rehearsal ahead of trial, would not apply in the present application.[42]

46 In response, the defendants made three primary arguments. First, Victory made the deliberate choice to commence OA 1214 as an originating application. Accordingly, Victory considers that the material facts are not in dispute and that it is not necessary to prove any particular fact to obtain the reliefs it seeks.[43] Second, the reliefs sought by Victory in OA 1214 against Mr Borrelli are contingent on it having a legal entitlement to the documents and information sought. As such, to order cross-examination before Victory has established Mr Borrelli's duty to provide these documents and information would be premature.[44] Third, there is simply no basis for cross-examination based on the supposed factual disputes between the parties.[45]

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42 CWS-SUM 195 at para 29.

43 Defendants' Written Submissions to resist SUM 195 ("DWS-SUM 195") at paras 22−23.

44 DWS-SUM 195 at paras 32−34.

45 DWS-SUM 195 at paras 40−64.

My decision: Victory was not allowed to cross-examine Mr Borrelli

47 For the reasons that I will now explain, I decided that Victory should not be allowed to cross-examine Mr Borrelli.

The applicable law

48 I start with the applicable law, which the parties did not dispute. To begin with, the starting point is that originating applications must generally be decided on the basis of the evidence adduced by affidavits and on oral or written submissions, without oral evidence or cross-examination. This is made clear by O 15 r 7(5) of the ROC 2021, which provides as follows:

> (5) Unless otherwise provided in any written law or the Court otherwise directs, originating applications and summonses must be decided on the basis of the evidence adduced by affidavits and on oral or written submissions, without oral evidence or cross-examination.

49 While this is the general and default position, the court has the discretion to order that the makers of an affidavit in an originating application be cross-examined. The power to do so is provided for by O 15 r 7(6)(*b*) of the ROC 2021 in the following terms:

> (6) Where the Court is of the view that there are disputes of facts in the affidavits, the Court may order any of the following:
>
> …
>
> (*b*) the makers of the affidavits to be cross-examined.

50 However, it goes without saying that the mere existence of disputes of fact in the affidavits cannot automatically trigger an order for cross-examination. Instead, the court's discretion, to order the exceptional cross-examination of an affidavit in an originating application, must be exercised according to coherent and consistent principles. In this regard, the High Court

in *Syed Ibrahim Shaik Mohideen v Wavoo Abdulsalam Shahul Hameed and others* [2023] 4 SLR 903 ("*Syed Ibrahim*") had to consider whether to allow the cross-examination of the applicant, who had applied under s 216A of the Companies Act (Cap 50, 2006 Rev Ed) for leave to commence a statutory derivative action against the first and second respondents, who were directors of the third respondent company. While the application in *Syed Ibrahim* was made pursuant to O 38 r 2(2) and O 28 r 4(3) of the ROC 2014, the court considered that the case law regarding those orders continue to be relevant in the interpretation of their equivalent orders in the ROC 2021, which are O 15 r 7(5) and O 15 r 7(6). I likewise maintain this view in the present application.

51 Briefly, *Syed Ibrahim* identified three factors that should guide a court in the exercise of its discretion whether to order for cross-examination of an affidavit in an originating application. I hold that these three factors are equally applicable in relation to O 15 r 7(5) and O 15 r 7(6) of the ROC 2021. These three factors, adapted for language used in the ROC 2021, are as follows:

(a) First, the *raison d'etre* behind the originating application process. Given that the entire reason for this process is to ensure a quick resolution of the parties' dispute, this would militate against the order of a cross-examination.

(b) Second, the nature of the application at hand. There would be different considerations depending on the application concerned. For example, as was the case in *Tan Sock Hian*, a cross-examination in an interlocutory application may give the parties an unwarranted opportunity to rehearse for the coming trial.

(c) Third, the presence (or absence) of disputes of fact in the application. The starting point is that the mere presence of factual disputes cannot automatically lead to an order for cross-examination. Instead, there must be good reasons beyond the existence of factual disputes to allow for cross-examination.

Victory was not allowed to cross-examine Mr Borrelli for three reasons

52 I decided that Victory should not be allowed to cross-examine Mr Borrelli for three reasons.

(1) Victory chose to commence OA 1214 as an originating application

53 First, Victory had made a clear choice to commence OA 1214 as an originating application. This means that it took the view that there are no material facts in dispute. In this regard, O 6 r 1 of the ROC 2021 provides clearly as follows:

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

54 In my view, a plain reading of O 6 r 1 of the ROC 2021 clearly provides that a claimant who commences a proceeding by an originating application represents that the material facts are *not* in dispute. This is because O 6 r 1(2) of the ROC 2021 provides that a claimant *must* commence proceedings by an originating claim where the material facts are in dispute. Furthermore, this is contrasted with O 6 r 1(3) of the ROC 2021, which expressly provides in r 1(3)(*c*) that a claimant must commence proceedings by an originating application if, among other things, the material facts are not in dispute. Applied to the present application, Victory's choice to commence OA 1214 as an originating application must therefore represent a view that, in the words of O 6 r 1(3)(*c*) of the ROC 2021, OA 1214 "concern[s] solely or primarily the construction of any written law, instrument or document or some question of law and the material facts are not in dispute". In other words, regardless of whether OA 1214 concerns "the construction of any written law, instrument or document or some question of law", Victory represents that the overriding condition in O 6 r 1(3)(*c*) of the ROC 2021 applies, that is, the material facts in OA 1214 are undisputed.

55 Furthermore, Victory has not suggested that it intends to convert OA 1214 into an originating claim. Indeed, at the last Registrar's Case Conference held on 12 January 2024 before the learned Assistant Registrar Rajaram Vikram Raja, Mr Yim informed the court that they have considered whether to convert OA 1214 into an originating claim but decided against doing so. Importantly, Mr Yim reiterated that Victory had filed an originating application "because that is the correct route" since they are asking for documents from Mr Borrelli, a receiver, and this is a question of law. As such, in maintaining OA 1214 as an originating application, Victory has stuck

to its position that OA 1214 does not involve disputes of material facts, even after having the chance to review Mr Borrelli's reply affidavit.

56 Accordingly, given the position that Victory has taken, both in taking out OA 1214 as an originating application *and* maintaining it as such, I agreed with Mr Borrelli that Victory bore a heavy burden to establish why it should be granted permission to cross-examine him. For the reasons that I will explain later, I did not think that Victory discharged this burden.

(2) Victory's prayers for relief are premised on the court finding that it is legally entitled to the documents and information sought

57 Second, considering the nature of the present application, all of Victory's prayers for relief, except for the Consequential Relief Prayer, are premised on the court finding that Victory is legally entitled to the documents and information sought. Whether the court will so find turns primarily on questions of law which relate to the duties that a receiver like Mr Borrelli owes to a mortgagor-chargor like Victory. Thus, it is only if the court finds that Mr Borrelli owes a duty to account to Victory that the alleged factual disputes become relevant.

58 This point can be demonstrated by referring to the three areas that Victory argued it needed to cross-examine Mr Borrelli on. These are, as Victory highlighted in its written submissions: (a) why there was an alleged delay of nine weeks for the Receivers in signing the Minority SPA; (b) how Victory's moneys have been used in relation to the Sale Proceeds and assessment of legal fees; and (c) the present status of the Loan Adjustment Amount, Deferred Purchase Price, and Sale of the Surplus Land.

59 In relation to the reasons for the delay, this comes under Victory's prayer for the Report, under which, if granted, Mr Borrelli should state "[t]he reasons for the delay in the execution of the Minority SPA". Thus put, it is clear that any cross-examination on such reasons for the alleged delay is premised on the court ordering Mr Borrelli to produce the Report in the first place. Thus, if Mr Borrelli were to be cross-examined now at the hearing of OA 1214, Victory would gain access to information about the alleged delay (if there was such a delay) without the court having pronounced on its entitlement to the Report under which those reasons were to be furnished.

60 Similarly, in relation to how Victory's moneys have been used in relation to the Sale Proceeds, this comes under Victory's prayer for Mr Borrelli to provide a full account of such proceeds. This is necessarily predicated on the court ordering Mr Borrelli to provide such an account in the first place. Yet, if Victory were allowed to cross-examine Mr Borrelli so that he can "explain how [Victory's] money has been used", it would, again, gain access to information (here, a "fuller" account of the Sale Proceeds), without the court having pronounced on its entitlement to such information in the first place. This wrongly presupposes that the court would rule in Victory's favour on the prior question of entitlement. The same might be said about Victory's liability for the legal fees. Moreover, it would not be relevant to cross-examine Mr Borrelli on this issue because whether Victory is entitled to tax CCPL's legal fees turns on the interpretation of the relevant provisions in the LPA.

61 Finally, in relation to the present status of the Loan Adjustment Amount, Deferred Purchase Price, and Sale of the Surplus Land, this comes under Victory's prayer for the Report. In this prayer, Victory asks that Mr Borrelli state "[w]hat steps will be taken by [Mr Borrelli] to collect the outstanding

consideration for the sale of [the Victory Shares] under the Minority SPA". Again, similar to my reasons above, any cross-examination on these issues is premised on the court ordering Mr Borrelli to produce the Report in the first place. It is not necessary for me to repeat myself here, except to say that Victory confuses the conceptual distinction between entitlement and consequential relief following that entitlement.

62 For all these reasons, I found that Victory's prayers for relief were premised on the court finding that it is legally entitled to the documents and information sought. Only if the court orders Mr Borrelli to produce the said documents and information, would the facts which Victory sought through cross-examination become relevant. As such, I did not allow Victory to cross-examine Mr Borrelli.

63 In so far as Victory argued that its Consequential Relief Prayer puts the issue of consequential relief before this court, I disagreed. In my view, the Consequential Relief Prayer was a non-starter and should not have been included in OA 1214. To recapitulate, Victory seeks through this Prayer that, if this court were to find Mr Borrelli and/or Mr Bance "negligent in carrying out their duties as receivers, that this [court] grant any consequential relief for losses incurred by [Victory] as a result". This Prayer suffers from several conceptual and legal defects:

(a) First, even if I were to order Mr Borrelli to disclose the documents and information sought, that would not, as Victory appears to assert, amount to a finding that Mr Borrelli had been "negligent". Instead, any order for Mr Borrelli to disclose the documents and information sought is based on his *duty* to Victory to do so. But it does

not follow that Mr Borrelli was negligent *in relation to the matters disclosed* by such documents and information, such as whether there was undue delay on the Receivers' part in signing the Minority SPA, and whether this amounted to "negligence".

(b) Second, it follows that I cannot make a finding of negligence in the absence of further argument as to, among other things, whether Mr Borrelli had breached any duty towards to Victory. Indeed, the parties' arguments have all been focused on whether Victory is *entitled* to the said documents and information, as opposed to whether Mr Borrelli was careless. As such, I would have thought that the purpose of the documents and information is so that Victory can take out a further proceeding, if necessary, to properly make good its allegation of negligence.

(c) Third, and in any case, even if Victory is correct that an order for Mr Borrelli to disclose the documents and information is simultaneously a finding that he is negligent, the Consequential Relief Prayer is defective in suggesting that this court can make a similar finding of negligence against Mr Bance. Mr Bance is not before this court. It is a fundamental tenet of our civil justice system that a party cannot be made civilly liable without being given an opportunity to defend itself, unless that party forgoes such an opportunity.

64 Accordingly, I did not think that the issue of consequential relief was properly before this court in OA 1214. This was yet another reason why I did not allow Victory to cross-examine Mr Borrelli: its proposed purpose for cross-examination was really focused on the issue of consequential relief, as opposed to whether it was entitled to the documents and information sought from

Mr Borrelli. After I broached these concerns with Mr Yim, he rightly applied to withdraw the Consequential Relief Prayer. I allowed this request despite the objection by counsel for the defendants, Mr Nish Shetty ("Mr Shetty"), because the parties had not spent as much time dealing with this prayer as compared to SUM 195.

(3) There are no good reasons, beyond disputes of fact, to warrant cross-examination

65 Third, I did not find any good reasons beyond the alleged disputes of fact to warrant an order for cross-examination. As I have already explained, the areas which Victory proposed to cross-examine Mr Borrelli on are premised on a finding that it is entitled to the documents and information sought. As such, these alleged disputes of fact, even if they exist, are not relevant to OA 1214. In so far as Victory argued that these alleged disputes of fact pertained to its Consequential Relief Prayer, I have already explained why I found that Prayer to be conceptually and legally defective.

66 As for Victory's argument that the cross-examination has a bearing on its financial health, I found that to be a non-starter. However important Victory may view the cross-examination to be, an order for such cross-examination must still be based on good legal reasons. Victory has not provided any.

67 Finally, in relation to Victory's assertion that cross-examination, if ordered, would not delay the convenient and speedy resolution of OA 1214, I agreed that even if cross-examination were ordered, OA 1214 could still be heard over just two days and be resolved within a few months of it being commenced. However, if cross-examination is not ordered, OA 1214 can be heard and resolved *even faster*, without compromising the parties' substantive

rights. The point is that, in assessing whether an originating application would be unduly delayed by an order for cross-examination, a simplistic allusion to quantitative time periods is not helpful. Rather, the correct reference should be to what *ought* to be the time period within which the matter should be heard and resolved. This necessarily falls back on a careful consideration of whether there are good legal reasons for cross-examination to be ordered. As such, I rejected Victory's argument that cross-examination, if ordered, would not delay the convenient and speedy resolution of OA 1214. In my judgment, it is precisely because there is no good reason to order cross-examination in the present application, that an order for cross-examination would *in fact* delay the convenient and speedy resolution of OA 1214, which would be resolved *even* more conveniently and speedily without cross-examination.

68 For all these reasons, I decided that Victory should not be allowed to cross-examine Mr Borrelli and dismissed SUM 195, with the costs of SUM 195 to be dealt with in the round with the costs for OA 1214.

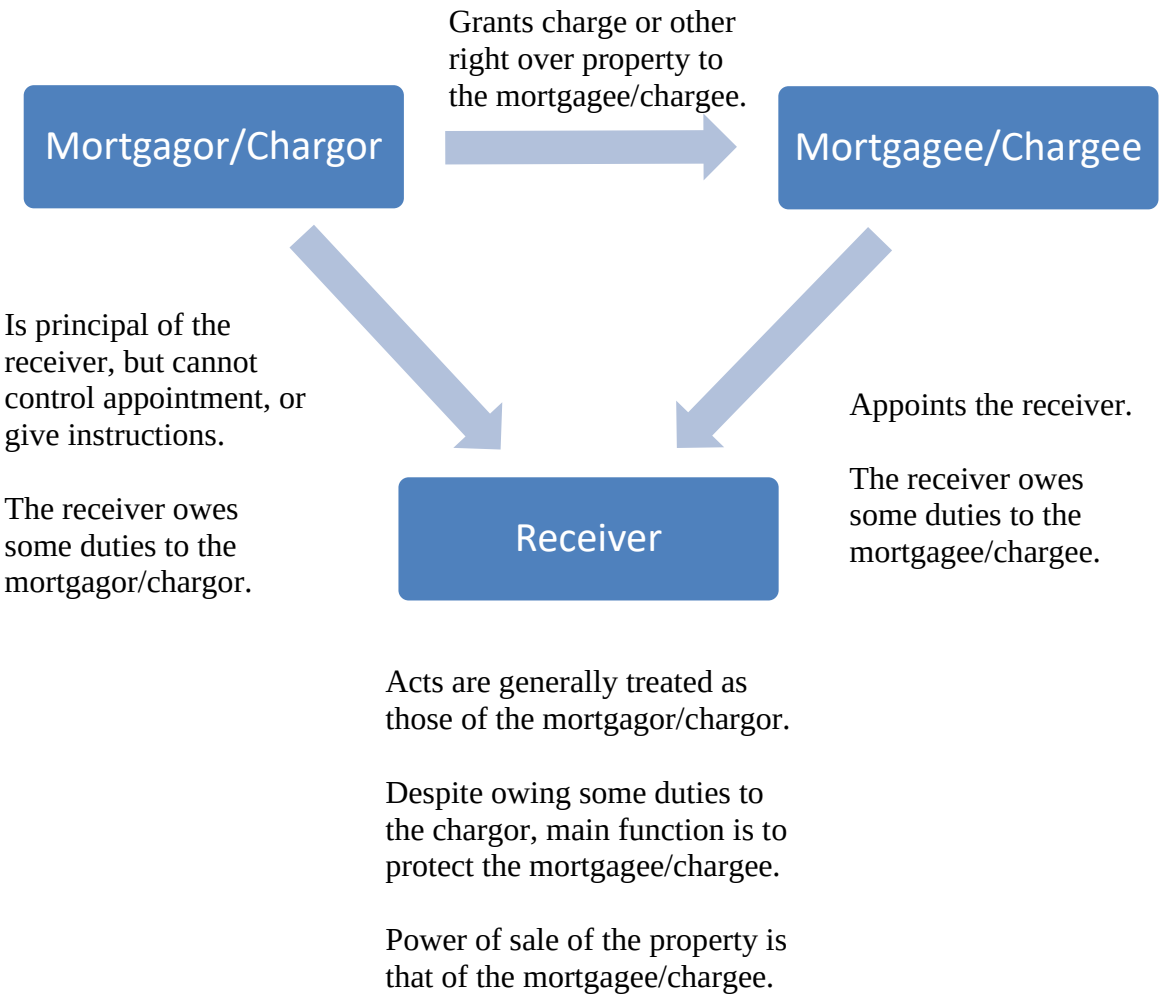
General principles on the agency and duties of a receiver

69 I turn now to consider OA 1214. Because OA 1214 turns on questions of law in relation to the agency and duties of a receiver, I will first deal with the general principles, before considering Victory's entitlement to the various reliefs it seeks against the defendants.

The nature of the relationship between a receiver and the mortgagor/chargor

70 To begin with, as the English Court of Appeal explained in *Gomba Holdings UK Ltd and others v Minories Finance Ltd and others* [1988] 1 WLR 1231 ("*Gomba (CA)*") (at 1233), the agency relationship set up by a secured

debt instrument (*eg*, a charge like in the present case) and the appointment of a receiver thereunder, is tripartite in nature. This relationship involves the mortgagor or chargor (as the case may be), the mortgagee or chargee (sometimes called the "debenture holder"), and the receiver. In a typical receivership situation, the receiver is appointed by the mortgagee/chargee upon the occurrence of certain events, and becomes the agent of the mortgagor/chargor without the mortgagor/chargor having any say in his appointment (see s 29(2) of the Conveyancing and Law of Property Act 1886 (2020 Rev Ed)). The primary purpose of this relationship is to protect the mortgagee/chargee (see *Gomba (CA)* at 1233). Thus, the receiver acts as the agent of the mortgagor/chargor only to the extent that he has the power to affect the position of the mortgagor/chargor by acts which, while done for the benefit of the mortgagee/chargee, are treated as if they are that of the mortgagor/chargor (*Gomba (CA)* at 1233). I summarise broadly the tripartite nature of this relationship in the diagram below.



71 The next point, as the Singapore cases have made clear, is that while a privately appointed receiver is an "agent" of the mortgagor/chargor, the scope of this agency relationship is limited. Indeed, the reason for this is that the receiver's primary duty is to the mortgagee/chargee who appointed him, *and not to his principal* (*ie*, the mortgagor/chargor). In this regard, the High Court in *Jurong Aromatics Corp Pte Ltd (receivers and managers appointed) and others*

v BP Singapore Pte Ltd and another matter [2018] SGHC 215 ("*Jurong Aromatics*") held as follows (at [69]):

> A receiver and manager is usually the agent of the company by virtue of the security instruments but this does not mean that the property subject to the charge remains within the control of the company. The receiver and manager's primary duty is to the debenture holders: *In re B. Johnson & Co. (Builders) Ltd [1955] Ch 634 at 661*. The agency that is generally created permits the receiver and manager to bind the company in transactions and avoid liability for the debenture holder. As noted by David Milman in "Receivers as Agents" (1981) 44(6) MLR 658 at pp 660–663, the receiver and manager actually owes little by way of duties as an agent to the company. The receiver and manager's agency does not affect the equitable interest held by the debenture holder in the charged assets; there is no transfer or surrender of that equitable interest.

72 The Court of Appeal, on appeal in *BP Singapore Pte Ltd v Jurong Aromatics Corp Pte Ltd (receivers and managers appointed) and others and another appeal* [2020] 1 SLR 627, affirmed the principle that the agency relationship between a receiver and a mortgagor/chargor is a limited one. Indeed, the Court held that receivers owe little by way of duties as an "agent" to the mortgagor company in that case (at [30]–[31]):

> 30. The appellants' submission that JAC had control over the claimed receivables because the Receivers acted as agents of JAC in continuing its ordinary business cannot, in the light of these principles, be accepted. It is correct that the Receivers were the agents of JAC by virtue of cl 16.4 of the Debenture. But the receiver and manager of a company in receivership is not an agent of the company itself in the same sense as its directors are. …
>
> 31. Unlike the directors of the company, the receivers and managers are, after all, duty-bound to carry out their functions in the interests of those who appointed them in the first place – the security holders. As the Judge correctly noted (see *Jurong Aromatics (HC)* at [69], citing David Milman in "Receivers as Agents" (1981) 44(6) MLR 658 at 660–663), the receiver and manager actually owes little by way of duties as an agent to the company. That a security document confers upon the receiver the power to carry on the company's business and the right to

> do so as agent of the company is simply an arrangement "to enable the mortgagee to enjoy the advantage of his nominee, the receiver, displacing the mortgagor from control of the mortgaged property and from receipt of the income derived from it whilst at the same time avoiding assuming the liabilities of a mortgagee in possession": *Lightman & Moss* at para 10–013. …

73 Indeed, Assistant Professor Rachel Leow, in her learned article on the definition of the term "agency", goes so far as to suggest that a receivership is a "clear" example of an agency relationship where fiduciary duties are *not* owed to the principal (*ie*, the mortgagor/chargor), given that the receiver of a company typically acts in the interests of the mortgagee/chargee and not the mortgagor/chargor (see Rachel Leow, "Understanding Agency: A Proxy Power Definition" (2019) 78(1) CLJ 99 at 106−107). For the avoidance of doubt, I leave open the question of whether a receiver owes fiduciary duties to the mortgagor/chargor.

74 I now summarise, drawing on the previous discussion and the case of *Silven Properties Ltd and another v Royal Bank of Scotland plc and others* [2004] 1 WLR 997 ("*Silven Properties*"), the "peculiar incidents" of a receiver's agency that are relevant to the present discussion (at [27]):

(a) Even though the mortgagor/chargor is the principal, it has no say in the appointment or identity of the receiver and is not entitled to give any instructions to the receiver. It is also not entitled to dismiss the receiver.

(b) There is no contractual relationship between the mortgagor/chargor and the receiver.

(c) The receiver owes duties to both the mortgagee/chargee, and the mortgagor/chargor. This creates a tripartite relationship between the mortgagor/chargor, the receiver, and the mortgagee/chargee.

(d) The duty owed by the receiver to the mortgagor/chargor is not owed to him individually but to him as *one of the persons* interested in the equity of redemption. In other words, this right possesses a "class character".

(e) Despite the foregoing, the receiver's primary duty in exercising his powers of management is to try and bring about a situation in which the secured debt is repaid.

(f) Therefore, the receiver is not managing the mortgagor/chargor's property for the benefit of the mortgagor/chargor, *but the security, the property of the mortgagee/chargee,* for the benefit of the mortgagee/chargee.

75 Thus, as summarised in a practitioner's textbook, the receiver's agency for the mortgagor/chargor does not place him on the same footing as the mortgagor/chargor. Crucially, the receiver's "ability to bind the company is for the primary purpose of acting in the debenture holder's best interests by realising the security". As such, in determining the scope of the private receiver's duties and liabilities, the tension between his mandates to the mortgagee/chargee and the mortgagor/chargor should be kept in mind (see *Halsbury's Laws of Singapore – Insolvency (Volume 13)* at para 150.093).

The limited general duties that arise from the agency relationship between a receiver and the mortgagor/chargor

76 The more specific question in the present case is the content of the duties that arise by virtue of the "limited" agency relationship between a receiver and the mortgagor/chargor. At the outset, it should be pointed out that the duties that a receiver owes to a mortgagor/chargor are primarily equitable in nature. As the English Court of Appeal explained in *Silven Properties* (at [27]), there "is no contractual relationship or duty owed in tort by the receiver to the mortgagor: the relationship and duties owed by the receiver are equitable only".

77 While there does not appear to be any authoritative judicial explanation in Singapore as to why this is the case, I surmise that this is because, in a legal mortgage, the mortgagor conveys legal title in the property to the mortgagee, only retaining the equity of redemption (see Tang Hang Wu & Kelvin F K Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 4th Ed, 2019) ("*Tan Sook Yee*") at paras 18.3, 18.7, 18.20, and 18.39). Since the common law regards the mortgagee as the owner of the property, it follows that the common law does not impose any duties on the mortgagee in relation to the mortgagor. However, as equity regards the mortgagor as the owner of the property (see *Tan Sook Yee* at para 18.39), it imposes, and thus is the source of, various duties that the mortgagee owes to the mortgagor (see generally *Tan Sook Yee* at paras 18.20−18.38). Therefore, when the receiver exercises the powers it receives from the mortgagee, any duties it owes to the mortgagor in the exercise of those powers continue to be governed by equity. As for charges, they are creations of equity (see *Jurong Aromatics* at [43]) and thus it stands to reason that the relationship between the chargor and chargee, and the receiver by extension, is regulated by equity. In addition to equity, duties owed by the receiver may be provided by statute or even in the contract between the

mortgagor and mortgagee (see the English High Court decision of *Gomba Holdings UK and others v Homan and another* [1986] 1 WLR 1301 ("*Gomba (HC)*") at 1305–1306). Admittedly, there are cases, such as the Privy Council decision of *Downsview Nominees Ltd v First City Corporation Ltd* [1993] AC 295, which have explained that a receiver's duties owed to a mortgagor/chargor are equitable in nature because the characterisation of such duties as tortious in nature would overwhelm any equitable duty. It suffices for me to observe that this explanation, so far as I have correctly understood it, does not answer the prior question of *why* a receiver's duties should be equitable in nature. This is why I have advanced an explanation that rationalises the equitable nature of a receiver's duties from first principles.

78 As to the local jurisprudence which has considered the content of the duties owed by a receiver to the mortgagor/chargor, both parties refer to the Court of Appeal decision of *Roberto Building Material Pte Ltd and others v Oversea-Chinese Banking Corp and another* [2003] 3 SLR(R) 217 ("*Roberto*") as the governing local authority. In that case, the company alleged, among other things, that the receiver had not diligently pursued the offers made by certain parties to purchase the mortgaged property. In dismissing the company's allegations, Chao Hick Tin JA, delivering the decision of the court, set out the general duties owed by a receiver to a mortgagor/chargor (at [51]):

> At this juncture, we will examine the law to determine what duty of care is owed by a receiver to the mortgagor company. From the authorities, it would appear that there is no general duty of care on the part of the receiver to the company. The primary duty of the receiver is to the debenture holders and not to the company. There is no duty to exercise the power of sale. The mortgagee (thus the receiver) is not a trustee of the power of sale for the mortgagor. The mortgagee or receiver is entitled to determine the time for sale so long as he acts in good faith.

This is consistent with the starting point that the scope of the receiver's agency relationship with the mortgagor/chargor is a limited one. Thus, as Chao JA explained (at [51]), the receiver has no "general duty of care" to the mortgagor/chargor and that his primary duty is to the mortgagee/chargee.

79 More specifically, the receiver's power of sale is, in effect, that of the mortgagee/chargee. As such, the receiver owes the same duties to the mortgagor/chargor, as the mortgagee/chargee owes to the mortgagor/chargor when exercising the power of sale (see *Roberto* at [52], citing the English Court of Appeal decision of *In re B Johnson & Co (Builders) Ltd* [1955] Ch 634 at 662). Following from this, as Chao JA further explained, the receiver has no duty to exercise the power of sale (see *Roberto* at [51]). However, if the receiver does exercise the power of sale, he owes a duty to the mortgagor/chargor to "exercise reasonable care as to the manner in which the sale is carried out so as to obtain its true market value" (see *Roberto* at [53] and [63]). As such, the receiver commits no breach of duty to the mortgagor/chargor by a *bona fide* sale, even if he might have obtained a higher price or at more favourable terms from the mortgagor's/chargor's perspective. While not relevant to the present application, the English Court of Appeal in *Medforth v Blake* [2000] Ch 86 extended this duty to the situation where, instead of selling a mortgaged property, the receiver carried on the business of the company concerned. Chao JA in *Roberto* appeared to have accepted this extension, albeit with certain clarifications (see *Roberto* at [56]).

80 In summary then, under Singapore law, it is possible to make the following points about the nature and content of the receiver's duties to the mortgagor/chargor. First, the receiver owes little by way of duties to the mortgagor. Second, a receiver's primary duty is owed to the mortgagee/chargee,

and not to the mortgagor/chargor. Third, the receiver's duties to the mortgagor/chargor are derived primarily in equity, although statute or contract can provide for additional duties. Fourth, when exercising its power of sale of a mortgaged property, a receiver owes, to the mortgagor/chargor, a duty of good faith and a duty to take reasonable care to obtain a proper price.

While the receiver comes under a duty to account to the mortgagor/chargor, this is a limited duty

The parties' disagreement as to the existence of a receiver's duty to account

81 It is appropriate at this point to address the issue of whether a receiver owes a duty to account to the mortgagor/chargor. In this regard, Victory makes three points. First, it relies on a reference in *Silven Properties* to the "core duty of the receiver to account to the mortgagor" as support for such a duty.[46] Second, Victory analogises the receiver-mortgagor relationship to the trustee-beneficiary relationship. In this regard, Victory points out that a beneficiary is entitled to see the documents held by a trustee in his capacity as trustee as the beneficiary would otherwise be "robbed of the ability to bring proceedings against the trustees in the event of breach of trust because they cannot find out if there had been a breach of trust because they have no access to the appropriate information" (citing Alastair Hudson, *Equity and Trusts* (Routledge, 8th Ed, 2015) at para 8.4.3).[47] Third, Mr Yim made the argument, before me, that because the receiver is a fiduciary, it follows that he has a duty to give an

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46 CWS at para 34.

47 CWS at para 37.

account.[48] Victory's written submissions also seemed to imply such an argument at various points.[49]

82 With respect, I found some of Victory's points for establishing a receiver's duty to account to the mortgagors to be unconvincing. First, I do not think that it is appropriate to analogise the receiver-mortgagor/chargor relationship to the trustee-beneficiary relationship. This is because unlike in the receiver-mortgagor/chargor relationship, the beneficiary stands, broadly speaking, as the ultimate recipient of the benefits under the trust. This is why the beneficiary principle expects that there must be some person in whose favour a court can decree performance. In contrast, in the receiver-mortgagor/chargor relationship, the receiver's primary duty is not to the mortgagor/chargor but to another party, *ie*, the mortgagee/chargee.

83 Second, I do not agree with Mr Yim's approach of beginning from the premise that a receiver is a "fiduciary", and then proceeding onwards from that starting point to determine the scope and content of the receiver's duties to the mortgagor/chargor. The Court of Appeal decision of *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 makes clear that such an argument puts the cart before the horse. This is because the label "fiduciary" is "a *conclusion* which is reached only once it is determined that particular duties are owed" [emphasis in original] (at [193], citing James Edelman, "When do Fiduciary Duties Arise?" (2010) 126 LQR 302 at 316). In other words, "[i]t is not because a person is a 'fiduciary' or a 'confidant' that a rule applies to him. It is because a particular rule applies to him that he is a fiduciary or confidant

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48 Minute Sheet ("MS") at pp 6 and 10.

49 CWS at paras 29−32, 36−39.

for its purposes" [emphasis in original omitted] (at [193], citing Paul Finn, *Fiduciary Obligations* (The Law Book Company, 1977) at p 2). Therefore, it is incumbent on Victory to explain *why* it is owed a duty to account by the Receivers, and why this duty is fiduciary in nature, rather than simply asserting that a receiver is a fiduciary and expecting legal consequences to flow therefrom. Indeed, as the Court of Appeal pointed out, "[g]iven that a fiduciary obligation is a *conclusion* rather than a *premise*, the meaning of the term 'fiduciary *relationship*' is naturally thrown into doubt" [emphasis in original] (at [193]).

84 As for the defendants, they initially took the position in their written submissions that the receiver does not owe a duty to account under Singapore law.[50] However, at the hearing before me, Mr Shetty conceded that, in light of Kristy Tan JC's recent decision in *Hang Huo Investment Pte Ltd v Wong Pheng Cheong Martin* [2024] SGHC 32 ("*Hang Huo*"), the receiver does owe a duty to account to the mortgagor/chargor under Singapore law.[51]

A receiver has a duty to account to the mortgagor/chargor under Singapore law

85 Having considered the parties' arguments, I find that a receiver does have a duty to account to the mortgagor/chargor under Singapore law. This is consistent with Tan JC's decision in *Hang Huo*, where she reasoned as follows. The learned judge began by observing that in a curial receivership, receivers are officers of the court, and for this reason, owe a duty to account (at [116]). She

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50 DWS at paras 36–38.

51 MS at p 11.

then drew an analogy between curial receivers and private receivers, and concluded that private receivers, as agents of a company, owe a similar duty to account to that company (at [117]). However, she also caveated that the receiver's agency, and the duties he owes to the principal thereunder, must be qualified by the fact that the purpose of his appointment is to realise the assets of the company primarily for the benefit of the mortgagee/chargee (at [117]).

86 I respectfully agree with and gratefully adopt Tan JC's reasoning in *Hang Huo*. In addition to what she has said, I further observe that a duty on a receiver to account to the mortgagor is not inconsistent with his other duties that the Court of Appeal recognised in *Roberto*.

87 In fact, a duty to account can be said to give effect to some of those other recognised duties. For example, if the receiver must exercise reasonable care in the conduct of a sale of the mortgaged property, then it stands to reason that the receiver should account to the mortgagor/chargor so that the latter can determine whether such reasonable care had been taken. A duty to account might also be necessary to enable the mortgagor/chargor to have some information from which to investigate and interrupt any potential fraud or unreasonableness on the part of the receiver. Besides, a duty to account may be necessary to ensure that the mortgagor/chargor's rights are effective. For instance, as Hoffmann J observed in *Gomba (HC)* (at 1308C), if a company has no way of finding out which assets have been sold and which remain to be redeemed, this could render nugatory the company's right to redeem (at 1308C). As such, the right to redeem probably "gives rise to a right on the part of the company to ask for sufficient information to make it effective" (at 1308B).

88 Other English cases apart from *Gomba (HC)* appear to support the proposition that receivers owe the mortgagor/chargor a duty to account. For instance, in *Silven Properties*, a significant issue was the identification of the duties owed by a receiver to the mortgagor/chargor. Despite the court's caution regarding the indiscriminate importation of "general agency principles" into the context of a receivership, it was still willing to find that "[t]he core duty of the receiver to account to the mortgagor subsists" (at [28]).

The limitations on the receiver's duty to account to the mortgagor/chargor

89 However, in light of the notion that a receiver's relationship of agency to a mortgagor is a "limited" one, and that his primary duties are owed to the mortgagee/chargee, it follows that any duty to account to the mortgagor must correspondingly be limited. Hoffmann J in *Gomba (HC)* explained what these limitations are. In that case, the bank exercised its right as mortgagee to appoint receivers of the plaintiffs' assets. The plaintiffs were a group of companies, of which Mr Abdulhamid Shamji ("S") was the sole director. The receivers went on to realise the assets. This reduced the plaintiffs' indebtedness to about £11m. S then entered into an agreement with an undisclosed third party. S claimed that this agreement would allow the plaintiffs to pay off its outstanding indebtedness to the bank and to redeem the remaining assets. The plaintiffs therefore sought information as to the current state of the receivership so as to conclude negotiations with the third party. The receivers supplied some information. However, the plaintiffs thought that the information was less than what they were legally entitled to. They therefore sued the receivers for the full disclosure of all disposals of assets made or proposed to be made by the receivers. Hoffmann J dismissed the motions for disclosure because, among other reasons,

the receivers were justified in concluding that the plaintiffs did not need the relevant information sought.

90 In coming to his decision, Hoffmann J deduced the following principles in relation to what he found to be the receiver's duty to account to the mortgagor (see *Gomba (HC)* at 1305–1306):

(a) First, the receiver should have the power to carry on the process of realisation of the company's property without interference from the board (see *Gomba (HC)* at 1306). This follows from the receiver's displacement of the company in, among other things, the power to dispose of property put into his possession.

(b) Second, any duty to provide information must be subordinated to the receiver's primary duty not to do anything which may prejudice the interests of the mortgagee/chargee (see *Gomba (HC)* at 1307–1308).

(c) Third, when weighing the interests of the mortgagee/chargee vis-à-vis the company (the mortgagor/chargor), the receiver has a discretion to decide how much information to disclose. If the company disputes the sufficiency of information provided by the receiver, the burden is on the company seeking information to show that the receiver had exercised this discretion in bad faith or had made a decision no reasonable receiver would have made (see *Gomba (HC)* at 1307).

(d) Fourth, and practically speaking, subject to any express contrary provision found in statute or the terms of the debenture, the company's right to information was only on a "*need to know*" basis. This may arise when the company's board might need information from the receivers

> in order to comply with its statutory obligation to render accounts or to exercise its equity of redemption (see *Gomba (HC)* at 1308). This therefore negates a general obligation upon the receiver to provide information to the company (see *Gomba (HC)* at 1307).

In my respectful view, these principles are equally applicable in Singapore.

91 Similar limitations on the receiver's duty to account have also been applied in other jurisdictions. For example, in the Supreme Court of New South Wales decision of *Boulos and another v Carter and another (as receivers and managers of Tarbs World TV Australia Pty Ltd)* (2005) 220 ALR 572 ("*Boulos*"), the court considered *Gomba (CA)* and agreed that any right of access for documents would be "subject to the qualification that it may not be exercised in a way that would prejudice the due progress and completion of the receivership" (at [49]).

92 Likewise, in the Supreme Court of Western Australia decision of *Re Geneva Finance; Quigley (Receiver and Manager appointed) v Cook and others* (1992) 7 WAR 496 ("*Re Geneva*"), the court summarised (at 513–514) the principles with respect to the inspection by receivers and observed that "[t]he receiver would be justified in refusing to grant access to the documents where to do so would impede the receiver in the proper exercise of his functions or would impinge prejudicially upon the position of the [mortgagee/chargee] by threatening or imperilling the assets which are subject to the charge". In short, a receiver's duty to account is ultimately subject to the receiver's primary duty to the mortgagee/chargee.

93 In summary, I do not agree with Mr Yim's submission that the mortgagor/chargor is at all times entitled to ask, and the receiver is obliged to provide, any information that the former asks for as long as the information does not prejudice the interests of the receiver or the mortgagee/chargee.[52] I find that to conceive of the duty to account in this manner would be too broad. In light of the receiver's limited duties to the mortgagor/chargor, it would be inappropriate for the receiver to be subject to a general obligation to provide information to the mortgagor/chargor while the receivership is ongoing. The receiver should generally, as it were, be left alone. Otherwise, the receiver could be burdened by repeated applications for information during the course of the receivership, especially where such information is requested more to "appease fears", as Mr Shetty put it, rather than to establish any specific wrongdoing.[53] The position could, however, be different once the receivership ends (see *Gomba (HC)* at 1307G−H).

The practical test to govern when a receiver needs to produce documents

94 So far, I have set out the limitations on the receiver's duty to account to the mortgagor/chargor, as derived from the more general proposition that a receiver's duty to so account is conditioned by the tripartite relationship between a receiver, the mortgagee/chargee, and the mortgagor/chargor. However, even though it is established that such limitations exist, another question remains: what is the practical test governing when a receiver needs to produce documents in furtherance of his (albeit limited) duty to account?

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52 MS at pp 14−17.

53 MS at p 13.

95 In this regard, the parties' arguments before me reveal at least two possible tests: one premised on the mortgagor's/chargor's "ownership" of the documents, and another based on the mortgagor's/chargor's "need to know" the contents of the documents. It is necessary, in my view, not only to explain these two tests, but also decide how they interact with each other.

96 For the reasons that I will now develop, I conclude that the "ownership" test is always subject to an overriding discretion as to whether the production of the document concerned *during the receivership* would be of such utility as to be warranted (see *Boulos* at [50]). Thus, while a claim based on ownership may constitute a valid basis to compel production, the court retains an overriding discretion to decide if an order to so produce should be made. However, once the receivership ends, a claim to the document based on ownership will usually succeed. One of the considerations that goes towards deciding whether the discretion is exercised in favour of production, during the receivership, is whether the mortgagor/chargor has a need to know the contents in the documents.

The "ownership" test

97 I turn first to the "ownership" test. In this regard, whether a mortgagor/chargor can claim ownership over a document created during by a receiver "depend[s] upon the capacity in which the receivers were acting when they brought the documents into existence" (see *Gomba (CA)* at 1235B). *Gomba (CA)* concerned a claim by the plaintiffs for receivers to deliver certain documents *after* the receivership had ended. In assessing the plaintiffs' argument that they were entitled to the documents based on ownership, Fox LJ explained that the documents created during a receivership can be broadly grouped into three categories. The first are documents that are created or

received by the receivers, in pursuance of their duty to manage the affairs of the mortgagor/chargor. This would be the property of the mortgagor/chargor (at 1234D). The second are documents that the receivers created for the purpose of advising and informing the mortgagee/chargee about the conduct of the receivership. This would not be the property of the mortgagor/chargor (at 1234E). Finally, there are what can be broadly termed as "preparatory" documents. These are documents that are prepared by the receivers "not in pursuance of any duty to prepare them but simply to enable the receivers to prepare such documents or perform such duties as they were required to prepare or perform for the purposes of their professional duties to the debenture holders or the companies" (at 1234F). This would be the property of the receivers. In sum, only documents in the first category (*ie*, those documents that are created by the receivers when they are acting in their capacity to manage the mortgagor's/chargor's business and property), are the property of the mortgagor/chargor. In the event, Fox LJ dismissed the plaintiffs' claim to the documents because they did not own them pursuant to his analysis of the various ownership scenarios.

98 The New South Wales Supreme Court decision of *Boulos* supports the proposition that the ownership of documents created during the course of a receivership depends on the capacity in which the receivers were acting when they were creating those documents (at [47]):

> … documents created or received by the receivers in the course of acting for the company … must be regarded as owned by the company … Of course, not every document created by receivers during receivership will belong to the company. Excluded will be documents prepared by the receivers for their own benefit or protection and documents referable only to the receivers' relationship with their appointor. But when the receivers act for the company in and about the conduct of its business or the

> sale of its property, the agency they exercise is not different in its essential nature from administration by a board of directors.

99 Indeed, it appears to me that *Boulos* adopts a very similar, if not identical, tripartite grouping of documents as *Gomba (CA)*, and reaches the same conclusion: that the mortgagor/chargor owns the documents which are created by the receiver when the receiver is acting in its capacity to conduct or manage the mortgagor's/chargor's business or sell the mortgagor's/chargor's property.

100 For completeness, I address Mr Shetty's attempt to distinguish *Gomba (CA)* on the grounds that it concerned an application for documents after the end of a receivership.[54] I find this distinction to have no bearing on the validity of the tripartite classification of documents in *Gomba (CA)*. After all, documents that are created by the receiver, while it is acting in its capacity to manage or dispose of the mortgagor's/chargor's business or property, are owned by the mortgagor/chargor, regardless of whether the receivership is still ongoing or not. Indeed, Mr Shetty did not argue, in my view correctly, that ownership of the documents somehow switches upon the termination of the receivership.

101 However, and this is an important point, Mr Shetty is correct in that even if the mortgagor/chargor can assert ownership over certain documents, that does not mean that the receiver must produce the documents *during the receivership* upon being asked. In my view, such a broad application of the "ownership" test ignores the limitations on the receiver's duty to account to the mortgagor/chargor, as derived from the broader realities concerning the tripartite relationship between the receiver, the mortgagee/chargee, and the

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[54] MS at p 21.

mortgagor/chargor. Indeed, as I mentioned previously, *Boulos* qualifies a mortgagor's/chargor's right to compel production in the following terms (see *Boulos* at [50]):

> The general law rule applies to documents generally, being documents owned by the company. But the fact that a basis of claim exists is not of itself sufficient to cause the court to make an order enforcing it. *There is a discretion. The overriding question is whether the order sought will, in the particular circumstances, be of such utility as to be warranted.*
>
> [emphasis added]

In my view, the discretion mentioned in this quoted passage should be exercised by considering whether the mortgagor/chargor has a "need to know" the contents of the documents that it seeks to be produced.

The "ownership" test is subject to an overriding discretion embodied in, among others, a "need to know"

102 My view, that the court's overriding discretion should be guided by the mortgagor's/chargor's "need to know" the contents of the documents that it seeks to be produced, finds support in *Gomba (HC)*. In that case, Hoffmann J held (at 1308A) that the company's right to information depended on demonstrating, among other things, a "need to know" such information for the purpose of enabling the board to exercise its residual rights or perform its duties. While the learned judge did not want to explore what this entailed beyond what was necessary in that case, he accepted that the "need to know" could include the company needing information to exercise its equity of redemption. Indeed, in *Gomba (HC)*, S (the director of the applicant companies) had at least entered into an agreement with (albeit undisclosed) third parties to pay off the bank and redeem the remaining assets. Yet, Hoffmann J rejected the plaintiffs' motion for

fuller information because the receivers in that case were justified in concluding that S had not evinced a realistic prospect of redemption.

103 I recognise that the Australian case of *Re Geneva* has cast doubt on this statement as it appears that the statement in *Gomba (HC)* was not based on any specific authority (see *Re Geneva* at 511). However, I find that the "need to know" test is not precluded by any higher local authority and is also in principle a helpful test to address the receiver's duty to the mortgagee/chargee. Indeed, it affirms the receiver's overriding duty to the mortgagee/chargee *during the receivership*, while also recognising that the mortgagor/chargor may "need to know" the contents of the documents concerned in order to, for example, exercise certain rights or discharge certain duties. However, after the receivership has ended, a mortgagor's/chargor's claim to documents based on its ownership will be more likely to succeed. While such claims would still be subject to the court's discretion, stronger reasons would be needed to satisfy the court as to why production is not warranted.

The position regarding documents that have not yet come into existence

104 I now turn to the consider the position regarding documents that have *not yet* come into existence. This might be relevant where a mortgagor/chargor asks that the receiver *create* new documents, such as reports, to summarise or convey certain information concerning the receivership. In such cases, there is simply no question of ownership as the documents do not yet exist at the time that the mortgagor/chargor is asking for those documents. Following from this, I am of the view that, where a mortgagor/chargor asks for documents that are not yet in existence, the "ownership" test simply does not apply. Rather, the mortgagor's/chargor's request to compel the receiver to create the documents sought would be governed by the court's overriding discretion as set out above,

which, if the receivership is still subsisting, is guided by the mortgagor's/chargor's "need to know" (see above at [102]−[103]).

Summary of the practical test to govern when a receiver needs to produce documents

105 Consolidating the foregoing discussion, I now set out the test that governs when a receiver needs to produce documents at the request of the mortgagor/chargor:

(a) Do the documents exist? If the answer is "yes", proceed to (b). If the answer is "no", skip (b) and proceed straight to (c).

(b) Does the mortgagor/chargor own the documents? This depends upon the capacity in which the receivers were acting when they created those documents (see above at [97]−[99]). If the answer is "yes", proceed to question (c). If the answer is "no", the court is unlikely to order production.

(c) Will production of the documents be of such utility as to be warranted? This depends on several factors:

(i) If the receivership is still subsisting, the court's discretion should be guided by the mortgagor's/chargor's "need to know" the contents of the documents (see above at [101]−[103]).

(ii) If the receivership has ended, and the documents being requested are owned by the mortgagor/chargor, the court will be more likely to answer this question in the affirmative unless the receiver can provide strong

reasons as to why production of the documents should be refused (see above at [103]).

106 With these general principles in mind, I turn to consider Victory's various prayers for relief.

Whether Mr Borrelli should produce a copy of the Minority SPA to Victory

The parties' arguments

107 In respect of Victory's prayer that Mr Borrelli produces a copy of the Minority SPA to it, Victory submits that it is unreasonable for Mr Borrelli to have refused to do so for the following reasons. First, it is not acceptable for Mr Borrelli to say that Victory "has already been provided with a summary of the key terms of the Minority SPA".[55] Without a copy of the Minority SPA, Victory would not be in a position to know whether Mr Borrelli has properly discharged his duties to it.[56] Second, Victory is an impecunious company and is heavily dependent on the Sale Proceeds to repay the loan under the Facility Agreement. As such, it is important for it to know that Mr Borrelli has acted with due diligence to obtain all consideration due under the Minority SPA for the Shares and has properly applied such proceeds to the repayment of the said loan.[57] Third, Mr Yim also argued before me that Victory can claim ownership over the Minority SPA because it was created by the Receivers when they were acting for Victory.

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55 CB-1 at para 57.

56 CWS at paras 43−46.

57 CWS at para 47.

108 In response, the defendants argue that Victory is not entitled to a copy of the Minority SPA for several reasons. First, Mr Borrelli has no duty to account to Victory based on his reading of the applicable law. In this connection, cl 11.4(a) of the Share Pledge and cl 5 of the Deed of Appointment both state that Victory alone is "responsible" for the Receivers' "acts", "defaults", "losses", and "liabilities". The contractual language therefore makes it plain that the primary purpose of the agency relationship between the Receivers and Victory is so that the Receivers can bind Victory, and Victory agrees to be bound by the Receivers' acts.[58] Second, even if Mr Borrelli has a duty to account, Victory has not shown that he has breached that duty. In this regard, the defendants point out that there are clear limits to such a duty to account, including that a receiver needs only to disclose information on a "need to know" basis. In the present case, Victory has not shown any need to know more facts than that has already been given to it. Third, in any case, Mr Borrelli has always provided regular and timely updates to Victory with respect to the Victory Shares.[59] Fourth, the duty to account, if it exists, is ultimately subordinate to the receiver's primary duty to the mortgagee/chargee. In the present case, Mr Borrelli is entitled to conclude that the provision of any further information beyond what has already been provided would be prejudicial to Navis's interests. In this regard, Mr Borrelli was wary that the documents and/or information would be used for a collateral purpose, including in the other proceedings that Victory has brought against Navis.[60] The defendants largely

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58 DWS at paras 53−55.

59 DWS at paras 57−63.

60 DWS at paras 70−76.

rely on these same four points in relation to Victory's other prayers, except in respect of the legal bill of costs.

My decision: Mr Borrelli should produce a copy of the Minority SPA to Victory

109 In my judgment, Mr Borrelli should produce a copy of the Minority SPA to Victory for two reasons. To begin with, I find that Victory does have a claim to ownership over the Minority SPA. However, because a claim premised on ownership is always subject to an overriding discretion, I further find that the Minority SPA is a basic document that Victory needs to know about. This is despite the fact that Mr Borrelli has a rather wide discretion, premised on his primary duty to Navis, to decide the information that should be provided to Victory. I explain each point in turn.

110 First, I agree with Victory that it owns the Minority SPA. In the present case, the Minority SPA had been created by the Receivers in order to discharge the very purpose of the receivership, *ie*, to dispose of the Victory Shares. In order to validly bind Victory to the terms of the Minority SPA, the Receivers must have been acting in their capacity as agents of Victory when they created, signed, and executed the agreement. As such, I find that Victory does have a valid claim to ownership over the Minority SPA. However, this is subject to the court's overriding discretion to decide whether compelling its production would be of such utility as to be warranted.

111 On this point, I find that Victory is entitled to the Minority SPA on a "need to know" basis. I conclude that it would not be sufficient for Mr Borrelli to supply Victory with only a summary of the key terms of the Minority SPA. This is because while Mr Borrelli owes limited duties to Victory, he still

nonetheless owes duties of good faith when exercising his power to sell the Victory Shares. Victory would be entitled to enforce these duties should they be breached, and it would only be able to do so if it has access to at least the premise upon which the Victory Shares were sold, *ie*, the Minority SPA. Accordingly, I also disagree with Mr Borrelli that Victory has not demonstrated any "legal or other basis … to demand a copy of the Minority SPA". In my view, not only has Victory done so but, to the extent that Mr Borrelli argues that the disclosure of the Minority SPA will prejudice Navis's interests, I find that he has not shown why that would be the case, for the reasons that I set out at [125] below.

112 For these reasons, I direct Mr Borrelli to produce a copy of the Minority SPA to Victory on the terms set out in prayer 1 of OA 1214.

Whether Mr Borrelli should provide a full account of the Sale Proceeds to Victory

The parties' arguments

113 As for Victory's prayer for a full account of the Sale Proceeds to it, Victory argues that the summary account which Mr Borrelli has provided to it is unsatisfactory.[61] In particular, Victory points out that it is unclear how the total secured liabilities as of 26 October 2023 was calculated to be US$5,035,259.35.[62] Victory submits that, given that secured liabilities are being paid down using the Sale Proceeds, Mr Borrelli should clearly explain all the

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61 CWS at para 50.

62 CWS at para 52(b).

component sums and calculations to Victory.[63] It is not tenable for Mr Borrelli to state that Victory can make the calculations on its own.

114 In response, apart from the four points outlined previously, Mr Borrelli also points out that Victory is aware of the principal and interest amounts owed and is thus able to calculate the outstanding amounts under the Facility Agreement.[64] Also, the form of the Statement of Account is consistent with prevailing market practice and contains all material and relevant information for Victory, including the precise US$ amounts of the Sale Proceeds, the waterfall of payments, and the secured liabilities.[65] In any case, the Statement of Account provided to Victory on 31 October 2023 was an interim one and a further statement of account would be provided following the receipt and application of any further payment.[66] Finally, it is telling that Victory declined to take up Mr Borrelli's offer to address any specific queries that it had but chose to commence this originating application instead.[67]

My decision: Mr Borrelli need not provide a full account of the Sale Proceeds to Victory

115 Since the full account of the Sale Proceeds is a document that is not yet in existence, Victory cannot assert ownership to it. It therefore follows from the test, that I have previously set out, that the only question here is whether I should exercise my discretion to order Mr Borrelli to provide this document to Victory.

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63 CWS at para 52(b).

64 DWS at para 64(a).

65 DWS at para 64(b); CB-1 at paras 44(a) and 44(b).

66 DWS at para 64(c); CB-1 at para 44(c).

67 DWS at para 64(d).

116 In my judgment, this question should be answered in the negative. Mr Borrelli need not provide a full account of the Sale Proceeds to Victory. In the present case, Victory has not advanced any reason to justify its right to a fuller account on a "need to know" basis. It has not, for example, asserted that it needs to know the information so as to exercise the equity of redemption.

117 In any event, Mr Borrelli has already explained why the present statement of account is summary in nature. I accept Mr Borrelli's unchallenged evidence that the form of the present statement of account is consistent with prevailing market practice and contains all material information for Victory to, among other things, calculate the outstanding amounts under the Facility Agreement. Thus, in so far as Mr Borrelli's duty to account to Victory is a limited one, I find that he has discharged this duty by the provision of the present statement of account.

118 Besides, Mr Borrelli has sworn on affidavit that "the Statement of Account provided to [Victory] on 31 October 2023 was clearly an interim update and would be updated once more information was received".[68] Thus, even if Mr Borrelli were obliged to provide more detail than is in the present statement of account, I find that Victory's request for a fuller account is premature at this stage. Not only is there no further information to enable Mr Borrelli to furnish an updated statement of account, he has also promised to do so at a later stage when such information is forthcoming.

119 For these reasons, I find that Mr Borrelli does not need to provide a full account of the Sale Proceeds to Victory and dismiss prayer 2 of OA 1214.

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[68] CB-1 at para 44(c).

Whether Mr Borrelli should provide the Report to Victory

The parties' arguments

120 As for Victory's prayer for the Report, it argues that the Receivers should not have acted in a dilatory manner by taking over nine weeks from the arbitral tribunal's dismissal of Victory's interim injunction application on 25 July 2023 to only sign the Minority SPA on 5 October 2023.[69] Victory rejects Mr Borrelli's explanation that the Receivers had to constantly encourage RV Healthcare to proceed with the Minority SPA sale.[70] Indeed, this explanation fails to account for the fact that the draft Minority SPA had already been drafted, agreed upon by RV Healthcare, and was ready for execution by Victory more than two years ago when Victory first received it from Navis on 26 July 2021.[71] Moreover, during this (alleged) delay period, Victory incurred increased interest under the Facility Agreement in the amount of US$172,940.62, which could not have been unknown to Mr Borrelli.[72]

121 Furthermore, Victory argues that because Mr Borrelli's primary duty as receiver is to bring about a situation where Victory's secured debt and the interest flowing therefrom is repaid, he cannot remain passive if doing so would damage Victory's interests.[73] Victory therefore should know about Mr Borrelli's intended steps to collect the outstanding consideration from the Loan Adjustment Amount, the Deferred Purchase Price, and the Sale of the Surplus

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69 CWS at para 54.

70 CWS at paras 55−56.

71 CWS at para 57.

72 CWS at para 60.

73 CWS at para 62.

Land.[74] It is not satisfactory that Victory only knows about these amounts from a summary of these terms in letters from CCPL and Cavenagh Law.[75] It is therefore important for Victory to know about these three sources of consideration as any delay in their delivery would increase the interest that Victory has to pay.[76]

122 In response, apart from the four points outlined above, Mr Borrelli submits that there is no basis for Victory to complain about the alleged delay in the execution of the Minority SPA.[77] The defendants have explained to Victory on multiple occasions that the negotiations and executions of the Minority SPA was a delicate process, not least because of Victory's tendency to threaten legal proceedings if things did not go its way.[78] In particular, Victory had joined RV Healthcare as a party to proceedings it had taken out in Vietnam in or around September 2022. This required Mr Borrelli to spend time and effort to assuage RV Healthcare's concerns.[79] Moreover, Mr Borrelli owes no duty to sell the Victory Shares by a particular time, and, in any case, he had used his best endeavours to sell the Shares in an expeditious manner. Those best endeavours were only stymied by Victory's own litigious and obstructive conduct.[80] Finally, because Mr Borrelli's primary duty is to Navis, he is entitled to conclude that the provision of any further information beyond what had already been provided

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74 CWS at paras 64−75.

75 CWS at para 63.

76 CWS at para 75.

77 DWS at para 65.

78 DWS at para 66.

79 DWS at paras 66−67.

80 DWS at para 68.

would be prejudicial to Navis's interests.[81] This is especially due to Victory's litigiousness, and the concern that Victory would use such documents and information for collateral purposes.[82]

My decision: Mr Borrelli need not provide the Report to Victory

123 Again, since the Report does not yet exist, Victory cannot assert ownership to it. As such, the only question here is whether I should exercise my discretion to order Mr Borrelli to provide the Report to Victory.

124 In my judgment, Mr Borrelli need not provide the Report to Victory. Like before, considering the limited extent of the duties that Mr Borrelli owes to Victory, I do not think that Victory has demonstrated its entitlement to the Report on a "need to know" basis. To begin with, Mr Borrelli does not owe a duty to Victory to even carry out the sale of the Victory Shares. This much is clear from cl 12.6 of the Share Pledge, which provides that Mr Borrelli, as receiver, may "convert into money and realise any Security Asset by public auction or private contract and generally *in any manner and on any terms which he thinks fit* without any restriction imposed by Section 25 of the Property Act or the need to observe any of the restrictions or provisions of Sections 23 or 25 of the Property Act" [emphasis added].[83] It is therefore plausible that the contractual provisions have superseded Mr Borrelli's duty to exercise reasonable care in the sale of the Victory Shares. This is because cl 12.6 clearly

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81 DWS at paras 70−76.

82 DWS at paras 73−74.

83 NSH-1 at p 132.

provides that Mr Borrelli can conduct such a sale "in any manner … he thinks fit", which must extend to deciding *when* to execute the Minority SPA.

125 As for the defendants' argument that Mr Borrelli is entitled to conclude that disclosure of the report would cause prejudice to Navis, and thus refuse disclosure of the said report on that basis, I make no finding in this regard. While the defendants have made various allegations that such might possibly lead to a protracted litigious response from Victory that might delay the realisation of its Shares, there is no evidence as to how this might occur. Furthermore, there is no indication from the various communications between CCPL and Drew & Napier LLC that Victory would use the report (or any of the other information) to initiate multiple or protracted proceedings against Mr Borrelli.

126 In any event, even if it were true that Mr Borrelli still comes under a residual equitable duty to exercise reasonable care in conducting the sale of the Victory Shares (and I make no finding in this regard), I find that the supposed delay of nine weeks would not have amounted to a breach of such a duty. It is commonsensical that a transaction of this magnitude cannot be concluded swiftly after the arbitral tribunal dismissed Victory's application for an interim injunction on 25 July 2023. I also do not think that Victory can say that the Minority SPA can be concluded within one week of the arbitral tribunal's decision on the basis of, among other things, the existence of a draft Minority SPA. Victory was not involved in the negotiations with RV Healthcare and cannot possibly speak to their nature and the time it would take to resolve them. Instead, I accept Mr Borrelli's evidence that the negotiations with RV Healthcare were delicate. As such, it is entirely reasonable for the Minority SPA with RV Healthcare to be executed in the time it was.

127 For these reasons, I find that Mr Borrelli does not need to provide the Report to Victory and dismiss prayer 3 of OA 1214.

Whether CCPL's bill of costs should be delivered to Victory and assessed by the court

The parties' arguments

128 I turn now to Victory's prayer that the defendants deliver to it CCPL's bill of costs for legal fees in connection with the Share Pledge, and for it to be assessed by the court. This prayer has been made pursuant to ss 120, 124, and 125 of the LPA, which I set out below:

> **Order for assessment of delivered bill of costs**
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> **120.—**(1) An order for the assessment of a bill of costs delivered by any solicitor may be obtained on an application made by originating application or, where there is a pending action, by summons by the party chargeable therewith, or by any person liable to pay the bill either to the party chargeable or to the solicitor, at any time within 12 months from the delivery of the bill, or, by the solicitor, after the expiry of one calendar month and within 12 months from the delivery of the bill.
>
> (2) The order is to contain such directions and conditions as the court thinks proper, and any party aggrieved by any such order may apply by summons that the order be amended or varied.
>
> …
>
> **Order for delivery of bill of costs to be obtained as of course**
>
> **124.**—(1) An order for the delivery of a solicitor's bill of costs, and for delivery of any deeds, documents or other papers in the possession of the solicitor, subject to any lien which the solicitor may have, and for the assessment of the bill when delivered, may be obtained on an application made under section 120(1).
>
> …
>
> **Solicitor to deliver copy of bill of costs**
>
> **125.** When an application is made by a party other than the party chargeable, the court may order the solicitor to deliver to

> the party making the application a copy of the bill of costs, upon payment of the costs of making the copy.

129 Victory argues that pursuant to cl 15(a) of the Share Pledge, it is liable for the legal fees incurred by the Receivers in connection with the Share Pledge. Because those legal fees would be that of CCPL, this would make Victory "liable to pay" CCPL's bill of costs under s 120(1) of the LPA.[84] Further, Victory has the obligation to directly indemnify Mr Borrelli and his legal fees under cl 15(a) of the Share Pledge. Indeed, cl 15(b) states for Victory to "keep each of them indemnified" and not only Navis. In any event, Victory stands as the ultimate paying party for CCPL's bill of costs as the legal fees are deducted from the net proceeds from the sale of the Victory Shares.[85]

130 Victory then submits that, given that it has standing under s 120(1) of the LPA, there are two special circumstances that would warrant the court's assessment of CCPL's bill of costs despite it having already been paid. One, the legal fees incurred by CCPL, which stands at US$546,536.56, is exorbitant for the extent of work done.[86] Two, Victory never had any control over Mr Borrelli's legal fees, which were incurred by CCPL. Victory does not even know the legal work that was actually undertaken by CCPL.[87]

131 In response, the defendants make three arguments. First, Victory has no standing under s 120(1) of the LPA to seek an assessment of CCPL's fees, as that is a right reserved either to the party chargeable (*ie*, the Receiver) or any

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84 CWS at para 87.

85 CWS at para 90.

86 CWS at para 91(a).

87 CWS at para 91(b).

person liable to pay the bill to the party chargeable (*ie*, Navis). Victory is neither of these parties.[88] Second, Victory's dissatisfaction with the legal fees incurred by CCPL should be taken up under the Share Pledge with Navis, under which it has a contractual relationship with.[89] Third, given that CCPL's fees have already been paid, Victory does not have the right to seek taxation as it has not shown the existence of "special circumstances" under s 122 of the LPA.[90]

My decision: CCPL need not deliver its bill of costs to Victory and it need not be assessed by the court

132 In my judgment, CCPL need not deliver its bill of costs to Victory for the simple reason that Victory has no standing under s 120(1) of the LPA to request for such delivery.

The applicable law

133 I begin with the applicable law. The effect of s 120(1) of the LPA is to set out: (a) who can apply for assessment; (b) how such an application should be made; and (c) when should an application be made. In particular, s 120(1) of the LPA provides that a person must fall within one of two categories of persons so as to have standing to apply: (a) "the party chargeable"; or (b) "any person liable to pay the bill either to the party chargeable or to the solicitor". Sections 124 and 125 of the LPA support a client's right under s 120 of the LPA by setting out the rule that an order for delivery of a solicitor's bill is to be obtained on an application made under s 120(1) of the LPA and empowering

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88 DWS at para 77(a).

89 DWS at para 77(b).

90 DWS at para 77(c).

the court to order the delivery of a copy of the bill of costs where an application is made by a party other than the party chargeable, respectively.

134 In addition, as the High Court observed in *Kosui Singapore Pte Ltd v Thangavelu* [2015] 5 SLR 722 ("*Kosui*") (at [59]), the client's right to have its fees assessed under s 120 of the LPA is not "absolute". There are at least two limits to this right, being: (a) where the client has given up the right by entering into a fee arrangement which complies with s 111 of the LPA; and (b) where the client applies to have his solicitor's bill assessed either (i) after paying the bill or (ii) after 12 months have elapsed from delivery. Persons falling into either situation under (b) cannot proceed to assessment unless they can prove to the court that there are "special circumstances" within the meaning of s 122 of the LPA.

135 The High Court observed in *Kosui* (at [64]) that the rationale for disallowing assessment under s 122 of the LPA when the solicitor's bill has already been paid is to "discourage the client from approbating and reprobating and [uphold] the solicitor's interest in security of receipt for his fees". As such, what constitutes "special circumstances" would need to be interpreted in this light (see *Kosui* at [62]) and includes the following (see *Kosui* at [61]):

(a) prolonged negotiation over fees between solicitor and client after which the client applies for taxation;

(b) a disciplinary committee's finding that the solicitor has in fact overcharged;

(c) an impecunious client who requires time to secure a grant of legal aid in order to apply under section 120 of the LPA;

(d) a bill which fails to provide sufficient information, even when supplemented by what is subjectively known to the client, to enable the client to take an informed decision on whether to seek taxation;

(e) the fact that the solicitor, without his client's knowledge or consent, appropriated funds belonging in equity to the client in order to pay the bill; and

(f) duress, pressure, or fraud by the solicitor.

Victory has no legal basis to compel CCPL to deliver its bill of costs to it

136 With the above principles in mind, I conclude that Victory has no standing under s 120(1) of the LPA to apply for an assessment of CCPL's bill of costs. First, Victory is clearly not the "party chargeable" with CCPL's bill. Rather, the person liable to pay the bill to CCPL is Mr Borrelli, being CCPL's client on record.

137 Second, the party who is "liable to pay the bill … to the party chargeable" is Navis under the terms of the Deed of Appointment. Clause 9 of this Deed provides that Navis shall indemnify each Receiver for all reasonable legal fees incurred on a full indemnity basis. As for Victory's argument based on cl 15(a) of the Share Pledge, this ignores the nature of the tripartite contractual arrangement between the parties. In my view, this tripartite contractual arrangement is such that: (a) Mr Borrelli engaged CCPL and is its client on record; (b) Navis separately appointed the Receivers under a Deed of Appointment whereby Navis agreed to indemnify the Receivers for all costs and expenses incurred in connection with the receivership including all legal expenses; and (c) Victory is obliged under cl 15 of the Share Pledge to

indemnify Navis for all reasonable costs and expenses (including legal fees) incurred in connection with the Share Pledge. Thus, I agree with the defendants that Victory is at least one step removed from being a party who is entitled to seek an assessment of CCPL's bills.

138 In this connection, I also reject Victory's argument that it is ultimately the party "liable to pay the bill". This ignores the phrase which follows these words, *ie*, "*to* the party chargeable" [emphasis added]. Section 120(1) of the LPA clearly does not confer standing on just any third party who may claim to be ultimately liable to pay the legal costs. Rather, it cuts the connection to the second person removed from the "party chargeable". In the present case, the party chargeable is Mr Borrelli. The person liable to pay Mr Borrelli directly is Navis. While the funds may ultimately come from the Sale Proceeds of the Victory Shares, Victory is not the entity who is liable to pay Mr Borrelli directly. Rather, Victory is two steps removed from Mr Borrelli.

139 Such a view is consistent with *Riaz LLC v Sharil bin Abbas (through his deputy and litigation representative, Salbeah bte Paye)* [2013] 4 SLR 736 ("*Riaz LLC*"), where Choo Han Teck J made brief remarks as to who may properly constitute a "party chargeable" under s 120(1) of the LPA. *Riaz LLC* concerned a firm of solicitors ("Riaz") which had sought a review of an assistant registrar's decision disallowing its bill of costs in relation to Suit No 539 of 2009 ("S 539"). S 539 had been filed by Riaz on behalf of its purported client ("Sharil"), who had suffered serious brain damage as a result of a road traffic accident. Due to the High Court's finding that Sharil lacked the mental capacity to endorse the Warrant to Act, and that this would have been obvious to any reasonable observer (at [7]), Riaz had to rely on their alternative arguments premised on O 59 r 28 and O 59 r 29 of the ROC 2014, which permitted

recovery of costs from a litigation representative in lieu of the client. Riaz sought to use these provisions to recover costs from Sharil's mother ("Salbeah") on the grounds that she had signed the Warrant to Act (upon which Sharil had affixed his thumbprint). While the High Court found that Salbeah was not Sharil's litigation representative at the material time (at [9]), it went on to consider the position under the LPA. It observed that "[a] 'party chargeable' [within the meaning of s 120(1) of the LPA] may refer to the litigation representative of the client or his duly authorised agent who must have had authority to contract on behalf of the client when the solicitor was given authority to act for the client in the matter" (at [10]).

140 For completeness, the High Court decision of *Kintyre Park Development Pte Ltd v Cooma Lau & Loh* [1990] 1 SLR(R) 739 ("*Kintyre Park*"), which Victory relied on, does not in fact support Victory's reading of s 120(1) of the LPA. In that case, the one-third owner of a property ("Golden Bow") applied to, among other things, tax the bills incurred by the mortgagee bank's solicitors ("Cooma Lau"). The property was held as tenant in common with the two-third owner, and both owners were jointly and severally liable to pay the mortgagee bank's solicitors' bills. Chan Sek Keong J (as he then was) allowed the petitioner to tax the bills, holding that the mortgagor was clearly "any person liable to pay the bill" under the LPA (at [11]). Importantly, the learned judge's decision was premised on Golden Bow being *jointly liable* to pay the mortgagee bank for its legal costs. Indeed, unlike Victory's situation, Golden Bow was *not* in fact twice removed from Cooma Lau's clients – Golden Bow was directly liable to pay Cooma Lau's clients for their legal fees. This puts *Kintyre Park* fully in line with my interpretation of s 120(1) of the LPA. It does not assist Victory in contending for a more expansive interpretation of s 120(1) of

the LPA, in which third parties twice removed (or more) can ask for assessment of a solicitor's bill of costs.

Victory has not proven special circumstances justifying the delivery of a bill of costs under s 122 of the LPA

141 Even if I were to accept that Victory has standing under s 120(1) of the LPA to ask for delivery and assessment of the bill of costs to be delivered by CCPL, Victory still bears the burden of proving that there are "special circumstances" within the meaning of s 122 of the LPA. Victory has alleged two special circumstances. For the reasons I will develop below, I find that Victory has not proven the existence of such special circumstances.

(1) Overcharging

142 I turn to Victory's allegation of overcharging. I respectfully agree with Vinodh Coomaraswamy J in *Kosui* (at [97]) that:

> … where overcharging is relied upon as special circumstances within the meaning of s 122, a general allegation of overcharging by reference to the quantum of fees is not sufficient in itself. The applicant must go further and point to evidence which enables the court to draw the inference of overcharging.

Indeed, Victory does not appear to dispute this statement of principle given that it cites this same passage in its own submissions.[91]

143 However, in my view, Victory appears to have done exactly what Coomaraswamy J warned against in *Kosui*. Victory's allegation of overcharging

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91 CWS at para 83.

is a bare accusation, bereft of evidence. Its submissions on the overcharging issue essentially amount to the following.

144 First, Victory begins by citing the fee charged by CCPL (US$ 546,536.56) and alleging that this sum is "exorbitant" on the grounds that the work done by CCPL was purely advisory.[92] This is wholly insufficient to ground an allegation of overcharging. I also reject the assumption that advisory work is necessarily significantly less costly than contentious work, especially where significant communication with the counterparty's counsel is required, such as in this case, due to Victory's numerous queries and demands of Mr Borrelli.[93]

145 Second, Victory cites the case of *Loganathan Ravishankar v ACIES Law Corp* [2022] SGHC 135 ("*Loganathan*") in an attempt to show me how I could find Victory's allegation of overcharging to be made out. It quoted the following passage by Choo J (at [6]):[94]

> … Furthermore, the defendant charged the client $715,161.31 in professional charges for work done in the pre-action stage and part of the discovery process, and $11,536.09 in disbursements for printing, photocopying, and postage charges. Considering the quantum of the bills and the nature of the work done, I am of the view that, unless explained, the bills appear excessive. Therefore, I find that these are special circumstances justifying the taxation of the 1st and 2nd Invoices under s 122 of the LPA.

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92 CWS at para 91(a).

93 See generally NSH-1 at pp 220–401.

94 CWS at para 91(a).

146 However, in my view, Victory has cited this passage out of context. When read in its proper context, it becomes clear that this passage was *ancillary* to Choo J's main reasons as to why he allowed taxation. It is clear from the rest of the paragraph preceding this passage, and the paragraph before that (*ie*, at [5] and the first half of [6]), that Choo J's decision was mainly based on the fact that the bills in *Loganathan* presented "itemizations of the work done and lump sum figures at the end of the bills to represent the total costs of all the items, with no details on the costs of each individual item". This, as Choo J observed, is an established reason for finding "special circumstances" within the meaning of s 122 of the LPA (at [5], citing the Court of Appeal decision of *Wee Harry Lee v Haw Par Brothers International Ltd* [1979−1980] SLR(R) 603). Accordingly, I find that the passage which Victory cites from *Loganathan* provides no assistance in its allegation of overcharging.

(2) Lack of control

147 I next consider Victory's second argument, which is that its "lack of control" over the legal fees charged to Mr Borrelli, coupled with its obligation to indemnify the legal costs, constitute a "special circumstance" within the meaning of s 122 of the LPA. In support of this argument, Victory cites a passage from *Barclays plc and another v Villers and another* [2000] 1 All ER (Comm) 357 ("*Barclays*") (at 369j−370a).[95] However, Victory's submissions left out the immediately preceding paragraph (at 369h), where the English High Court considered and rejected the exact argument that Victory presently advances:

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95 CWS at para 86.

> Mr Walker also submitted that it was a 'special circumstance' that the only protection for [the applicant] lay in its rights under [the legislative provision allowing for taxation by third parties], as it had no control over the costs incurred in the litigation. *But that would normally be the case with any third party applicant … and cannot of itself amount to a special circumstance …*
>
> [emphasis added]

148 I agree. The mere fact that a party is unable to control the costs incurred by the client, cannot in itself be a special circumstance, because this would be the case for any party who is not the client. More generally, it is extremely unhelpful for parties to cite passages from judgments out of their proper context. Indeed, this may, in some cases, amount to intentionally misleading the court when there is an obviously inconsistent or qualifying passage within the same judgment.

(3) Privilege

149 Finally, I agree with the defendants that one circumstance militating against the delivery and assessment of CCPL's bill of costs is the fact that the information in the bill of costs may be privileged.[96] An itemised bill of costs set out in the format prescribed by B32 of the Supreme Court Practice Directions 2021 would require CCPL to state *all* the legal and factual issues on which it advised Mr Borrelli, the matters affecting the complexity of the work, and the number and type of correspondences exchanged with not only the client, but also other parties. Much of this information that I have described would likely be subject to legal professional privilege. While Victory has suggested that privileged information could be redacted,[97] I find that the redactions may

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96 DWS at paras 106−107.

97 NSH-1 at para 65.

be so significant that they might overwhelm the usefulness of any bill of costs produced by CCPL. As such, I find that the presence of privileged information is a factor militating against delivery and assessment of CCPL's bill of costs.

Conclusion

150 For all the reasons above, I dismissed SUM 195 on 7 February 2024, and make the limited order in terms of prayer 1 only in OA 1214.

151 Unless the parties are able to agree, they are to submit their respective written submissions on the appropriate costs order for both SUM 195 and OA 1214, limited to seven pages, within seven days of this decision.

Goh Yihan
Judge of the High Court

Jimmy Yim Wing Kuen SC, Chole Shobhana Ajit and Nikhil Daniel Angappan (Drew & Napier LLC) for the claimant;
Nish Kumar Shetty, Krishna Elan and Choo Ian Ming (Cavenagh Law LLP) for the defendants;
Liew Wey Ren Colin (Colin Liew LLC) (instructed), Poon Guokun Nicholas and Chan Michael Karfai (Breakpoint LLC) for OPV Pharma Holdings Ltd (on watching brief).