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

[2024] SGHC 84

Suit No 267 of 2022 (Summons No 56 of 2024)

Between

(1) Hyflux Ltd (in compulsory liquidation)
(2) Hydrochem (S) Pte Ltd (in compulsory liquidation)
(3) Bendemeer Infrastructure Pte Ltd (in creditors' voluntary liquidation)
(4) Eflux Singapore Pte Ltd (in creditors' voluntary liquidation)
(5) Hyflux Asset Management Pte Ltd (in creditors' voluntary liquidation)
(6) Hyflux Capital (Singapore) Pte Ltd (in creditors' voluntary liquidation)
(7) Hyflux Innovation Centre Pte Ltd (in creditors' voluntary liquidation)
(8) Hyflux International Engineering Pte Ltd (in creditors' voluntary liquidation)
(9) Hyflux Management and Consultancy Pte Ltd (in creditors' voluntary liquidation)
(10) Hyflux Sip Pte Ltd (in creditors' voluntary liquidation)
(11) Hyflux Water Trust Management Pte Ltd (in creditors' voluntary liquidation)
(12) Menaspring Utility (S) Pte Ltd (in creditors' voluntary liquidation)
(13) Menaspring Utility (Tlemcen) Pte Ltd (in creditors' voluntary liquidation)
(14) Newspring Utility Pte Ltd (in creditors' voluntary liquidation)

(15) Tuasone Pte Ltd
(16) Tuaspring Pte Ltd (under receivership)
(17) Hyflux Engineering Pte Ltd
(18) Hyflux Membrane Manufacturing (S) Pte Ltd
(19) Hydrochem Membrane Products (Singapore) Pte Ltd
(20) Hyflux Consumer Products Pte Ltd
(21) Hyflux Energy Pte Ltd
(22) Hyflux International Pte Ltd
(23) Hyflux Utility (Oman) Pte Ltd
(24) Tuasone Environmental Engineering Pte Ltd
(25) H J Newspring Limited
(26) Hyflux Utility (TJ) Limited
(27) Sinospring Utility Ltd (in liquidation)
(28) Spring China Utility Ltd (in liquidation)
(29) Qurayyat Desalination SAOC
(30) Hyflux Engineering (India) Private Limited
(31) Hyflux Filtech (Shanghai) Co, Ltd
(32) Sinolac (Huludao) Biotech Co, Ltd
(33) Eflux (Taizhou) Company Limited
(34) Tianjin Dagang Newspring Co, Ltd
(35) Hyflux Hi-Tech Product (Yangzhou) Co, Ltd
(36) Hyflux Unitech (Shanghai) Co, Ltd
(37) Cosimo Borrelli

… *Plaintiffs*

And

Lum Ooi Lin

… *Defendant*

Suit No 268 of 2022 (Summons No 144 of 2024)

Between

(1) Hyflux Ltd (in compulsory liquidation)

(2) Hydrochem (S) Pte Ltd (in compulsory liquidation)
(3) Bendemeer Infrastructure Pte Ltd (in creditors' voluntary liquidation)
(4) Eflux Singapore Pte Ltd (in creditors' voluntary liquidation)
(5) Hyflux Asset Management Pte Ltd (in creditors' voluntary liquidation)
(6) Hyflux Capital (Singapore) Pte Ltd (in creditors' voluntary liquidation)
(7) Hyflux Innovation Centre Pte Ltd (in creditors' voluntary liquidation)
(8) Hyflux International Engineering Pte Ltd (in creditors' voluntary liquidation)
(9) Hyflux Management and Consultancy Pte Ltd (in creditors' voluntary liquidation)
(10) Hyflux Sip Pte Ltd (in creditors' voluntary liquidation)
(11) Hyflux Water Trust Management Pte Ltd (in creditors' voluntary liquidation)
(12) Menaspring Utility (S) Pte Ltd (in creditors' voluntary liquidation)
(13) Menaspring Utility (Tlemcen) Pte Ltd (in creditors' voluntary liquidation)
(14) Newspring Utility Pte Ltd (in creditors' voluntary liquidation)
(15) Tuasone Pte Ltd
(16) Tuaspring Pte Ltd (under receivership)
(17) Hyflux Engineering Pte Ltd
(18) Hyflux Membrane Manufacturing (S) Pte Ltd
(19) Hydrochem Membrane Products (Singapore) Pte Ltd
(20) Hyflux Consumer Products Pte Ltd
(21) Hyflux Energy Pte Ltd
(22) Hyflux International Pte Ltd
(23) Hyflux Utility (Oman) Pte Ltd
(24) Tuasone Environmental Engineering Pte Ltd

(25) H J Newspring Limited
(26) Hyflux Utility (TJ) Limited
(27) Sinospring Utility Ltd (in liquidation)
(28) Spring China Utility Ltd (in liquidation)
(29) Qurayyat Desalination SAOC
(30) Hyflux Engineering (India) Private Limited
(31) Hyflux Filtech (Shanghai) Co, Ltd
(32) Sinolac (Huludao) Biotech Co, Ltd
(33) Eflux (Taizhou) Company Limited
(34) Tianjin Dagang Newspring Co, Ltd
(35) Hyflux Hi-Tech Product (Yangzhou) Co, Ltd
(36) Hyflux Unitech (Shanghai) Co, Ltd

… *Plaintiffs*

And

KPMG LLP

… *Defendant*

JUDGMENT

[Civil Procedure — Parties — Consolidation]

TABLE OF CONTENTS

Hyflux Ltd (in compulsory liquidation) and others
v
Lum Ooi Lin and another suit

[2024] SGHC 84

General Division of the High Court — Suit No 267 of 2022 (Summons No 56 of 2024) and Suit No 268 of 2022 (Summons No 144 of 2024)
Goh Yihan J
8 March 2024

25 March 2024 Judgment reserved.

Goh Yihan J:

1 Ms Lum Ooi Lin ("Ms Lum") is the defendant in HC/S 267/2022 ("Suit 267"). This is her application in HC/SUM 56/2024 ("SUM 56") and HC/SUM 144/2024 ("SUM 144") for an order that Suit 267 and HC/S 268/2022 ("Suit 268") (collectively, the "Suits") be fixed before the same Judge in the General Division of the High Court and be heard or tried at the same time. Ms Lum also prays for certain ancillary orders (the "Ancillary Orders"). KPMG LLP ("KPMG"), who is the defendant in Suit 268, agrees with Ms Lum's position that the Suits should be so heard or tried. In addition, KPMG takes the position that Suit 268 should be the "lead action" in the proceedings, if Ms Lum's application is granted. For convenience, I shall refer to Ms Lum's applications as the "Application".

2 The plaintiffs in the Suits oppose the Application. In this regard, the four plaintiffs in Suit 267 are: (a) Hyflux Ltd (in compulsory liquidation) ("Hyflux"); (b) Hydrochem (S) Pte Ltd (in compulsory liquidation) ("Hydrochem"); (c) Tuaspring Pte Ltd (under receivership) ("Tuaspring"); and (d) Mr Cosimo Borrelli ("Mr Borrelli"). Mr Borrelli is the sole liquidator of Hyflux and Hydrochem. In turn, the three plaintiffs in Suit 268 are: (a) Hyflux; (b) Hydrochem; and (c) Tuaspring. For convenience, I will refer to the plaintiffs in the Suits as the "plaintiffs".

3 After taking some time to consider the matter, I allow the Application, including the Ancillary Orders sought. However, I do not order Suit 268 to be the "lead action" in the sense that it is tried before Suit 267; instead, I decide that the Suits should be tried jointly. I now explain the reasons for my decision.

Background facts

4 I begin with the background facts. Hyflux, Hydrochem, and Tuaspring belong to the same group of companies (the "Group").[1] Hyflux is the holding company of the Group.[2] The Group was engaged in seawater desalination, water purification, wastewater cleaning, water recycling, and water reclamation for public and industrial clients, as well as filtration and purification products for home consumers.[3] The Group's business activities were focused on, among other things, project investments. In this regard, the Group incorporated special purpose companies which received a concession from a government or state-

---

1 2nd Affidavit of Cosimo Borrelli in Suit 268 dated 31 January 2024 ("CB-2") at para 14.

2 CB-2 at para 14.

3 CB-2 at para 15.

owned enterprise to finance, build, operate, and maintain a plant involved in water treatment, wastewater treatment, desalination, power, or waste-to-energy.[4]

5 The plaintiffs' claims in the Suits relate to one such project investment. This is the Group's Tuaspring project (the "Project"), which comprised (a) a sea water desalination plant at Tuas (the "Desalination Plant"), which Tuaspring was to design, build, own, and operate; and (b) a 411-megawatt combined cycle gas turbine power plant to supply electricity to the Desalination Plant (the "Power Plant").[5]

6 The plaintiffs' main allegation in the Suits is that Hyflux's financial statements for the financial years ended 31 December 2011 to 2017 (the "Financial Statements") were materially misstated.[6] More specifically, the alleged misstatements differ in each of the Suits:

(a) In Suit 267, the plaintiffs allege that the Financial Statements were misstated due to a failure to recognise provisions and/or impairment losses in relation to the Project, in accordance with the Singapore Financial Reporting Standards ("FRS") 36 (Impairment of Assets), FRS 37 (Provisions, Contingent Liabilities and Contingent Assets), and/or FRS 38 (Intangible Assets).[7]

---

4 CB-2 at para 15(a).

5 CB-2 at para 16.

6 CB-2 at para 17.

7 CB-2 at para 17(a).

(b) In Suit 268, the plaintiffs allege, in addition to the above misstatements, that the Financial Statements were misstated due to the incorrect application of Interpretation of FRS 112 (Service Concession Arrangements) ("INT FRS 112") to account for the Power Plant.[8]

7 On 9 February 2023, Ms Lum's solicitors wrote to the plaintiffs' solicitors and KPMG's solicitors. In her letter, Ms Lum asked the plaintiffs and KPMG whether they would agree to the Suits being heard or tried together at the same time before the same Judge.[9] On 13 February 2023, the plaintiffs' solicitors replied to say that the plaintiffs did not see sufficient basis for the Suits to be heard or tried at the same time.[10]

8 In contrast, KPMG agreed with Ms Lum that the Suits should be so heard or tried. Additionally, KPMG also agreed with Ms Lum that they should seek the Ancillary Orders,[11] which are primarily as follows:[12]

(a) Documents disclosed, filed and/or used in one Suit shall be treated as, and form part of, the documents in the other Suit.

(b) All documents, including but not limited to pleadings, correspondence, lists of documents and/or affidavits verifying such lists

---

8 CB-2 at para 17(b).

9 3rd Affidavit of Lum Ooi Lin in HC/S 267/2022 dated 8 January 2024 ("LO-3") at para 20.

10 LO-3 at para 21.

11 KPMG's Written Submissions in HC/S 268/2022 dated 1 March 2024 ("2DWS") at para 4.

12 2DWS at paras 5(b)−5(i).

filed by any party in one Suit are to be served on the other parties in the other Suit.

(c) Copies of all documents specified in the lists of documents filed by any party in one Suit are to be provided to all the other parties in the other Suit.

(d) All applications (together with any supporting affidavit(s)) in one Suit be served on the parties to the other Suit.

(e) All hearings in either Suit for directions and/or case management be heard in the presence of the parties in both Suits.

(f) Evidence filed in one Suit shall be served on the other parties in the other Suit and evidence in Suit 267 and Suit 268 be treated as evidence led in both Suits.

(g) Any party in one Suit shall be entitled to cross-examine the witnesses in the other Suit.

9 Finally, KPMG posits that Suit 268 should be the "lead action" in the proceedings, should the Application be granted.

10 With the above background in mind, I turn now to the parties' general positions, which I will elaborate at the appropriate junctures.

The parties' general positions

11 Ms Lum's position is the Application should be granted because the requirements set out in O 4 r 1(1) of the Rules of Court 2014 ("ROC 2014") are

satisfied.[13] In this regard, Ms Lum submits, firstly, that she has met the prescribed grounds for a joint trial in O 4 r 1(1), in that (a) common questions of law and/or fact arise in the Suits,[14] (b) the rights to the reliefs claimed by the plaintiffs are in respect of or arise out of the same transaction or series of transactions,[15] and (c) it is desirable for other reasons to make an order for a joint trial.[16] Ms Lum then submits that, secondly, a joint trial will satisfy the purpose of O 4 r 1(1) in that (a) a joint trial will lead to convenience and the saving of costs, time, and effort,[17] and (b) the plaintiffs' objections are without merit.[18]

12 KPMG aligns itself with Ms Lum's position. In essence, KPMG submits that (a) there are common questions of law and/or fact which arise in the Suits, and (b) it would be desirable for "an order for consolidation of the Suits to be made as there are compelling reasons in support of the Suits being heard together, including the saving of time and costs".[19] At this point, I should say that while KPMG refers to the Application as the "Consolidation Application"[20] (as well as, in different contexts, the "consolidated proceedings") throughout its written submissions, this is not strictly accurate. There is a difference between an order for "consolidation of the Suits" and an order that "the Suits be heard or

---

13 Ms Lum Ooi Lin's Written Submissions in HC/S 267/2022 dated 1 March 2024 ("1DWS") at para 9, heading III.

14 1DWS at paras 11 and 33.

15 1DWS at para 43.

16 1DWS at paras 47−60.

17 1DWS at para 64.

18 1DWS at para 75.

19 2DWS at para 4.

20 2DWS at paras 1, 5, 6, 11, and 37.

tried at the same time", which Ms Lum has rightly referred to as a "joint trial". Indeed, as I will elaborate below, the plain words of O 4 r 1(1) clearly distinguish between these two orders. In my respectful view, it is important for terminological precision to be carefully maintained in legal submissions so that the *same word* is used to mean the *same thing* in the *same context*. Indeed, this is a point that I have tried to emphasise in different contexts (see, *eg*, the High Court decisions of *V V Technology Pte Ltd v Twitter, Inc* [2023] 5 SLR 513 at [44]–[58], *Salmizan bin Abdullah v Crapper, Ian Anthony* [2023] SGHC 75 at [42]–[50], and *Ho Chee Kian v Ho Kwek Sin* [2023] SGHC 192 at [46]–[47]). It is admittedly not easy to do this, but the effort made to maintain such precision will ensure that our case law develops coherently and comprehensibly. That said, it is clear that KPMG has in mind a joint trial because it consistently refers in its submissions to the Suits being "heard together".[21] That KPMG has in mind a joint trial is also evidenced by its submission that Suit 268 should be the "lead action" in the joint trial,[22] as this submission would not make sense if KPMG wants the Suits to be consolidated. After all, were the Suits to be consolidated, Suit 268 would cease to exist as an independent action, and there would be no question of it being the "lead action".

13 The plaintiffs oppose the Application at this stage of the proceedings. They say that it is premature for this court to order a joint trial now because there is at least considerable uncertainty as to whether such an order will save time and costs or otherwise be desirable.[23] However, the plaintiffs submit that this court can revisit the question of a joint hearing at a later stage in the

---

21 2DWS at para 4(b); Minute Sheet ("MS") at p 4.

22 2DWS at para 6.

23 Plaintiffs' Written Submissions in HC/S 267/2022 in response to HC/SUM 56/2024 and HC/SUM 144/2024 dated 1 March 2024 ("PWS") at paras 4 and 48.

proceedings, such as after the filing of evidence.[24] More specifically, the plaintiffs submit that: (a) Ms Lum has failed to show that a joint trial order will lead to savings of time and costs;[25] (b) Ms Lum's proposed orders will result in the Suits progressing in lockstep, likely causing delay as both Suits will progress at the rate of the slower Suit;[26] and (c) a joint trial risks giving rise to a hearing of an unwieldy complexity and length.[27] That said, the plaintiffs are in favour of this court ordering that a single Assistant Registrar and a single Judge be assigned to hear interlocutory applications for both Suits, and that Judge be assigned to hear the trials for both Suits.[28] Finally, in the event that this court orders a joint trial, the plaintiffs oppose the Ancillary Orders sought by Ms Lum.[29]

14 With the parties' general positions in mind, I turn now to consider the relevant issues that are before me.

The relevant issues

15 In my view, there are three relevant issues which I have to decide:

(a) Whether, pursuant to O 4 r 1 of the ROC 2014, Suit 267 should be heard or tried at the same time as Suit 268.

(b) If so, whether the Ancillary Orders sought should be granted.

---

24 PWS at para 4.

25 PWS at para 23.

26 PWS at para 32.

27 PWS at para 31.

28 PWS at para 51.

29 PWS at para 38.

(c) If so, whether Suit 268 should be the lead action.

16 I now deal with each issue in turn.

Whether, pursuant to O 4 r 1 of the ROC 2014, Suit 267 should be heard or tried at the same time as Suit 268

The relevant principles

The different orders under O 4 r 1(1) of the ROC 2014

17 The starting point I took is O 4 r 1(1) of the ROC 2014, which provides as follows:

> **Consolidation, *etc.*, of causes or matters (O.4, r.1)**
>
> **1.—**(1) Where 2 or more causes or matters are pending, then, if it appears to the Court—
>
> (*a*) that some common question of law or fact arises in both or all of them;
>
> (*b*) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or
>
> (*c*) that for some other reason it is desirable to make an order under this Rule,
>
> the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.

18 It is important that the heading to O 4 r 1 is about the "consolidation, *etc*" [emphasis added] of causes or matters. I emphasise the word "etc" in the heading because this suggests that O 4 r 1(1) is not only concerned with an order that the causes or matters be consolidated on such terms as it thinks just, but also with orders that: (a) the causes or matters be tried at the same time; (b) the causes or matters be tried one immediately after another; and (c) one cause or

matter be stayed until the determination of the other (see the careful analysis of each of these orders in Jeffrey Pinsler, *Singapore Court Practice: Rules of Court 2014* (LexisNexis, 2023) at para 4/1/4). Indeed, that O 4 r 1(1) allows for orders other than consolidation to be made, is supported by the fact that O 4 r 1(2) and O 4 r 1(3) both apply *only* to an order of consolidation. This therefore emphasises that there is a distinction between an order for consolidation, which is further subject to O 4 r 1(2) and r 1(3), as opposed to other orders possible under O 4 r 1(1).

19 In this regard, Boswell J in the Ontario Superior Court of Justice decision of *Paterson v Stewart Title Guaranty Company* [2020] ONSC 4609 ("*Paterson*") observed (at [21]) that consolidation and a joint hearing essentially achieve the same goal but in slightly different ways. Although the learned judge was interpreting r 6.01 of the Ontario Rules of Civil Procedure, RRO 1990, Reg 194 (O), his description of the essential features of consolidation and a joint hearing are broadly applicable here. Boswell J quoted Quinn J's decision in the Ontario Superior Court of Justice decision of *Wood v Farr Ford Ltd* [2008] OJ No 4092 (at [24]–[26]) as follows:

> Where two actions are consolidated, they become, and proceed as, one action. Thus, there is "one set of pleadings, one set of discoveries, one judgment, and one bill of costs" …
>
> If two actions are ordered to be tried together, "the actions maintain their separate identity and there are separate pleadings, discoveries, judgments and bills of costs. But the actions are set down on the list one after the other to be 'tried in such manner as the court directs'. Usually, the trial judge will order that the evidence in one action is to be taken as evidence in the other action or actions. In this way both or all of the actions are tried together by the same judge or jury" …
>
> Although it has been said that "[t]he difference between consolidation and an order directing the trial of actions together is more technical than real" … I think the difference can be quite real if the matter is addressed promptly. Actions ordered tried together largely offer a savings of time and money, and

> enhanced convenience, at the trial stage. However, consolidation provides those features from an earlier stage in the proceedings, including: one set of pleadings, affidavits of documents, discoveries and pre-trial memoranda and one pre-trial.

20 In essence, Boswell J explained in *Paterson* that consolidation condenses two actions into one. This therefore allows for one set of pleadings, one set of discoveries, and a single trial, with no prospect of inconsistent findings. Consolidation also avoids the potential for multiple actions to proceed at different speeds. In contrast, while an order for a joint trial (or for one cause or matter to be heard one after the other) also avoids inconsistent findings, it neither provides for one set of pleadings and one set of discoveries, nor does it guarantee one trial. Further, such an order also does not provide for the sharing of evidence among all the parties in the actions. However, a court can make ancillary orders to address these issues. For example, a court can make an order requiring common discoveries and for all parties in all actions to exchange affidavits of evidence-in-chief. These ancillary orders may transform what is ostensibly an order for a joint hearing into, effectively, an order for consolidation.

21 The possibility of a court making different orders under O 4 r 1(1) of the ROC 2014 suggests that it can apply different principles to decide whether to grant the order concerned. The plaintiffs suggest this to be the case in their submissions.[30] In my view, it is correct that a court can apply different principles depending on the nature of the order asked for under O 4 r 1(1), though in practice, this will not make a difference in most cases. This is supported by cases that have applied different principles depending on whether the order prayed for

---

30 PWS at para 14(d).

is a consolidation or a joint hearing (see, *eg*, the High Court decision of *Lee Kuan Yew v Tang Liang Hong and another and other actions* [1997] 2 SLR(R) 141 ("*Lee Kuan Yew*") at [4]–[5]). Indeed, Boswell J explained in *Paterson* (at [21]) that:

> … where there are two potential means of achieving the same goal, the choice between them must be guided by a costs/benefits analysis. In other words, where, like here, the parties agree that the proceedings should be linked in one way or another but cannot agree on whether they should be consolidated or heard together, the task of the court is simple. *The court must assess the salient factors that point towards and away from an order of consolidation. Next, the court must assess the salient factors that point both towards and away from an order that the actions be heard together.* Finally, the court must balance all of those salient factors to determine which linkage order will best promote the most efficient, expeditious and least expensive resolution of the disputes. [emphasis added]

Coleman J put it even more succinctly in the Hong Kong Court of First Instance decision of *Convoy Collateral Ltd v Cho Kwai Chee* [2022] HKFCI 3406 ("*Convoy Collateral*") (at [14]):

> Therefore, whilst the authorities frequently deal with the situation of a potential order for consolidation, such an order is not the same as an order for the trial of one action to follow the other, or an order to stay one action pending the trial of another. *Different considerations may apply depending on which potential order is sought or in focus.* This emphasises the flexibility in the consideration, as the Court seeks in the exercise of its discretion to identify the case management decision which promotes the efficient and just resolution of the disputes before it. [emphasis added]

22 However, in some cases, a court may first need to ascertain what is being asked of it substantively. Thus, while a party's prayer may be for, on its face, an order that the causes or matters be tried together, it could be the case that the party is also asking for ancillary orders praying for, as an example, common discovery. In such cases, that party may be effectively asking for an order that the causes or matters be consolidated. It may be artificial to divorce the

consideration of a prayer for a joint trial from that of ancillary orders because those orders condition the kind of joint trial that is being asked for. Thus, rather than analyse a prayer for a joint hearing and a prayer for related ancillary orders separately, it may be better for a court to consider both prayers holistically. This would better enable the court to consider the relevant principles applicable to what is being asked of it *substantively*. However, this may not be as necessary in cases where the substantive nature of the order sought lies somewhere in between the continuum of a consolidation and a joint trial.

23 At this point, I note that, taken strictly, the wording of O 4 r 1(1) seemingly does not allow a court to condition an order for a joint trial or for one trial to be heard after another "on such terms as it thinks just". Indeed, the expression "on such terms as it thinks just" ostensibly applies only to an order for consolidation. While this may suggest that a court cannot impose ancillary orders when it makes orders other than one for consolidation under O 4 r 1(1), this would make little practical sense. As such, had it been necessary for me to decide this point, I would have held that a court still has the discretion to make ancillary orders even when making an order that is not an order for consolidation under O 4 r 1(1). The power to do so can, if necessary, be located in the court's inherent powers.

The requirements under O 4 r 1(1) of the ROC 2014

24 To sum up the foregoing, a court can have regard to different principles or considerations depending on the specific order that is sought under O 4 r 1(1) of the ROC 2014. Despite this, it bears emphasis that the court should only have recourse to these different principles at the stage in which the court is exercising its discretion. This discretion stage only comes after an applicant has shown that its application comes within one of the three grounds specified in the Order. In

this regard, the parties here do not dispute the two-stage analytical framework that the High Court laid down in *Yeo Su Lan (alias Yang Shulan) v Hong Thomas and others* [2023] SGHC 44 ("*Yeo Su Lan*"). These two stages are:

(a) First, an applicant has to show that he or she satisfies one of the three alternative grounds in O 4 r 1(1). While the grounds in O 4 r 1(1)(*a*) and O 4 r 1(1)(*b*) are largely self-explanatory, it should be noted that the ground in O 4 r 1(1)(*c*) is a catch-all meant to cater for any other relevant circumstance. However, in the spirit of a harmonious interpretation of O 4 r 1(1), the ground advanced under O 4 r 1(1)(*c*) must obviously be of a similar grain to the grounds expressly provided for in O 4 r 1(1)(*a*) and O 4 r 1(1)(*b*).

(b) Second, even if an applicant can come within one of the three grounds in O 4 r 1(1), he or she would still need to convince the court that the order sought in respect of the causes or matters would satisfy the purpose of O 4 r 1(1), which is principally "to save costs, time and effort and for reasons of convenience" (see *Lee Kuan Yew* at [4]).

25 Thus, it is only at the second stage of the framework above that a court needs to apply the discretionary principles to decide whether to grant the particular order sought. Put differently, regardless of the order sought in an application, that application will, in any event, need to satisfy at least one of the three grounds in O 4 r 1(1), as a threshold condition. It is only after fulfilling this threshold condition that an applicant will need to convince a court that it should exercise its discretion in favour of the particular order being sought. To do this, the applicant would need to advance reasons specific to the particular order that it seeks, which would include the principles and reasons discussed above at [19]−[24].

26 Finally, as an overarching point, I reiterate the view in *Yeo Su Lan* that since O 4 r 1(1) of the ROC 2014 is framed in substantively the same terms as O 9 r 11 of the Rules of Court 2021, there is no reason why the above principles in relation to O 4 r 1(1) of the ROC 2014 should not, subject to the Ideals in O 3 r 1 of the ROC 2021, apply equally to O 9 r 11 of the ROC 2021.

27 With these principles in mind, I turn to the Application.

My decision: the Application is allowed

Ms Lum has satisfied one or more grounds provided in O 4 r 1(1) of the ROC 2014

28 Turning to the first stage of the analytical framework, I do not understand the plaintiffs to be arguing that Ms Lum has not satisfied one or more of the grounds provided in O 4 r 1(1) of the ROC 2014. This is because the plaintiffs' arguments canvass reasons why this court should not exercise its discretion to order a joint trial, rather than why Ms Lum has not satisfied the grounds in O 4 r 1(1). Despite this, I will briefly explain why, in any event, I find that Ms Lum has indeed satisfied one or more grounds in O 4 r 1(1).

29 First, with regard to O 4 r 1(1)(*a*), there are common questions of law or fact in the Suits. As a preliminary point, while the plaintiffs have alluded to there being a substantial number of key non-overlapping issues between the Suits, that is not relevant in considering whether the ground in O 4 r 1(1)(*a*) is satisfied. Rather, as the plain words of O 4 r 1(1)(*a*) make clear, all that is needed is that "*some* common question of law or fact arises in both or all of [the causes or matters concerned]" [emphasis added]. To establish this, it is useful to consider the plaintiffs' cases in the Suits. In Suit 267, the plaintiffs allege the following: that Ms Lum, (a) in breach of her common law, equitable, and

statutory duties; (b) caused Hyflux, Hydrochem, and Tuaspring to be in breach of the prohibitions against wrongful trading in s 239 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") and/or its equivalent provision in the Companies Act prior to the enactment of the IRDA ("CA"); and/or (c) wilfully paid and/or permitted Hyflux to pay dividends in contravention of s 403(1) of the CA.[31] In turn, in Suit 268, the plaintiffs allege that KPMG breached its duty to exercise reasonable skill and care in carrying out its audit work in relation to its audit of the Financial Statements.[32]

30 Crucially, the plaintiffs rely on the same pleaded facts in support of these causes of action. More specifically, the plaintiffs have pleaded that:

(a) the Financial Statements portrayed a group that was in good health and growing strongly;

(b) the Financial Statements were materially misstated as a result of a failure to recognise provisions and/or impairment losses in accordance with FRS 36, FRS 37, and/or FRS 38; and

(c) these misstatements relate to the Project, and had these misstatements been recognised in the Financial Statements, Ms Lum should, and Hyflux would have, realised that Hyflux should not have prepared the Financial Statements for at least 2014 onwards on a going

---

[31] 1DWS at para 12; Statement of Claim (Amendment No 1) dated 27 November 2023 filed in Suit 267 ("Suit 267 SOC") at para 44.

[32] 1DWS at para 13; Statement of Claim (Amendment No 1) dated 26 September 2023 filed in Suit 268 ("Suit 268 SOC") at paras 47−50.

concern basis, or at least that there was material uncertainty whether Hyflux and the Group could continue as a going concern.[33]

31 Similarly, the plaintiffs also claim to have suffered almost identical losses in both Suits, namely: (a) dividends paid to Hyflux's shareholders; (b) financing and interest costs for perpetual capital securities issued by Hyflux; (c) financing and interest costs for debt instruments from banks and external creditors; (d) discretionary bonuses paid to directors and senior management; and (e) funding losses.[34] In addition, the plaintiffs also claim in Suit 267 the remuneration, bonuses, fees, and benefits paid to Ms Lum.[35]

32 Leaving aside Ms Lum's and KPMG's pleadings, it is clear, based on the plaintiffs' pleadings alone, that there are common questions of fact and law. One, due to the commonality of the facts pleaded by the plaintiffs across the Suits, it is likely that there will be common questions of fact. In this regard, the only difference in the factual matrix of the Suits may be the plaintiffs' further allegation in Suit 268 against KPMG that it was allegedly inappropriate for Hyflux to account for the Power Plant using INT FRS 112. Two, there are common questions of fact and law in relation to factual causation given the manner that this issue has been pleaded in the Suits. For example, the plaintiffs allege that Ms Lum and KPMG ought to have appreciated that the significant misstatements and losses incurred meant that there was at least material uncertainty about the ability of Hyflux and the Group to continue as a going concern. Three, there are common questions of fact and law in relation to legal

---

[33] 1DWS at para 15.

[34] 1DWS at para 16.

[35] 1DWS at para 17.

causation given the manner in which this issue has been pleaded in the Suits. This is because the plaintiffs have pleaded that all the losses claimed flow directly from Ms Lum's and KPMG's failure to discharge their respective duties. Four, there are common questions of fact and law in relation to the damages and losses claimed by the plaintiffs due to the almost identical manner in which the plaintiffs have pleaded these across the Suits.

33 Second, pursuant to the ground in O 4 r 1(1)(*b*), the rights to relief claimed in the Suits are in respect of or arise out of the same transaction or series of transactions. In this regard, the plaintiffs' claims in the Suits include, among other things, an order that Ms Lum and KPMG pay the plaintiffs compensation, including the dividends Hyflux paid to its shareholders between 2012 and 2018. It is clear that the plaintiffs' right to this relief, among others that they seek, are in respect of and arise out of the same transaction, that is, the alleged misstatements in the Financial Statements.

34 Accordingly, I find that Ms Lum has satisfied one or more grounds in O 4 r 1(1) of the ROC 2014. I therefore move on to consider the second stage of the analytical framework.

Ms Lum has shown that the joint hearing of the Suits would satisfy the purpose of O 4 r 1(1)

(1) The nature of the order sought

35 In view of my conclusion above that it may be necessary to assess what Ms Lum is asking for substantively in the Application, I asked Mr Jaikanth Shankar ("Mr Shankar"), counsel for Ms Lum, how he would characterise the substantive nature of what Ms Lum was seeking. Mr Shankar replied that Ms Lum was asking primarily for a joint trial, and if that was granted, that the

Ancillary Orders be made.[36] On the basis of how Mr Shankar has advanced his case, I consider Ms Lum's prayer for a joint trial separately from her prayer for the Ancillary Orders. However, I still observe that, in some cases at least, a court may be justified in considering a prayer for a joint trial (or consolidation, as the case may be), together with any ancillary order sought, and make a holistic assessment of the application.

(2) The plaintiffs' objections are not convincing

36 From this starting point, I turn to explain why I do not find the plaintiffs' objections to the Application to be convincing.

37 First, the plaintiffs submit that there are a number of non-overlapping issues in both the Suits that are key and substantial.[37] Before me, Mr Kenneth Tan SC ("Mr Tan"), who appeared as instructed counsel for the plaintiffs, confirmed that these issues are the ones detailed in Mr Borrelli's affidavit filed on 31 January 2024 at paras 20 and 23.[38] Thus, for Suit 267, the plaintiffs point to, among others, evidence from Ms Lum and other Hyflux team members as to what Ms Lum knew and did in relation to the Financial Statements and whether this involved a breach of her duties. For Suit 268, the plaintiffs point to, among others, evidence from KPMG audit team members, and the plaintiffs' and KPMG's respective audit experts as to what KPMG knew and did in the course of its audit and whether this involved a breach of its duties.

---

36 MS at p 1.

37 PWS at para 18.

38 MS at p 7.

38 While there are a number of non-overlapping issues between the Suits, I find that the overlapping issues are key and substantial. To begin with, and the plaintiffs fairly do not argue this, the mere presence of some non-overlapping issues cannot mean that the Application must be dismissed. Rather, what is important is the nature and significance of these non-overlapping issues as compared to the overlapping issues. Considered this way, the supposed non-overlapping issues in the Suits flow from the common questions of fact and law, which in turn flow from the similar manner in which the plaintiffs have pleaded to the Suits. Indeed, given that both Ms Lum and KPMG are heavily referenced in both Suits, it is clear that the overlapping issues will be more substantial in number and key in significance as compared to the supposed non-overlapping issues identified by the plaintiffs.

39 In any event, I do not think that all of the supposed non-overlapping issues identified by the plaintiffs are really unique to either Suit 267 or Suit 268. In fact, as I will proceed to demonstrate, a majority of them are clearly overlapping issues across the Suits. In relation to Suit 267:

(a) Mr Borrelli points out at paras 20(a) and 20(b) of his affidavit that Ms Lum's positions with the Group (including her role on the board of directors), as well as the duties she owed, are unique to Suit 267. However, these issues are relevant in Suit 268 because KPMG has pleaded that the plaintiffs' board represented that they were of the opinion that the Financial Statements gave a true and fair view of the Group's financial performance and were in accordance with the CA and the FRS.[39] Therefore, the

---

[39] Defence (Amendment No 1) dated 26 September 2023 filed in Suit 268 ("Suit 268 Defence") at para 84.3.

composition of the board at the relevant time, as well as the duties they owed, would be relevant in Suit 268 as well.

(b) Mr Borrelli points out at para 20(c) of his affidavit that the issue of whether Ms Lum breached her duties is unique to Suit 267. However, this issue is relevant in Suit 268 because KPMG has pleaded that the plaintiffs were contributorily negligent and that, in signing the Financial Statements, the plaintiffs' board represented that they were of the opinion that the Financial Statements gave a true and fair view of the Group's financial performance.[40] Therefore, what Ms Lum knew or ought to have known at the time the Financial Statements were prepared would be relevant in Suit 268 as well.

(c) Mr Borrelli points out at para 20(e) of his affidavit that whether Ms Lum's breaches of her various duties caused the plaintiffs damage and loss is unique to Suit 267. However, this issue is relevant in Suit 268 because a court would need to decide, as between Ms Lum's alleged breaches and KPMG's alleged breaches, which one of these was the effective cause of the plaintiffs' damage and loss. Therefore, it cannot be said the issue of causation in Suit 267 is irrelevant in Suit 268, especially given that the plaintiffs have relied on the same underlying facts to advance its claims in the Suits.

40 In relation to Suit 268:

---

[40] Suit 268 Defence at para 84.3.

(a) Mr Borrelli points out at paras 23(a) to 23(c) of his affidavit that whether KPMG breached the express and implied terms of its letter of engagement is unique to Suit 268. However, this issue is relevant in Suit 267 because Ms Lum has pleaded that she was entitled to, and did in fact, rely on the assessments, assumptions, analyses, opinions, and/or judgments prepared by KPMG.[41] Therefore, the court's determination of KPMG's role and duties under its engagement would also be relevant to Suit 267.

(b) Mr Borrelli points out at paras 23(d) to (f) of his affidavit that whether KPMG owed and, if so, breached its duties in tort to Hyflux, Hydrochem, and Tuaspring is unique to Suit 268. However, this issue is relevant in Suit 267 because a court would need to determine the effective cause of the plaintiffs' damage and loss in Suit 267, especially given that the plaintiffs have relied on the same underlying facts to advance its claims in the Suits.

(c) Mr Borrelli points out at para 23(g) of his affidavit that whether it was appropriate for Hyflux to account for the Power Plant using INT FRS 112, including whether the Power Plant was physically separable and capable of operating independently of the Desalination Plant, is unique to Suit 268. However, the issue of whether the Power Plant was physically separable and capable of operating independently goes towards the accounting treatment applied in the Financial Statements, which is also relevant in Suit 267.

---

[41] Defence dated 16 December 2022 filed in Suit 267 ("Suit 267 Defence") at para 11(g).

(d) Mr Borrelli points out at para 23(h) of his affidavit that whether the plaintiffs' loss was caused by Hyflux's and Hydrochem's allegedly premature application for creditor protection under s 211B of the CA is unique to Suit 268. However, this is a relevant issue in Suit 267 because Ms Lum has pleaded that the plaintiffs have ignored the effect of the application and the fact that the judicial managers were not able to achieve the purposes of their appointment, which included achieving the survival of Hyflux and Hydrochem as a going concern.[42]

41 Second, the plaintiffs submit that the contentions of Ms Lum and KPMG regarding the degree of commonality in the witnesses and documents across the Suits are lacking in specificity.[43] However, it is possible for this court to determine on a preliminary basis, based on the plaintiffs' highly similar pleadings across the Suits, who the witnesses might be. I find that Ms Lum and KPMG are well justified in concluding that their witnesses will likely be the same. This is due to how the plaintiffs' cases in each of the Suits flow from the same set of facts as pleaded. It follows that the documents across the Suits will also be similar. Thus, it is no objection to say that Ms Lum and KPMG have not particularised the degree of commonality in the witnesses and documents. Instead, what matters is that there is sufficient material contained in the pleadings for this court to preliminarily determine that degree of commonality.

42 Third, the plaintiffs submit that a joint trial will result in a hearing of unwieldy complexity and length, due to the aggregation of the substantial

---

42 Suit 267 Defence at para 27(b)(i).

43 PWS at para 28.

number of non-overlapping issues into one trial.[44] With respect, I think that the plaintiffs have overstated the complexity of a joint trial. Indeed, there are many complex commercial cases involving multiple parties before the courts. Given that each of the parties are represented by highly experienced counsel, who were certainly adept at dealing with this hearing efficiently and effectively, I do not think that a joint trial will result in such unwieldy complexity and length as would be unmanageable.

43 Fourth, the plaintiffs submit that a joint trial will cause the Suits to proceed in lockstep, so that they will proceed at the rate of the slower Suit.[45] It is true that the effect of an order under O 4 r 1(1) on one of the causes or matters is a relevant consideration. Thus, the Malaysian High Court, in its decision of *Federal Land Development Authority and Anor v Tan Sri Hj Mohd Isa bin Dato' Hj Abdul Samad and Ors* [2022] 7 MLJ 883, held that one factor which militated against cases being consolidated, tried together, or one after the other, was that the plaintiffs had filed the application in circumstances where the court was ready to fix new trial dates for one of the suits. In that case, one of the suits was ready for trial, but the other suit had not even reached the close of pleadings (at [61] and [67]). Similarly, the High Court in *Yeo Su Lan* also considered (at [29]) that an order for consolidation would delay, rather than expedite, the resolution of the parties' dispute. The reason was that one of the suits had been commenced earlier and the parties to that suit were close to trial after extensive amendments to the pleadings. Thus, returning to the present Application, the plaintiffs' concern would only be a real one if one of the Suits were very far ahead of the

---

44 PWS at para 31.

45 PWS at para 32.

other, and close to trial. However, this is not the case here. While Suit 268 is slightly ahead in terms of discovery, both Suits have a long way before trial.

44 Fifth, the plaintiffs submit that the risk of inconsistent findings is not determinative, especially where Ms Lum and KPMG have failed to show a saving of time and costs.[46] I disagree because, as I will explain below, I find that a joint trial will save costs, time, and effort, as well as promote convenience.

45 In the round, the plaintiffs' overarching complaint is that the Application is premature because this court does not have sufficient material with which to assess the Application at this juncture. I now explain why I disagree that the Application is premature.

(3) The Application is not premature

46 To begin with, an application for an order under O 4 r 1(1) of the ROC 2014 should be made "as soon as possible" (see *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 4/1/6). Of course, "as soon as possible" does not mean that an application must be brought immediately upon the crystallisation of a second cause of action or matter subsequent to the first one. Rather, it means that an application should be brought when there is sufficient material for the court to decide whether to make an order under O 4 r 1(1).

47 Second, although there must be sufficient material for a court to decide whether to make an order under O 4 r 1(1), it is not the case that all the evidence in the Suits regarding the causes or matters concerned must first be exhaustively

---

[46] PWS at para 37.

adduced for the court's consideration. In this regard, I agree with KPMG that the plaintiffs' proposal for this court to revisit whether to order a joint trial after "all evidence" has been adduced in the Suits would, if accepted, likely lead to even more wastage of time and costs.[47] For example, if I were to order that all documents disclosed, filed, and/or used in one Suit shall be treated as, and form part of, the documents in the other Suit, this could prevent the parties from realising substantial savings of time and costs. That cannot be what it means for a court to have sufficient material to decide whether to make an order under O 4 r 1(1).

48 Third, and in a related vein, the plaintiffs' proposal kicks the can so far down the road that an order made under O 4 r 1(1) at that point in time (*ie*, after "all evidence" has been adduced in the Suits) may no longer make sense. For example, by deferring a decision, the overlapping witnesses in the Suits may then file separate affidavits of evidence-in-chief in each of the Suits in relation to the same issues. After this has occurred, it would be less expedient to make an order under O 4 r 1(1) compelling them, at that time, to file a single affidavit of evidence-in-chief. After all, to do so would be to unwind what the parties have already done. I therefore agree with KPMG that the plaintiffs' proposal to decide the application at a later juncture would defeat the purpose of an application under O 4 r 1(1).[48]

49 Taken in the round, as I have discussed above, there is sufficient material for this court to decide whether to order a joint trial of the Suits. In this regard, I do not find the plaintiffs' reliance on *Convoy Collateral* and the Supreme

---

47 2DWS at para 33.

48 2DWS at para 34.

Court of Western Australia decision of *Spargos Mining NL v Michael John Fuller* [1998] WASC 361 ("*Spargos*") to be helpful to their case. I understand the plaintiffs to be relying on these cases for the broad proposition that an application for an order under O 4 r 1(1) would be premature if, as in *Convoy Collateral*, the applicants had not "identified the names and numbers of any suggested common witnesses between the two actions, and the nature and volume of any common documents",[49] while this would not be so if the court had sufficient material to, as in *Spargos*, estimate concretely the savings of time occasioned by a joint trial.[50] However, whether there is sufficient material before the court is entirely dependent on the facts in each case. For example, it appears that the cases sought to be consolidated in *Convoy Collateral* were premised on quite different causes of action; besides, one of the cases was a defamation suit that required a jury trial (see *Convoy Collateral* at [1]). Perhaps this is why Coleman J found that he lacked sufficient material, such as the list of common witnesses, with which to decide the application. This is in contrast to the present case, where the pleadings in the Suits are highly similar, and there is sufficient material for me to decide on the Application, without the need for the parties to provide a list of common witnesses. I therefore do not think that these cases assist the plaintiffs.

50 Accordingly, I do not think that the Application is premature.

---

49 PWS at para 15(b).

50 PWS at para 16.

(4) The joint hearing of the Suits will save costs, time, and effort, as well as promote convenience

51 In fact, apart from the lack of merit to the plaintiffs' objections, I find that, for reasons which I will shortly explain, the joint hearing of the Suits will save costs, time, and effort, as well as promote convenience. In this regard, I find the factors developed in the Ontario Superior Court of Justice decision of *Logtenberg v ING Insurance Co* [2008] OJ No 3394 to be helpful in a court's assessment of the matter (at [10]):

> Will the order sought create a savings in pretrial procedures?
>
> Will there be a real reduction in the number of trial days taken up by the trials being heard at the same time?
>
> What is the potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may only have a marginal interest?
>
> Will there be real savings in experts' time and witness fees?
>
> Is one of the actions at a more advanced stage than the other?
>
> Will the order result in a delay on one of the actions?
>
> Are any of the actions proceedings [*sic*] in a different fashion?

It is not necessary for me to consider all of these factors in the present case, and I only focus on three salient factors that exemplify how the joint hearing of the Suits will save costs, time, and effort, as well as promote convenience.

52 First, at the risk of repetition, there is clearly a substantial overlap in questions of fact and law across the Suits. Thus, a joint trial will prevent the repeated attendance of counsel, parties, and witnesses. This will clearly save time and costs.

53 Second, given the overlapping questions of fact and law across the Suits, a joint trial will ensure that there are consistent answers to these questions. As

the High Court observed in *DFI Engineering Pte Ltd v Mo Mei Jen* [2018] 5 SLR 431 (at [13]), consolidation will prevent an outcome that gives rise to inconsistent results:

> Secondly, and relying on established principles relating to the consolidation of cases under O 4 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the ROC"), the cases in S737 and ECT487 should be tried together or one after the other by the same Judge as they give rise to common questions of fact and law. Specifically, whether or not the defendant had been performing work for DFIT instead of the plaintiff and whether the defendant had used the plaintiff's resources for the benefit of DFIT were common issues for determination in both cases. Transferring the claim in ECT487 to the High Court would prevent a duplication of resources in terms of adducing the same evidence and producing the same witnesses in two different forums, and would also prevent an outcome where the adjudication in the two forums gave rise to inconsistent results.

54 Third, a joint trial will avoid the need for duplicative hearings before the courts. For example, the Suits have necessitated two separate pre-trial conferences presided over by two different Registrars for matters that overlap heavily across the Suits. These are time and costs that can be saved by an order for a joint trial.

55 Accordingly, I find that the joint hearing of the Suits will save costs, time, and effort, as well as promote convenience. I therefore allow Ms Lum's prayer for a joint trial, which is prayer 1 of SUM 56 and prayer 1 of SUM 144.

Whether the Ancillary Orders should be granted

56 Further, I conclude that the Ancillary Orders should be granted.

57 I do not find the plaintiffs' objections to the Ancillary Orders to be convincing:

(a) One, as to the plaintiffs' objection to the ancillary order relating to the sharing, exchange, and disclosure of evidence, documents, and lists of documents,[51] I do not think this will necessarily result in Ms Lum and KPMG receiving correspondence, discovered documents, affidavits of evidence-in-chief, expert reports, and interlocutory application documents in relation to issues that are irrelevant to the respective cases against them. Instead, given the clearly overlapping questions of fact and law across the Suits, having the documents disclosed in one Suit form part of the documents in the other Suit will help to manage the volume of documents, especially at trial where duplicates may be eliminated.

(b) Two, as to the plaintiffs' objection that the ancillary orders regarding discovery are not necessary given the usual discovery regime,[52] I find that those ancillary orders will likely lead to savings of time and costs. This is because, contrary to the plaintiffs' assertions,[53] Ms Lum and KPMG would not need to apply for discovery by way of a non-party discovery order under O 24 rr 6 and 7 of the ROC 2014 should they wish to obtain documents from each other. Indeed, given the clearly overlapping questions of fact and law across the Suits, a common discovery arrangement would make the most sense.

---

51 PWS at para 39.

52 PWS at para 41.

53 PWS at para 41.

(c) Three, as to the plaintiffs' objection to the ancillary order that all applications (together with any supporting affidavit(s)) in one Suit be served on the parties to the other Suit, and that all hearings in either Suit for directions and/or case management be heard in the presence of the parties in both Suits,[54] I find not only that this would fail to give rise to any significant wastage of time and costs, but also that such an approach would make for a better, more cost efficient, and more efficacious case management. After all, this ancillary order would avoid the parties having to argue over who can attend and/or be heard at the hearings for the other Suit, when it is clear that there is a significant degree of overlap in questions of fact and law across the Suits.

58 Instead, for very much the same reasons that I have ordered a joint trial, I find that the Ancillary Orders sought will save costs, time, and effort, as well as promote convenience. As such, I am of the view that the Ancillary Orders should be granted.

Whether Suit 268 should be the "lead action"

59 As to whether Suit 268 should be the "lead action", Mr Thio Shen Yi SC ("Mr Thio"), who appeared for KPMG, helpfully clarified that what KPMG meant by this request is that KPMG's evidence in the joint trial should be adduced before that of Ms Lum's.[55] KPMG did not mean that Suit 268 should be tried before Suit 267, in what would not be a joint trial but, rather, one trial being heard before the other.

---

54 PWS at para 44.

55 MS at pp 4–5.

60 With this clarification in mind, I think that the order in which the evidence should be adduced in the joint trial can be considered closer to that trial. I therefore do not direct that Suit 268 should be the "lead action" in the sense that Mr Thio has explained at this stage.

Conclusion

61 For all the reasons above, I allow the Application, including the Ancillary Orders sought. I, however, do not direct for Suit 268 to be the "lead action" in the joint trial.

62 Unless the parties are able to agree on an appropriate costs order for the Application, they are to tender written submissions, no longer than seven pages each, within seven days of this judgment.

63 In closing, I would like to thank Mr Shankar, Mr Thio, and Mr Tan for their most helpful submissions. While I may not have agreed with all of the submissions made to me, I am grateful to all counsel for making highly effective and efficient submissions. In this regard, while the Application was scheduled for a full day hearing, all counsel completed their submissions in less than two hours on the premise that the court had read all the relevant papers. Indeed, prolonged oral submissions are not necessarily better; they can, in fact, be worse because they divert attention away from salient points on which cases turn. Indeed, if the judge has made it clear that he or she has read the papers, counsel need to take the judge at his or her word and not, as in some other cases, still go through their written submissions paragraph by paragraph, or the factual matrix in exhaustive detail. What was especially helpful in this case was that Mr Shankar, Mr Thio, and Mr Tan all highlighted salient points on which their respective cases turned with only brief references to their written submissions.

This enabled all parties to have an open and informed exchange with me on these pertinent points. Mr Shankar, Mr Thio, and Mr Tan were also very able to address my questions as soon as I had asked them instead of, as in some other cases, return to their prepared remarks as if the judge had not asked the questions concerned. Effective advocacy should not be a lecture to the judge, but rather, a true dialectic between counsel and the judge. I was therefore greatly assisted by Mr Shankar's, Mr Thio's, and Mr Tan's oral submissions, which went to the crux of their respective cases, addressed my concerns immediately, and helped me better appreciate the finer details in their respective written submissions.

Goh Yihan
Judge of the High Court

Kenneth Tan SC (Kenneth Tan Partnership) (instructed),
Ng Ka Luon Eddee, Leong Qianyu, Teo Jin Yun Germaine,
Gitta Priska Adelya, Lu Yanrong Elycia and Clarise Chew Shu-Min
(Tan Kok Quan Partnership) for the 1st, 2nd, 16th and 37th plaintiffs
in HC/S 267/2022 and for the 1st, 2nd and 16th plaintiffs in
HC/S 268/2022;
Jaikanth Shankar, Rajvinder Singh Chahal, Sheiffa Safi Shirbeeni
and Shilpa Krishnan (Davinder Singh Chambers LLC)
for the defendant in HC/S 267/2022;
Thio Shen Yi SC, Tan May Lian Felicia, Kevin Elbert,
Chin Yen Bing Arthur, Joshua Phang Shih Ern, Juliana Lake,
Tay Zhuo Yan Isaac and Ng Qiheng Glenn (TSMP Law Corporation)
for the defendant in HC/S 268/2022.