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

[2025] SGHC 59

Originating Application No 530 of 2022 (Summons No 3752 of 2024)

Between

DJY

… *Applicant*

And

(1) DJZ
(2) DKA

… *Respondents*

GROUNDS OF DECISION

[Civil Procedure — *Erinford* injunctions]

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v
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Introduction

1 In HC/OA 530/2022 ("OA 530"), DJY applied for an injunction to restrain DJZ from demanding payment and/or receiving monies under an irrevocable standby letter of credit dated 28 March 2022 (the "SBLC") for the sum of US$126,569,231.12 (the "SBLC Sum"), as well as to restrain the second respondent (the "Bank") from effecting payment of any sum of money to the first respondent under the SBLC.

2 After hearing counsel's submissions, I dismissed the application. DJY applied for an interim injunction pending the appeal against my decision. Such an injunction is also known as an *Erinford* injunction (named after the case of

Erinford Properties and Another v Chesire County Council [1974] 2 WLR 749 ("*Erinford*")).

3 *Erinford* injunctions typically occupy the space between decisions and appeals against those decisions. The time for applications, hearings and judgments on *Erinford* injunctions thus tend to be abridged. Written decisions on *Erinford* injunctions tend to be equally brief, mirroring the short time those injunctions remain in place before an appeal is decided. In the circumstances surrounding this case, the parties have invited me to expand on and clarify this area under Singapore law. I have accepted that invitation in these grounds of decision.

Facts

Background to the proceedings

4 The background facts can be found in *DJY v DJZ and another* [2024] SGHC 301 (the "Judgment"). For present purposes, it suffices to note the following.

5 On 19 December 2003, DJY and DJZ entered into a contract where DJY was to construct an oil and gas production platform (the "Contract"). Subsequently, the parties amended the Contract several times to, amongst other things, increase the amount to be paid under the Contract by US$52,876,543.21 to adjust for the appreciation of Country [X]'s currency against the US dollar (Judgment at [3]).

6 In 2007, the Federal Audit Court of Country [X] (the "FAC") initiated an audit process to inquire into the Contract, and the amendments thereto. On 17 October 2007, the FAC made an order to suspend the execution of payment

resulting from "rebalancing motivated by exchange rate variations and changes in the domestic market" (the "Balancing Payment"). Pending its final decision on the matter, the FAC determined, on 21 November 2007, that DJZ could continue to make the Balancing Payment to DJY, but on the condition that a guarantee was provided by DJY as security for the Balancing Payment (the "FAC Interim Decision") (Judgment at [4]).

7 Accordingly, at DJY's request, an irrevocable standby letter of credit was issued in favour of DJZ on 20 February 2008. This standby letter of credit was replaced by the SBLC. Importantly, the SBLC specified that a condition for payment was that, *inter alia*, DJZ must present a copy of the notification receipt from FAC with the final decision issued by FAC "declaring the [Balancing Payment] is null and void" (the "First Condition"). The SBLC was subsequently extended up to 16 April 2025 (Judgment at [5]).

8 On 7 December 2011, the FAC directed DJZ, *inter alia*, to: (a) retain the existing balances under the Contract from the amounts paid as "rebalancing due to exchange variation and heating of the domestic market" (ergo, the Balancing Payment); (b) liquidate the bank letters of guarantee; and (c) if there are no contractual balances or guarantees, to take the necessary steps to recover from contractors the remaining amounts (the "FAC First Decision"). DJY and DJZ both appealed against the FAC First Decision. Both appeals were dismissed on 27 July 2022 (the "FAC Appeal Decision") (Judgment at [6]).

9 On 22 August 2022, DJZ called on the SBLC by presenting, *inter alia*, the notification that the FAC Appeal decision had been issued from the FAC (the "Notification Receipt") to the Bank (Judgment at [7]). The FAC Appeal Decision was not annexed to the Notification Receipt. Rather, the Notification

Receipt contained a link to the FAC Portal, on which parties could access the FAC Appeal Decision (the "Link").[1]

OA 530

10 On 9 September 2022, DJY commenced OA 530, seeking to restrain DJZ from demanding payment or receiving monies under the SBLC, as well as to restrain the Bank from effecting such payment.

11 DJY argued that the SBLC was more properly categorised as a performance bond rather than as a letter of credit. Hence, an injunction ought to be granted as DJZ's call on the SBLC did not fall within the terms of the SBLC (Judgment at [9]).

12 I agreed with DJY that the SBLC was a performance bond (Judgment at [28]). However, I found that DJZ's call on the SBLC did fall within the terms of the SBLC. Amongst other things, the First Condition only required a "declaration from the FAC with the effect that DJZ is to be paid back the sums it paid to DJY after the FAC Interim Decision" – the "sums it paid to DJY" being the Balancing Payment, secured by the SBLC (see above at [6]–[7]). DJZ had thus complied with the First Condition by providing a copy of the Notification Receipt with the Link (Judgment at [48] and [50]–[51]).

13 DJY has appealed against my decision, and the appeal is set to be heard in July 2025.[2]

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1 Third Affidavit of Affonso Henriques Maggiotti Costa Da Motta Barboza filed 22 January 2025 ("3AB") at paras 31–33.

2 Notes of Evidence dated 23 January 2025 ("NE") at p 2.

The parties' cases

14 DJY argued that there was a fair likelihood that it would succeed on appeal and if the *Erinford* injunction was not granted, that appeal would be rendered nugatory. Further, DJY argued that in its determination of whether to grant an *Erinford* injunction, the court should conduct a balancing exercise of the prejudice caused to parties (and whether any such prejudice can be compensated by damages). Accordingly, as the grant of the injunction caused no prejudice to DJZ, the court should grant the *Erinford* injunction pending the determination of DJY's appeal.[3]

15 DJZ, in turn, argued that DJY had not been able to show that it had a likelihood of success on appeal or that the appeal would be rendered nugatory if the *Erinford* injunction was not granted.[4] It also argued that the test for the grant of an *Erinford* injunction does not include a balancing exercise of the prejudice caused to parties, citing my decision in *Shanghai Chong Kee Furniture & Construction Pte Ltd v Church of St Theresa* [2024] SGHC 5 ("*Shanghai Chong Kee*") .[5]

Issues to be determined

16 There were two issues to be determined:

(a) what should be the proper test for determining whether an *Erinford* injunction should be granted; and

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3 Claimant's Written Submissions dated 16 January 2025 ("CWS") at paras 4 and 24.

4 First Defendant's Written Submissions dated 16 January 2024 ("1DWS") at para 2.

5 1DWS at para 181.

(b) applying this test, whether an *Erinford* injunction should be granted in this case.

The law on *Erinford* injunctions

17 The current test for *Erinford* injunctions was set out by Tan Siong Thye J (as he then was) in *SH Design & Build Pte Ltd v BD Cranetech Pte Ltd* [2018] SGHC 133 ("*SH Design*") at [93], and affirmed in a recent decision I had made in *Shanghai Chong Kee* at [61]. Based on these decisions, there are "*two* primary factors a court will consider" [emphasis added]: (a) "whether there is a likelihood that the appeal will succeed"; and (b) "whether the appeal will be rendered nugatory if a stay was not granted" (*SH Design* at [93]).

Distinction between an injunction pending appeal and a stay pending appeal

18 As counsel had cited cases regarding a stay pending appeal, a preliminary question arose as to the distinction between an *Erinford* injunction, or an injunction pending appeal, and a stay pending appeal.

19 In the case of *Erinford* itself, Megarry J seems to suggest that there is none as they are two sides of the same coin – albeit his comments were made in the context of whether it is the trial judge, or the appellate court, that should be allowed to hear an application for an injunction pending appeal. At 756, he noted that "[a]lthough the type of injunction that I have granted is not a stay of execution, it achieves for the application or action which fails the *same sort of result as a stay of execution* achieves for the application or action which succeeds" [emphasis added]. It was for this reason that he held that "[e]xcept where there is good reason to the contrary (and I can see none in this case), I would apply the convenience of the procedure from one to another".

20 The case of *SH Design* would also suggest such, given that Tan J had used the terms "stay" and "injunction" interchangeably – for example, in setting out the test for the grant of an *injunction* pending appeal, one of the grounds stated was whether "the appeal will be rendered nugatory if a *stay* was not granted" [emphasis added] (at [93]).

21 Moreover, the principles governing a stay of execution pending appeal mirror the stated principles governing a grant of an *Erinford* injunction. In *Strandore Invest AS v Soh Kim Wat* [2010] SGHC 174 ("*Strandore*"), Quentin Loh J, citing the decision of the Court of Appeal in *Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd* [1999] 1 SLR(R) 1053, stated that the principles governing a stay pending appeal are as follows (at [7]):

> (a) While the court has the power to grant a stay, and this is entirely at the discretion of the court, the discretion must be exercised judicially, *ie*, in accordance with well-established principles.
>
> (b) The first principle is that, as a general proposition, the court does not deprive a successful litigant of the fruits of his litigation, and lock up funds to which he is *prima facie* entitled, pending an appeal. There is no difference whether the judgment appealed against was made on a summary basis or after a full trial.
>
> (c) This is balanced by the second principle. When a party is exercising his undoubted right of appeal, the court *ought to see that the appeal, if successful, is not nugatory*. Thus a stay will be granted if it can be shown by affidavit that, if the damages and costs are paid, there is no reasonable probability of getting them back if the appeal succeeds.
>
> (d) The third principle follows, and is an elaboration of the second principle, that an appellant must show special circumstances before the court will grant a stay.
>
> All other rules follow and are derived from the application of these three principles to the individual circumstances and facts of each case. For example, the *likelihood of success* is not by itself sufficient, and a *bald assertion of the likelihood of success in an affidavit is inadequate*. Otherwise, a stay would be granted in every case because every appellant must expect that his

> appeal will succeed. Finally, it is neither possible, nor desirable, to give a catalogue of all the circumstances that would qualify to be considered as special. The court in every case will have to examine the facts to see if special circumstances justifying the grant of a stay of execution exist based upon the application of the three principles.

22 Hence, in my judgment, a stay of execution pending appeal and an injunction pending appeal are two sides of the same coin. Circumstances may vary but, generally, the former applies where a defendant seeks to restrain a successful claimant from enjoying the fruits of his litigation pending an appeal, and the latter applies where a claimant seeks to do the same to a successful defendant. It thus stands to reason that the same principles would apply to both.

The test for the grant of an Erinford injunction should involve a balancing exercise

23 Parties agreed that the two primary factors are as stated in *SH Design*: (a) whether there is a likelihood that the appeal will succeed; and (b) whether the appeal will be rendered nugatory if the *Erinford* injunction was not granted. However, parties disagreed over whether the test for the grant of an *Erinford* injunction also involves a balancing of prejudice and the comparative effects of granting or not granting the injunction. Hence, the question before me was whether there is a need to expand upon the two aspects of the test stated in *SH Design*, and if so, how I should do so.

24 The natural place to start in an analysis of the test for the grant of an *Erinford* injunction is the case from whence it derives its name. In the case of *Erinford*, Megarry J made the following comments (at 755):

> … where the application is for an injunction pending an appeal, the question is *whether the judgment that has been given is one upon which the* ***successful party ought to be free to act despite the pendency of an appeal***. One of the important factors in making such a decision, of course, is the *possibility*

> *that the judgment may be reversed or varied*[.] Judges must decide cases even if they are hesitant in their conclusions; and at the other extreme the judge may be very clear in his conclusions and yet on appeal be held to be wrong … A judge who feels no doubt in dismissing a claim to an interlocutory injunction may, perfectly consistently with his decision, recognise that his decision might be reversed, and that *the* ***comparative effects of granting or refusing an injunction pending an appeal*** *are such that it would be right to preserve the status quo pending the appeal* …
>
> There may, of course, be many cases where it would be wrong to grant an injunction pending appeal, as *where* ***any appeal would be frivolous***, or to grant the injunction *would* ***inflict greater hardship than it would avoid***, and so on. But subject to that, the principle is to be found in the leading judgment of Cotton L.J. in *Wilson v. Church (No. 2),* 12 Ch.D. 454, where, speaking of an appeal from the Court of Appeal to the House of Lords, he said, at p. 458, '… when a party is appealing, exercising his undoubted right of appeal, *this court ought to see that the appeal, if successful,* ***is not nugatory***.' …
>
> [emphasis added]

25 From Megarry J's perspective, the overarching question is "whether the judgment that has been given is one upon which the successful party ought to be free to act despite the pendency of an appeal". It will not be so when "the *comparative effects* of granting or refusing an injunction pending an appeal are such that it would be right to preserve the status quo pending the appeal" [emphasis added].

26 In making this determination, the court should consider, *inter alia*, whether "any appeal would be frivolous", whether granting the injunction "would inflict greater hardship than it would avoid", and whether refusing to grant the injunction would render a successful appeal nugatory.

27 On a plain reading of Megarry J's decision, I agreed with DJY that Megarry J's decision in the *Erinford* case suggests that the test for an *Erinford*

injunction involves a balancing of the effects of granting or refusing the injunction pending appeal.[6]

28 This is supported by the academic commentary on injunctions pending appeal following the *Erinford* case. David Bean, Isabel Parry and Andrew Burns in *Injunctions* (Sweet & Maxwell, 11th ed, 2012) echo Megarry J's statements in the *Erinford* case, and highlight that it "does not mean that an injunction should be granted where any appeal would be frivolous or where to grant the injunction would inflict greater hardship than it would avoid" (at para 6-34).

29 In Singapore, there are five cases (including *SH Design* and *Shanghai Chong Kee*) which considered the test for the grant of an *Erinford* injunction.

30 The oldest of these is *Tan Soo Leng David v Wee, Satku & Kumar Pte Ltd and another* [1993] 2 SLR(R) 741 ("*David Tan*"). GP Selvam JC (as he then was) started his analysis by citing the aforementioned comments by Megarry J (at [33]). Selvam JC concluded that as the defendants had "lived with this delay" for "[s]ome 11 months", the "waiting period for the hearing of the appeal is relatively short", and the defendants could be "compensated for the delay by damages", he granted an *Erinford* injunction against the defendants (at [36]–[37]).

31 In *Sin Herh Construction v Hyundai Engineering & Construction Company Ltd and another* [2017] SGHC 3 ("*Sin Herh*"), Kan Ting Chiu SJ dismissed the plaintiff's argument that its chances of securing other projects would be prejudiced if the injunction was not granted. This was because the purpose of an *Erinford* injunction "is to ensure that an appellant will not end up

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6 NE at p 3.

with a pyrrhic victory if it succeeds in an appeal". Thus, "the risk of negation must relate to the appeal or the dispute between the parties", and "the potential prejudice to the [p]laintiff in securing other projects [was] not related to either" (at [30]).

32 In *SH Design*, Tan J distilled from the judgment of Megarry J "two primary factors a court will consider when deciding whether to grant an [*Erinford*] injunction": (a) whether there is a likelihood that the appeal will succeed; and (b) whether the appeal will be rendered nugatory if a stay was not granted (at [93]). Accordingly, he declined to grant the *Erinford* injunction on the basis that the plaintiff had failed to prove that the appeal would be rendered nugatory (at [95]).

33 In *Shanghai Chong Kee*, I affirmed the test set out by Tan J in *SH Design* (at [61]). Further, I noted that for the first ground, the standard should not be set "so strictly that there must be a high likelihood of success in the appeal" (at [62]), and the negation test must "stand on its own two feet" and cannot involve a consideration of other issues "outside the four corners" of the case (at [64], citing *Sin Herh* at [30]). I also found in *Shanghai Chong Kee* that the claimant's argument – on the lack of irreparable prejudice caused to the defendant from the grant of the *Erinford* injunction – was unconvincing (at [67]).

34 Finally and most recently, the Appellate Division of the High Court ("Appellate Division") also considered the test for an *Erinford* injunction in *Ee Hup Construction Pte Ltd v China Jingye Engineering Corp Ltd (Singapore Branch) and another* [2025] 1 SLR 175 ("*Ee Hup Construction*"). The Appellate Division held that "the court, in considering an application for an *Erinford* injunction, should consider whether the appeal will ultimately be rendered nugatory" (at [31]). In that case, there was no evidence that the

respondent would not be able to repay the bond amount if the appeal was allowed and thus no prospect of the appeal being rendered nugatory. The Appellate Division therefore upheld the trial judge's decision to refuse the *Erinford* injunction.

35 The Singapore cases cited have focused mainly on the grounds of the likelihood of success of appeal and the appeal being rendered nugatory. They do not preclude a balancing exercise also forming part of the test for an *Erinford* injunction. While the Appellate Division in *Ee Hup Construction* focused its analysis on whether the appeal would be rendered nugatory, it made no explicit finding that the prospect of the appeal being rendered nugatory was the only factor the court should consider in making its determination. Similarly, as DJY noted, Tan J merely stated that the two aspects of the test in *SH Design* are the two primary factors the court will consider, not the only factors.[7]

36 However, while DJY was adamant that this balancing of prejudices between the parties was an essential part of considering whether an *Erinford* injunction should be granted, DJZ leaned quite heavily on my decision in *Shanghai Chong Kee* to suggest that the test for an *Erinford* injunction should follow the narrow two-factor test set out in *SH Design* and *Shanghai Chong Kee*.[8] DJZ argued that, in accordance with *Shanghai Chong Kee* (at [67]), other factors such as the lack of prejudice caused to the defendant were irrelevant.

37 I disagreed with DJZ. The point I made in *Shanghai Chong Kee* (at [67]) was specific to the facts of that case and was made without reference to the case of *David Tan*, which suggests that the lack of prejudice is indeed relevant (at

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7 NE at p 3.

8 NE at p 11.

[36]–[37]). It should thus not be read to have such a limiting effect. While I was, in *Shanghai Chong Kee*, unconvinced by the claimant's argument on the lack of irreparable prejudice caused to the defendant from the grant of the *Erinford* injunction because this is not one of the grounds stated *in SH Design*, I did not preclude the possibility of such a ground being relevant. Indeed, in *Shanghai Chong Kee*, I did not have the benefit of considering the case of *David Tan*, which suggests that the lack of prejudice is relevant. My decision in *Shanghai Chong Kee* therefore should not be read to have such a limiting effect.

38 Furthermore, the authorities on when the court will grant a stay of execution pending appeal also lend support to the proposition that the test for the grant of an *Erinford* injunction should include a balancing exercise. In *Axis Megalink Sdn Bhd v Far East Mining Pte Ltd* [2024] SGHC 47, Goh Yihan J noted that "the task of a court when considering a stay application pending an appeal is to 'hold the balance between the interests of the parties (pending the hearing of [the] appeal) to avoid any prejudice to any of the parties'" (at [11], citing the Court of Appeal decision of *PricewaterhouseCoopers LLP and others v Celestial Nutrifoods Ltd (in compulsory liquidation)* [2015] 3 SLR 665 at [19]). Given that, as noted above at [22], a stay of execution pending appeal and an *Erinford* injunction are merely two sides of the same coin, the same principle should apply to the test for the grant of an *Erinford* injunction.

39 As such, I agreed with DJY that the test for the grant of an *Erinford* injunction does include a balancing of the prejudice caused to parties.

The applicable test

40 Having considered the evolution of the position in Singapore on *Erinford* injunctions, I turned to the wider case law on this point. In particular,

DJY cited the English case of *Novartis AG v Hospira UK Ltd* [2014] 1 WLR 1264 ("*Novartis*"), where the English Court of Appeal summarised the "principles which apply to the grant of an interim injunction pending appeal" as follows (at [41]):

> (1) The court must be satisfied that the appeal has a real prospect of success. (2) If the court is satisfied that there is a real prospect of success on appeal, it will not usually be useful to attempt to form a view as to how much stronger the prospects of appeal are, or to attempt to give weight to that view in assessing the balance of convenience. (3) It does not follow automatically from the fact that an interim injunction has or would have been granted pre-trial that an injunction pending appeal should be granted. The court must assess all the relevant circumstances following judgment, including the period of time before any appeal is likely to be heard and the balance of hardship to each party if an injunction is refused or granted. (4) The grant of an injunction is *not limited to the case where its refusal would render an appeal nugatory*. Such a case merely represents the *extreme end of a spectrum of possible factual situations* in which the injustice to one side is balanced against the injustice to the other. (5) As in the case of the stay of a permanent injunction which would otherwise be granted to a successful claimant, the court should endeavour to arrange matters so that the Court of Appeal is best able to do justice between the parties once the appeal has been heard. [emphasis added]

41 Though the case of *Erinford* was not cited by the English Court of Appeal in *Novartis* itself, it was argued in the first instance decision from which the appeal arose.

42 I agreed with the approach in *Novartis*. The first part of the test relates to the likelihood of a successful appeal, and the second part of the test requires a balancing exercise of the effects of granting or not granting the injunction on the parties. The issue of whether the appeal is rendered nugatory is part of the latter half of the test - representing "an extreme end of a spectrum of possible factual situations" (see above at [40]), but where, in any particular case, it is

clear that an appeal would be rendered nugatory, then the injunction should be granted.

Likelihood of success on appeal

43 The English Court of Appeal in *Novartis* also stated, when referring to the likelihood of success of an appeal, that, "[t]he court must be satisfied that the appeal has a real prospect of success" (at [41]), a phrase typically used in the test for the grant of Mareva injunctions, which requires a "good arguable case". However, the court in *Novartis* made it clear that the standard applicable to this part of the test follows that for the standard interlocutory injunction, namely, the "triable issue" standard (at [33]).

44 Hence, as I also noted in *Shanghai Chong Kee* at [62], the first part of the test does not require that the applicant meet such a high standard such that they must establish that they are likely to succeed in the appeal. Rather, all that is required is that the applicant "should be ready to state with sufficiently detailed particulars the reasons why its arguments on appeal will succeed based on a fair and objective standard", as opposed to providing just a bare statement or denial.

The parties' cases

45 DJY argued that it had a reasonable likelihood of succeeding on appeal as it had at least a reasonable argument that DJZ failed to strictly comply with the First Condition of the SBLC.[9] It stated that it intends to put forward the following arguments on appeal:

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9 CWS at para 25.

(a) In my decision in OA 530, I had erred in my interpretation of the First Condition of the SBLC. According to DJY, from a plain reading of the text of the SBLC, the First Condition required, at least, a declaration that conveys the *same meaning* as a declaration that the Balancing Payment is null and void.[10] As such, my interpretation of the First Condition, *ie*, that it required a declaration from the FAC *with the effect* that DJZ is to be paid back the Balancing Payment it paid to DJY (see above at [12]), "impermissibly rewrote the agreed terms of the SBLC".[11] A declaration that DJZ is to be paid back the Balancing Payment is not equivalent to a declaration that the Balancing Payment is null and void, as a "direction to 'pay back' monies can arise from myriad scenarios".[12]

(b) In any case, there was no strict compliance with the First Condition.[13]

(i) First, I had also erred in finding that the Link incorporated the FAC Appeal Decision by reference.[14] Such incorporation by reference would strike at the heart of strict compliance and severely undermine business efficacy by requiring the issuing bank to investigate a presentation.[15] Furthermore, the Link was not a clear and explicit reference to

10 CWS at para 29.

11 CWS at para 31.

12 CWS at para 31.

13 CWS at para 32.

14 CWS at para 32(c).

15 CWS at para 32(c)(ii).

the FAC Appeal Decision, as it leads to the FAC Portal and not the FAC Appeal Decision itself.[16]

(ii) Second, even assuming that the FAC Appeal Decision had been incorporated as part of DJZ's presentation, the FAC Appeal Decision "does not contain words with the effect 'null and void' or 'that [DJZ] is to be paid back'".[17] In the FAC Appeal Decision, the FAC had only determined that there was "no lawful reason – not even currency fluctuations or inflation – for parties to vary the Contract Price".[18]

46 DJZ, in turn, argued that:

(a) DJY's case on appeal is just a restatement of its case in the original application, that had already been considered and dismissed by me;[19]

(b) DJY's arguments are in any case without merit:

(i) First, there was no requirement for the phrase "null and void" to be used in the declaration and DJZ had presented the decision by the FAC when calling on the SBLC sum.[20]

(ii) Second, the FAC's determination that there is "no legal substantiation" conveys the same meaning as "null and void".[21]

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16 CWS at para 32(c)(iv).

17 CWS at para 32(d).

18 CWS at para 32(d)(i).

19 1DWS at paras 2(a), 47, 71 and 87.

20 1DWS at para 57.

21 1DWS at paras 60–61.

(iii) Third, the FAC Appeal Decision had been incorporated by reference. Paragraph 2 of the Notification Receipt explicitly referred to the FAC Appeal Decision.[22] Further, by way of the Link, the full version of the FAC Appeal Decision was incorporated into the Notification Receipt.[23]

There is a reasonable likelihood of DJY succeeding on appeal

47 I agreed with DJY that it has a reasonable likelihood of success on appeal. Just because DJY is restating its case does not mean that it does not have a likelihood of succeeding on appeal.

48 As Megarry J said in the case of *Erinford* (at 755), judges are not infallible, and they can get things wrong (see above at [24]). Hence, as long as DJY has put forward a logical and fair argument on its appeal, supported by sufficiently detailed arguments, as opposed to just a bare statement or denial, DJY would have established that it has a real prospect of success on appeal. As I noted at [44] above, the standard is not so strict that there must be a *high* likelihood of success in the appeal.

49 DJY's arguments were not a bare disagreement with the reasons behind my decision. It had explained in some detail why a declaration that DJZ is to be paid back the Balancing Payment is not equivalent to a declaration that the Balancing Payment is null and void, and as such, why I might have erred in my interpretation of the First Condition. Similarly, it put forward fair reasons for why I might have been too hasty to find that the FAC Appeal Decision was incorporated by reference.

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22 1DWS at para 97.

23 1DWS at paras 101–103 and 121–125.

The balancing exercise

50 The second part of the test then requires the court to balance the comparative effects of granting or not granting the *Erinford* injunction (see above at [42]). Where, in any particular case, it is clear that an appeal would be rendered nugatory, then the injunction should be granted.

51 Factors that are not within the four corners of the case should not be relevant to the balancing exercise (see above at [33], and *Shanghai Chong Kee* at [64]). It was also noted in *Novartis* that the ultimate aim of the court in granting an *Erinford* injunction is to arrange matters such that "when the appeal comes to be heard, the appellate court may be able to do justice between the parties" (at [31]). In other words, the main concern is the justice *of the case* itself. It hence follows that any factors that the court takes into consideration should be limited to factors that relate to the case on appeal.

The parties' cases

52 In considering the balance of prejudices, it would be helpful to summarise the arguments advanced by each party.

53 DJY argued that:

(a) making payment of the SBLC will have a significant impact on DJY's financials given the value of the SBLC Sum;[24]

[24] CWS at para 13.

(b) certain arguments put forward by DJZ in previous arbitration proceedings suggest that it is likely that DJZ will resist DJY's attempts to recover the SBLC Sum in the event of a successful appeal;[25]

(c) efforts by DJY to recoup the SBLC Sum will require great time, risk and expense, especially as DJY will have to bring proceedings in Country [Y] (DJZ's place of incorporation) and/or Country [X] (DJZ's place of business);[26]

(d) DJZ has only made a bare assertion as to its ability to repay the SBLC Sum, and this assertion was in doubt as DJZ's 2023 Annual Report showed that its total cash on hand approximated to only 55% of the SBLC Sum;[27]

(e) the injunction would only be for the brief period before the appeal and in any case, DJZ had "been content to not receive the return of [the SBLC Sum] for the **last 15 years**" [emphasis in original] (since the first iteration of the standby letter of credit was issued in 2008);[28]

(f) DJY has furnished an undertaking to pay for any damages suffered by DJZ;[29] and

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25 CWS at para 18(a).

26 CWS at paras 18(b)–18(d) and 19.

27 CWS at para 20; 3AB at para 55 and p 582.

28 CWS at para 22; Fifth Affidavit of Wong Chung Han filed 16 January 2025 ("5WCH") at para 42.

29 CWS at para 23, 5WCH at para 43.

(g) DJY would be renewing the SBLC that is due to expire in April for another year, so that the SBLC remains in DJZ's hands, just as they have done every year since 2022.[30]

54 DJZ, in turn, argued that:

(a) DJY had made provisions for the SBLC Sum, such that it would not face any adverse or material impact if the SBLC Sum was to be released;[31]

(b) the balance sheets of DJY's parent company suggest that DJY has significant financial resources;[32]

(c) any financial issues that DJY is facing are outside the four corners of this case (citing *Shanghai Chong Kee* at [64]);[33]

(d) any difficulty in enforcing any Singapore judgment for DJZ to repay the SBLC Sum to DJZ that arises out of the mere fact that DJY would have to bring proceedings in Country [X] or Country [Y] is insufficient to warrant the grant of the *Erinford* injunction (citing *Strandore* at [13]);[34]

(e) there is nothing to suggest that DJZ would resist any attempt by DJY to seek restitution in the event its appeal is successful considering DJZ's conduct over the last 15 years – it has consistently acted in "a

30 NE at p 9.

31 1DWS at para 149; 3AB at para 43–51.

32 1DWS at paras 146–147; 3AB at para 53.

33 1DWS at paras 138–143.

34 1DWS at para 155.

transparent, rule-based, proper and fair manner", as evidenced by it waiting to obtain the Notification Receipt before calling on the SBLC;[35]

(f) DJZ has sufficient assets to pay the SBLC Sum in the event that DJY's appeal is successful – its net total assets of US$677,526,000 far outweigh the SBLC Sum;[36]

(g) the lack of impact on DJZ should not be a consideration (citing *Shanghai Chong Kee* at [67]);[37]

(h) DJZ did not refrain from calling on the SBLC for 15 years (between the issuance of the first iteration of the standby letter of credit in early 2008, and its calling on the SBLC in late 2022) because it was content to not receive the SBLC Sum, rather, it was because it could not satisfy the terms of the SBLC until the FAC issued the Notification Receipt;[38]

(i) DJZ will suffer prejudice from being denied the use of the SBLC Sum;[39] and

(j) given that DJY has been alleging financial issues, it may not be able to fulfil its undertaking as to damages in the event its appeal is unsuccessful.[40]

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35 1DWS at para 168; 3AB at paras 70–72.

36 1DWS at para 172; 3AB at para 57 and p 578.

37 1DWS at para 181.

38 1DWS at para 186; 3AB at paras 70–72.

39 1DWS at para 187; NE at p 10.

40 NE at pp 10–12.

The balance of prejudice lies in favour of DJY

55 I start with some of DJY's arguments which did not convince me. It is not clear that an appeal would be rendered nugatory if the injunction was not granted. As DJZ had noted, it had consistently followed the law and not called on the SBLC for 15 years, until it obtained the requisite documents in 2022. As such, I was not convinced by DJY's argument that DJZ would flout the law in not repaying the SBLC sum where DJY's appeal succeeds.

56 Further, I was not convinced by DJY's allegation that DJZ is not in a financial position to pay the SBLC Sum to DJY in the event that DJY succeeds in the appeal. The fact that DJZ's total cash on hand is around twice the SBLC Sum does not show that DJZ will not be able to pay it to DJY – rather, it shows that DJZ is indeed in a position to repay DJY in the event that it is successful on appeal. I also accepted DJZ's point that its net total assets far exceed the SBLC Sum.

57 Moving on to the balancing of the comparative effects of granting or not granting the injunction, I nonetheless found that the balance lay in favour of granting the injunction.

58 First, in terms of the impact on DJY if the injunction was not granted, DJY's potential financial issues are within the four walls of this case as they have a direct impact on DJY. The current case can be distinguished from *Sin Herh* and *Shanghai Chong Kee*. Those cases involved outside influences, namely, potential prejudice in securing other projects in the former (*Sin Herh* at [30]), and how the significant debt on the claimant's balance sheet, arising from the enforcement of the decision, might deter potential investors from helping with its debt restructuring efforts (*Shanghai Chong Kee* at [58(b)] and [64]).

59 In any event, even though they were relevant, I found the respective arguments raised by both parties surrounding the financial impact of a call on the SBLC on DJY to be internally contradictory. For DJY, it had stated with aplomb how it had made provision for any call on the SBLC and thus any call would have been accounted for from a financial perspective. Yet, DJY also argued the deep financial impact the call on the SBLC would have on DJY given the significant amount involved. For DJZ, it sought to expose DJY's arguments about the provision in DJY's accounts arising from any call on the SBLC by stating that the logical conclusion of such an argument would be that DJY would thus suffer limited financial prejudice from any such call on the SBLC. Yet, DJZ also questioned DJY's financial health and whether DJY would be able to sustain any undertaking for damages arising out of the injunction.

60 These arguments tempted me to allow these disparate conclusions to cancel each other out. However, in undertaking the test on the balance of prejudices, I found that the balance ultimately tilted in favour of DJY simply because the current financial *status quo* had been present for over 15 years. A shift of this reality would more likely than not have an adverse impact on DJY. All other things being equal, the more logical conclusion would be to allow the *status quo* to remain.

61 With respect to any inconvenience and costs that may stem from DJY having to seek recovery of the SBLC Sum in Country [X] and Country [Y], I agree with DJZ that following *Strandore*, such inconvenience and costs, on their own, are insufficient to justify depriving DJY of the fruits of its litigation (at [13]).

62 Moving next to the impact on DJZ if the injunction is granted, I agreed with DJY that the time until the appeal is heard is fairly short, being only a few

months, as compared to the 15-year status quo. While DJZ has argued that it will suffer prejudice from being denied the SBLC Sum, any such prejudice is tempered by the fact that it will only be for a short period of time until the appeal is heard. Furthermore, such prejudice can be remedied by damages, and DJY has undertaken to repay any such damages.

Conclusion

63 I therefore concluded that the balance lay in favour of granting the *Erinford* injunction sought by DJY.

Wong Li Kok, Alex
Judicial Commissioner

Lin Weiqi Wendy, Jill Ann Koh Ying (Xu Ying), Leau Jun Li, Wee Jong Xuan and Foo Hsien Weng (WongPartnership LLP) for the applicant;
Hing Shan Shan Blossom SC, Lim Mingguan, Lu En Hui Sarah and Desiree Chong Ci En (Drew & Napier LLC) for the first respondent;
The second respondent absent and unrepresented.