IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA(I) 5

Civil Appeal No 12 of 2021

Between

(1) Tamar Perry
(2) Solid Fund Private Foundation

… *Appellants*

And

(1) Jacques Henri Georges Esculier
(2) Bonnet Esculier Servane Michele Thais

… *Respondents*

Originating Summons No 16 of 2021

(1) Tamar Perry
(2) Solid Fund Private Foundation

… *Applicants*

And

(1) Bonnet Esculier Servane Michele Thais
(2) Jacques Henri Georges Esculier

… *Respondents*

GROUNDS OF DECISION

[Civil Procedure] — [Interpleader] — [Principles] — [Actions *in rem* and *in personam*]
[Civil Procedure] — [Amendment of pleadings]

Perry, Tamar and another
v
Esculier, Jacques Henri Georges and another and another matter

[2021] SGCA(I) 5

Court of Appeal — Civil Appeal No 12 of 2021 and Originating Summons No 16 of 2021
Judith Prakash JCA, Steven Chong JCA and Beverly McLachlin IJ
4 August 2021

19 October 2021

Judith Prakash JCA (delivering the grounds of decision of the court):

Introduction

1 The appellants in this appeal are the plaintiffs in the action in the Singapore International Commercial Court ("SICC") known as SIC/S 4/2020 ("Suit 4"). In Suit 4, the appellants claim to be the beneficial owners of a sum of money that is being held in an account in DBS Bank Ltd ("DBS") in Singapore in the name of the second respondent. Faced with competing claims from the appellants and the respondents to the money, DBS started interpleader proceedings in the High Court in August 2019 ("OS 1016"). Consequently, on 30 January 2021, a court order was made that in effect directed that a new action be filed in the High Court with the appellants as plaintiffs and the respondents as defendants so that ownership of the money could be determined. The new

suit was filed in March 2020 and it was subsequently transferred to the SICC whereupon it became Suit 4.

2 The appellants subsequently applied in SIC/SUM 55/2020 ("SUM 55") for leave to amend their Statement of Claim in Suit 4 to (a) include an alternative claim based upon s 73B of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) (the "CLPA claim" and the "CLP Act" respectively) or upon the equivalent provision in Hong Kong being s 60 of the Conveyancing and Property Ordinance (the "CPO Claim" and the "HK Ordinance" respectively), and (b) add Lexinta Group Ltd ("LG Ltd"), a Hong Kong company, as a party to Suit 4. The International Judge (the "Judge") heard the application on 25 September 2020 and dismissed it for the reasons given in his Grounds of Decision ("GD") dated 30 October 2020.

3 The legal backdrop against which these amendments to the appellants' pleadings were sought was the Court's exercise of its interpleader jurisdiction under O 17 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). The fundamental question which arose in this appeal was whether the additional claims that the appellants sought to bring could properly fall within the interpleader jurisdiction. Determination of this question involved, among other things, a determination of whether the relevant claims were "personal" or "proprietary" for the purposes of the Court's interpleader jurisdiction.

4 Having heard the parties and considered their written submissions, we dismissed the appeal. We set out our reasons below.

The relevant facts

The parties

5 The first appellant is a Polish business person and private investor. She is a beneficiary of the second appellant, which is a Netherlands Curacao Commercial Register private fund foundation.

6 The respondents, both of whom are French nationals, are a married couple. The second respondent, who is the wife, is the holder of the bank account to which the disputed monies have been credited.

7 Also relevant to the story behind the proceedings were:

(a) Bismark Antonio Badilla Rivera ("Badilla"), a Spanish national ordinarily resident in Switzerland. He is under investigation for fraud and was allegedly responsible for perpetrating an international Ponzi scheme. He appears to be in remand in Switzerland.

(b) LG Ltd, a Hong Kong company described as an "independent affiliated company of the Lexinta Group". Its sole known director is Badilla.

(c) The Lexinta Group of companies (the "Lexinta Group") which included LG Ltd, Lexinta Limited, Lexinta Management Limited, Lexinta Inc and Lexinta AG. Badilla was the President and founder of the Lexinta Group. The Lexinta Group was alleged to have been in the business of asset investment and management.

(d) Yachel Baker ("YB"), an Israeli national who was alleged to have been an investor in the Lexinta Group.

(e) Solid Real Estate & Development (1993) Limited ("SRE"), an Israeli private company of which the first appellant is the sole director and shareholder.

Factual background

8 The dispute in Suit 4 centred on competing claims by the parties to a sum of approximately US$10.24m (the "Monies") in an account with DBS in Singapore held in the name of the second respondent (the "DBS Account"). Between 5 August 2016 and 1 February 2017, LG Ltd sent various sums of money to the DBS Account and the sums remitted eventually totalled US$10.24m.

9 The appellants' claim to the Monies arose out of an alleged Ponzi scheme. This Ponzi scheme was said to have been operated by Badilla via the Lexinta Group. The appellants contended that the Lexinta Group had represented that they would be able to purchase blocks of shares in companies prior to those shares being listed on a stock exchange, reaping considerable profits for investors as a result. On the basis of these representations, various investors, including the appellants, transferred money to companies in the Lexinta Group pursuant to what are now said to have been fraudulent asset management agreements. The appellants further alleged that, as matters transpired, the Lexinta Group had stolen the transferred money, using the same to enrich Badilla and to keep the fraudulent scheme afloat.

10 By contrast, the respondents contended that the "[a]ppellants' allegations of a '*Ponzi scheme*' [were] not admitted and ha[d] yet to be tried" [emphasis in original]. Instead, the respondents' account of the background facts was that Badilla and the Lexinta Group had held themselves out as

providers of investment and asset management services, and both the appellants and the respondents had availed themselves of these services pursuant to various (and separate) asset management agreements entered into with Lexinta Group entities.

11 The respondents began investing with the Lexinta Group around April 2014. From 16 April 2014 to 26 February 2015, the respondents invested an aggregate of €4m and US$1m (or a total of around US$6m) with the Lexinta Group.

12 Subsequently, in late-2015, the respondents informed the Lexinta Group that they wanted to terminate their investment. The date agreed with Badilla for the return of their investment (with profit, less the commission fees payable) was 15 April 2016. The respondents understood that they would receive their original investment of around US$6m back, along with profits of around US$4.4m, for a total of around US$10.4m. The deadline of 15 April 2016 came and went without any payment, and the respondents' Swiss lawyers, Bär & Karrer, sent various demands for payment to the Lexinta Group and Badilla. Eventually, the Lexinta Group complied with the demands and paid the respondents in a number of tranches between August 2016 and February 2017. As stated earlier, the total amount transferred was approximately US$10.24m. All of the Monies were transferred from LG Ltd's bank account with DBS at its Hong Kong branch (the "Lexinta Account") to the DBS Account in Singapore.

13 As for the appellants, their position was that they had, directly and indirectly, invested at least US$24m with the Lexinta Group since around mid-2016. The first appellant indicated that she began having doubts regarding these investments by December 2017 following the Lexinta Group's failure to transfer certain moneys to her account. Further, contact with Badilla had ceased

by November 2017. These doubts were said to have been compounded by the first appellant's discovery of various proceedings against Lexinta entities in Hong Kong between end-2017 and early-2018.

14 On 6 March 2018, the first appellant and YB, who was also an investor in the Lexinta Group, obtained *ex parte* discovery orders from the Hong Kong courts against DBS for the banking records of the Lexinta Account. On 13 March 2018 and 10 April 2018, DBS disclosed documents and records in respect of the Lexinta Account pursuant to the discovery order. This resulted in the first appellant and YB becoming aware of the sums paid by LG Ltd to the DBS Account. The first appellant and YB thereafter asserted that the respondents had been party to the Ponzi scheme as "accomplices" or "associates" of Badilla's. They then claimed ownership of the Monies. In May 2018, the first appellant's Hong Kong lawyers demanded that DBS transfer the Monies to the first appellant. Shortly thereafter, DBS froze the first respondent's DBS Account.

15 In letters from DBS to each of the respondents dated 11 March 2019, DBS (a) informed the respondents that, following a review of their accounts, it had decided to close all the respondents' bank accounts with DBS, and (b) requested that the respondents provide transfer instructions for the moneys held in those accounts. The respondents' evidence was that they provided the transfer instructions sought on or around 15 March 2019. However, DBS refused to comply with the transfer instructions, and the respondents claimed that this marked the first time they realised that all their accounts with DBS were frozen. On 5 April 2019, the respondents' solicitors wrote to DBS, demanding that it comply with the respondents' transfer instructions.

Procedural history

16 Faced with competing claims to the Monies, DBS commenced OS 1016 on 8 August 2019. The second respondent, the first appellant, and YB were named in OS 1016 as the first, second, and third defendants respectively. OS 1016 was heard before Dedar Singh Gill JC (as he then was) on 10 January 2020. At the hearing:

(a) The first appellant expressly abandoned all allegations that the respondents had been involved in Badilla's alleged Ponzi scheme. This led to Gill JC repeatedly questioning the first appellant's counsel on whether the first appellant *did* in fact have an interest in the Monies, and what the evidence of such an interest was.

(b) Counsel for the first appellant drew to the Court's attention a letter from the second appellant supporting the making of the interpleader order, and indicating that it wished to intervene. Gill JC declined to permit the second appellant to intervene until it came before him to state its claim to the Monies, describing the attempted circumvention of procedure as being "wholly unsatisfactory".

(c) Third, counsel for YB (who also appeared as counsel for the first appellant) renounced any claim by YB to the Monies. Thereafter, YB played no further part in the proceedings.

17 Over the course of the hearing of OS 1016, in considering the strength of the first appellant's claim to the Monies after she had abandoned her allegation that the respondents were party to Badilla's fraud, Gill JC repeatedly observed that the first appellant's claim was weak. In particular, he observed

that the appellants' evidence in support of their beneficial title to the Monies was "very very thin".

18 Following the hearing of OS 1016, the Court made a number of orders, as set out in HC/ORC 1066/2020 ("ORC 1066"). ORC 1066 provided for the Monies to continue to be held in the DBS Account (so as to continue generating interest), and also set out timelines for a trial of the contest over title to the Monies between the first appellant and second respondent. In particular, Gill JC ordered that:

> …
>
> 2. The [second respondent] and the [first appellant] shall proceed to **have their respective claims to the [Monies] determined**, with the [first appellant] to be the plaintiff in such further proceedings (the '*Further Proceedings*') and the [second respondent], the defendant. [YB] shall not be a party to the Further Proceedings.
>
> 3. The [first appellant] shall file her Statement of Claim in the Further Proceedings by 31 January 2020, failing which the [Bank] shall release the [Monies] to the [second respondent] upon the [second respondent's] request. Further directions for the conduct of the Further Proceedings shall be given at a Pre-Trial Conference to be convened.
>
> …
>
> [original emphasis in italics, emphasis added in bold underline]

19 The plain wording of ORC 1066 and Gill JC's observations in OS 1016 notwithstanding, a degree of procedural irregularity arose following the making of ORC 1066:

> (a) First, the first appellant filed a Statement of Claim dated 31 January 2020 in OS 1016 itself even though Gill JC had already indicated that there were to be further (and separate) proceedings.

(b) Second, and somewhat inexplicably, the first appellant's Statement of Claim dated 31 January 2020 stated, for the first time and without forewarning, that the second appellant was a second plaintiff in the action, and that the second respondent was the second defendant. This, in effect, appeared to have been an attempt to render the joinder of those parties a *fait accompli*, even though no permission had been granted by Gill JC at the hearing of OS 1016.

Given the irregularities, parties were required to appear before Gill JC again on 10 February 2020.

20 At that subsequent hearing, Gill JC made HC/ORC 1975/2020 ("ORC 1975"). ORC 1975 provided that, among other things:

> 1. Leave be granted for [the first respondent] and [the second appellant] to be joined to HC/OS 1016/2019 …
>
> 2. The [first appellant] commence a Suit against the [respondents] by 19 March 2020 by filing and serving a Writ of Summons, attaching the Statement of Claim dated 12 February 2020 (as originally filed in OS 1016) …

21 On 19 March 2020, the appellants commenced the High Court suit (which later became Suit 4) in line with Gill JC's order, with themselves as the plaintiffs and the first and second respondents as the defendants. In their Statement of Claim (Amendment No. 1), the appellants based their claims to the Monies on two causes of action:

(a) First, the appellants asserted that the respondents' investments with the Lexinta Group were not genuine, and that the respondents' initial investments would have been dissipated long before. Accordingly, any returns on the investment were fake and "could only have come from monies sent [to the Lexinta Group] by the [appellants]".

The appellants thus asserted that the Monies had been paid by the Lexinta Group in breach of fiduciary duties owed to the appellants as beneficial owners thereof or in breach of trust and that therefore they had continuing equitable property rights in the Monies.

(b) Second, the appellants made a claim in unjust enrichment against the respondents.

22 On 19 June 2020, the respondents' counsel wrote to the appellants indicating that the respondents intended to amend their Defence and Counterclaim to specifically plead that the law applicable to the dispute was Swiss Law and that, under Swiss Law, which "does not know the institution of the common law trust or equitable proprietary rights over bank account balances", the appellants' claims were arid.

23 In response, the appellants proposed a number of further amendments to the Writ and Statement of Claim. These became the subject of an application ("SUM 55"), which was filed on 7 August 2020. The amendments sought included:

(a) The joinder of LG Ltd as an additional defendant;

(b) The addition of the CLPA claim and the CPO claim;

and

(c) The inclusion of an averment that the governing law of the dispute was Hong Kong Law (and not Swiss Law) because it was "the law most closely connected" to the dispute.

These amendments were sought on the basis that, as the first appellant claimed in her supporting affidavit, Suit 4 was a "freestanding" action independent of the Court's interpleader jurisdiction and which "proceed[ed] under the general procedural rules applicable to all such claims, including as to amendment and joinder of parties". The appellants also asserted that there was no difficulty with their reliance on claims (such as unjust enrichment) "even if one or more of those claims might result in a money [as opposed to proprietary] judgment".

24 Shortly thereafter, on 28 August 2020, the respondents applied to strike out the appellants' claim in unjust enrichment.

The Decision Below

25 On 25 September 2020, the Judge allowed the respondents' striking out application and struck out the appellants' claim in unjust enrichment. In relation to SUM 55, the Judge declined to permit the joinder of LG Ltd or the addition of the CPO and CLPA claims. However, the Judge permitted the amendment asserting that the governing law of the dispute was Hong Kong Law.

26 Broadly, the Judge's reasoning, as gleaned from the transcript of the 25 September 2020 hearing and the GD, was that (a) Suit 4 was not a freestanding action and was instead the direct result of Gill JC's orders for the parties' disputes over the Monies to be determined through the Court's interpleader jurisdiction; (b) the Court's interpleader jurisdiction was a creature of statute for the benefit of applicants who wish to discharge their legal obligations but do not know *to whom* they should do so, and therefore this jurisdiction entailed the Court dealing with proprietary claims to property as opposed to personal claims for remedies against named defendants; (c) the CLPA and CPO claims were personal and not proprietary claims; (d) it would

improperly circumvent the rules on service out of the jurisdiction if the CLA and CPO claims were permitted; and (e) it was neither just nor convenient to join LG Ltd, particularly since it appeared to be a shell company with no directors apart from Badilla, who was in remand in Switzerland.

27 The appellants then sought and received leave to appeal. There was a small complication in that initially the appellants decided not to appeal against the rejection of the CLPA claim as they were under the impression that s 73B of the CLP Act had been repealed by s 464 of the Insolvency Restructuring and Dissolution Act 2018 (No 40 of 2018) ("IRD Act"). Subsequently, however, they discovered that transitional provisions within the latter statute meant that s 73B could still apply to the facts of this case. They therefore filed OS 16 of 2021 ("OS 16") with this Court seeking leave to appeal in relation to the CLPA claim as well. We heard OS 16 together with the main appeal.

The arguments on appeal

28 On appeal, the appellants conceded that, contrary to their position below, Suit 4 was *not* a freestanding action and that they were thus constrained in what claims could be brought. Rather, the appellants' primary argument before us was that, by reference to the cases and the remedies available for the CPO and CLPA claims, those were proprietary and not personal actions, and that they thus fell within the ambit of interpleader relief. As an alternative, the appellants argued that the CPO claim was a "prior legal step" leading up to a proprietary remedy, and that a proprietary remedy could thus be said to be "contingent" on a claim under the HK Ordinance such that the CPO claim still fell within the Court's interpleader jurisdiction. The appellants further contended that LG Ltd should be joined as a party because its joinder was necessary to fully and effectually resolve the dispute. Moreover, the CLPA claim should be permitted

as a "consequential" amendment. Complicating the appellants' position, however, was a shift that occurred between the filing of the Appellants' Case and OS 16:

(a) In their Case, the appellants had indicated that, as the CLPA had been repealed, they would be relying on a claim under the IRD Act instead. They also requested that this Court permit the addition of that claim as "consequential relief" pursuant to ss 37(5) and 37(6) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (as in force immediately before 2 January 2021) and O 57 rr 13(3) and 13(4) of the ROC (as in force immediately before 2 January 2021).

(b) About two months later, the appellants totally changed their position on the CLPA. Abandoning their earlier concession that s 73B of the CLPA had been repealed, the appellants sought to revive their CLPA claim and argue that they should be granted leave to appeal out of time with respect to the CLPA claim. The appellants contended this position was tenable because s 464 of the IRD Act, read with Reg 15 of the Insolvency, Restructuring and Dissolution (Saving and Transitional Provisions) Regulations 2020 (the "Transitional Regulations"), permitted a claim under the IRD Act to be brought *alongside* rather than *instead* of the CLPA claim. Accordingly, *all* of the (i) CPO claim, (ii) claim under the IRD Act ("the IRDA Claim"), *and* (iii) CLPA claim were permitted under the Court's interpleader jurisdiction.

29 The respondents' arguments centred, by contrast, on showing that the claims sought to be added by the appellants fell outside the scope of what was permitted by Gill JC's earlier orders. In particular, the respondents argued that permitting the addition of the claims sought by the appellants would be an abuse

of the Court's interpleader jurisdiction. The respondents further contended that the appellants' arguments relating to joinder and the "consequential" addition of the other claims should be rejected.

The issues

30 This appeal centred fundamentally on a question of law, namely, whether the CPO claim, and by extension the CLPA claim, fell within the Court's interpleader jurisdiction. This turned on consideration of:

(a) the nature of the CPO claim and the correct interpretation of the cases which both parties had sought to rely on, and

(b) whether the CPO claim was an "essential step" for obtaining a proprietary remedy, and whether this sufficed to bring it within the ambit of the Court's interpleader jurisdiction.

Assuming the CLPA claim could properly be the subject of the appeal at all given the appellants' shifting positions on it, determination of whether the CPO claim fell within the Court's interpleader jurisdiction would determine the question of whether the CLPA claim (the Singapore law equivalent thereof) could properly be brought.

31 Apart from the CPO and CLPA claims, there remained three associated questions which fell to be determined:

(a) Was the joinder of LG Ltd necessary and convenient such that it should have been permitted;

(b) Should the appellants have been permitted to add the IRDA claim to their pleadings; and

(c) Should the appellants be granted leave to appeal out of time against the Judge's decision to deny them permission to amend their pleadings to add the CLPA claim?

We consider the CPO claim first, before addressing the other questions enumerated above.

The CPO claim

The law

32 The starting point of the law on interpleader is the longstanding decision of the English Court of Appeal in *De La Rue v Hernu, Peron & Stockwell, Limited* [1936] 2 KB 164 ("*De La Rue*"). In his consideration of the status of an action commenced as part of interpleader proceedings, Greer LJ observed from 168 to 170 that:

> The whole object of those proceedings was for the purpose of enabling the warehouseman, or a person in the position of a stakeholder, to obtain relief, and get a decision as to which of the two claimants he had to account to for the goods or money that he held; and **every part of the interpleader proceedings was a part of proceedings intended for the benefit of the warehouseman**, the defendant in the action, who had **rival claims** made against him. … and I think [counsel for the husband] is right in saying that the order on the interpleader issue in the form in which it was made in this case is not an action by the husband against his wife, but a proceeding in the action against the warehousemen. …
>
> …. Now I think that [the contention based on the Married Women's Property Act] is entirely wrong, for this reason: that **an interpleader order of this kind, an issue directed under the rules, is not an action for tort brought by the husband against the wife; it is a method provided by the law for the relief of a defendant when two claimants are making claims against him**. …
>
> [emphasis added in bold underline]

Greene LJ also observed in *De La Rue* from 17 to 173 that:

> In substance, when an interpleader issue is tried, two actions against the person interpleading are being dealt with. Interpleader proceedings are the method of compelling the parties – either one, or both, or neither of whom may have actually issued a writ – to prosecute their claims. As it is the essence of interpleader proceedings that the person who has interpleaded has no title himself he naturally drops out of the suit. But in effect the entire matter is tried out in the presence of all the parties concerned, and the real claimants are compelled to put forward their claims and have them adjudicated upon. The reason for that is not their own benefit, it is for the relief of the person interpleading.
>
> When it is once appreciated that that is the true nature and history of interpleader proceedings, I take the view that it is quite wrong to treat an issue directed under the Interpleader Rules as though it were an action of tort. It is a method to enable the Court to decide the claims between two persons present at the proceedings, and to decide those claims so that the person interpleading will get the relief to which he is entitled.

De La Rue thus makes clear that an action commenced as part of interpleader proceedings is *not* a freestanding action. Although it is in form an action between the rival claimants to particular property, it is in *substance* a proprietary dispute, the resolution of which is *necessary* to help the party applying for interpleader relief to determine who the liability (in the form of the property) is owed to.

33 The leading case on interpleader proceedings in this jurisdiction is the judgment of Steven Chong J (as he then was) in *Precious Shipping Public Co Ltd and others v OW Bunker Far East (Singapore) Pte Ltd and others and other matters* [2015] 4 SLR 1229 ("*Precious Shipping*"). At [17] and [18] of *Precious Shipping*, Chong J considered the general power of the court in relation to interpleader proceedings:

> 17 The power of the High Court to grant interpleader relief is expressly conferred by s 18(2) of the Supreme Court of

Judicature Act (Cap 322, 2007 Rev Ed) ('SCJA') read with para 4 of the First Schedule. Paragraph 4 of the First Schedule to the SCJA provides that this court has the power to grant interpleader relief in two circumstances:

> 4. Power to grant relief by way of interpleader —
>
> (*a*) where the person seeking relief is under liability for any debt, money, or goods or chattels, for or in respect of which he has been or expects to be, sued by 2 or more parties making adverse claims thereon; and
>
> (*b*) where a Sheriff, bailiff or other officer of court is charged with the execution of process of court, and claim is made to any money or goods or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process is issued,
>
> and to order the sale of any property subject to interpleader proceedings.

The language of para 4 is reproduced in O 17 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ('ROC').

18 It is important to appreciate the point which is being made here. The power of this court to grant interpleader relief is statutorily conferred and it is *only available* where the conditions precedent set out in para 4 of the SCJA are met. **This court does not have the power to grant interpleader relief (or exercise any powers within the interpleader process) outside the parameters set out in statute.** During the oral hearing, Mr Mohan submitted that the court should adopt a 'light-touch, minimal evaluation' approach towards the requirements in O 17 in order that it can "'take the bull by its horns' to bring the dispute to an end once and for all". I do not think such a submission can be accepted. **The powers of the court in this area have been delimited by Parliament and these limits demand scrupulous adherence**. Adopting a liberal approach towards the grant of interpleader relief might open the floodgates, encouraging claimants who do not legitimately believe that they have a sustainable cause of action to participate in the interpleader summons in order to gauge the court's assessment of their claims. That would not only be improper, it borders on an abuse of process.

[original emphasis in italics; emphasis added in bold underline]

34 The extracts cited above when applied here demonstrated that what was central was determining whether the claims which the appellants sought to rely on were: (a) (proprietary) claims which related to the *ownership* or *title* to the Monies and would be capable of establishing that the appellants *had title* to the Monies; or (b) claims which did *not* provide the appellants an ownership claim to the Monies themselves but simply gave the appellants the right to obtain a judgment against the respondents for an identical amount of money, and which were thus personal claims. Hereafter, in our reasoning, we adopt the language of "proprietary claims" and "personal claims" as set out above.

35 While the parties were agreed that the Judge's summary of the law on interpleader, incorporating both *De La Rue* and *Precious Shipping*, provided an accurate summary of the legal position, their submissions as to the appropriate conclusions to draw were diametrically opposed. The appellants insisted that the CPO and CLPA claims were proprietary claims, while the respondents contended that they were merely personal.

The nature of the claims

36 In order to determine whether the CPO (and CLPA) claims were proprietary or personal, we had to examine the text of s 60 of the HK Ordinance, which forms the basis for the CPO claim. Section 60 provides:

> **60 Voidability of dispositions to defraud creditors**
>
> (1) Subject to subsections (2) and (3), every disposition of property made, whether before or after the commencement of this section, with intent to defraud creditors, shall be voidable, at the instance of any person thereby prejudiced.
>
> (2) This section does not affect the law of bankruptcy for the time being in force.
>
> (3) This section does not extend to any estate or interest in property disposed of for valuable

> consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the disposition, notice of the intent to defraud creditors. (*Amended 31 of 1988 s. 22)*
>
> [***cf. 1925 c 20 s. 172 U.K***.]

As is clear from the text highlighted in bold italics, the section was derived from s 172 of the English Law of Property Act 1925 (c 20) (UK) (the "English LPA"). Section 172 of the English LPA was itself re-enacted from para 31 to Part II of Schedule 3 to the Law of Property (Amendment) Act 1924 (UK), which was in turn itself a reformulation of the provisions in ss 2 and 6 of the Statute of 13 Eliz 1571 (c 5) (the "1571 Statute"). As observed by the Court in *Wong Ser Wan v Ng Bok Eng Holdings Pte Ltd and another* [2004] 4 SLR(R) 365 at [4] ("*Wong Ser Wan*"), the 1571 Statute was intended to protect creditors against action taken by debtors to dissipate their assets.

37 The text of other comparable legislative instruments deriving from s 172 of the English LPA, including s 73B of the CLP Act, is identical in all material respects with s 60 of the HK Ordinance. Section 73B of the CLP Act provided:

> **Voluntary conveyances to defraud creditors voidable.**
>
> **73B.**—(1) Except as provided in this section, every conveyance of property made, whether before or after 12th November 1993, with intent to defraud creditors, shall be voidable, at the instance of any person thereby prejudiced.
>
> (2) This section does not affect the law relating to bankruptcy for the time being in force.
>
> (3) This section does not extend to any estate or interest in property disposed of for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the disposition, notice of the intent to defraud creditors.
>
> *[Cf. 13 Eliz. c.5 (1571)]*
> *[Law of Property Act 1925, s. 172]*

As is apparent from the text of both s 60 of the HK Ordinance and s 73B of the CLP Act, no provision is made for the precise remedies available should those sections apply.

Does the CPO claim fall within the Court's interpleader jurisdiction

38 In our view, the CPO claim, and by extension the CLPA claim, did not fall within the Court's interpleader jurisdiction. Even taking the appellants' case at its very highest, and assuming for the sake of argument that the CPO and CLPA claims would operate as against the Monies, *neither* claim would give the appellants *title* to the same. While the CPO and CLPA claims would have to be brought against the respondents (and, preferably, LG Ltd as well), a successful claim would only render the transfer of the Monies to the respondents voidable on the basis that they were sent out with intent to defraud LG Ltd's creditors generally. The Monies would then have to be returned to LG Ltd's creditors or liquidators for general distribution. There is clear authority for this proposition. In *Wong Ser Wan* at [22] and [23], Judith Prakash J (as she then was) stated that:

> 22 … There would, in my view, be no danger to the general body of creditors from allowing one of the creditors to take such action because, if the action succeeds, the property that is recovered or its proceeds must go to the estate of the bankrupt to be distributed by the trustee in bankruptcy and cannot be retained by the creditor who started the action.
>
> 23 I am therefore of the view that as long as an individual creditor does not seek to keep the fruits of his action for himself alone, he is entitled to commence action under s 73B [of the CLP Act] …

Prakash J's observations were particularly apposite on the instant facts because the appellants had been conspicuously silent as to precisely *how* the CPO and CLPA claims could be said to give rise to title in the Monies for *themselves*.

The most that could be said, even if the CPO and/or CLPA claims were to succeed, was that the Monies would go to LG Ltd for it to pay out as necessary. Quite simply, a successful CPO and/or CLPA claim would not be based on the appellants themselves having title to the Monies.

39 The respondents were thus right to point out, as an illustration, that, if the appellants had sought to rely solely on the CPO/CLPA claims in OS 1016, the requirements for the Court's exercise of its interpleader jurisdiction would not be met because the CPO and CLPA claims did not give the appellants a claim against DBS Bank for the Monies.

40 The precise orders made in OS 1016 fortified the conclusion above. ORC 1066 specifically stipulated at [2] that the interpleader proceedings would entail the first appellant and second respondent "hav[ing] their respective **claims to the [Monies]** determined" (emphasis added). Gill JC also made clear that the first appellant was to "state **her** claim to the monies" (emphasis added). It was thus evident that, even setting aside the precise *legal* ambit of interpleader proceedings generally, the *specific* interpleader proceedings authorised by OS 1016 did *not* permit claims which did not involve the parties asserting claims to the "Monies" themselves. No appeal was lodged against Gill JC's orders, and it was therefore not open to the appellants to seek to circumvent those orders by mounting claims which fell outside the ambit of what had been permitted. In other words, even assuming that the CPO and CLPA claims were not outside the ambit of the Court's interpleader jurisdiction *generally*, the *specific* orders made in OS 1016 precluded their being brought in Suit 4. For completeness, we should add that any appeal against Gill JC's orders to expand the interpleader proceedings to include non-proprietary claims would have failed in any event.

41 It was also clear that the CPO and CLPA claims could not even properly be said to be proprietary claims. The weight of authority on the effect of statutory provisions such as s 60 of the HK Ordinance and s 73B of the CLP Act is that the claims made thereunder are personal claims which can be enforced against the persons sued but are not proprietary claims against the property that provides the subject matter of the suit. The parties here relied on similar authorities to argue whether the CPO and CLPA claims were proprietary (in the sense of directly attaching to the property in question) or personal (in the sense of being a general claim for recovery against the other *party*) but sought to draw different conclusions from the same. To that end, we turn to consider the authorities that the parties relied on.

Regal Castings

42 The first case the parties relied on was *Regal Castings Ltd v Lightbody* [2008] NZSC 87 ("*Regal Castings*"), which concerned a claim under s 60 of the New Zealand Property Law Act 1952 (No. 51, 2007 Reprint) ("NZ Act"). Section 60 of the NZ Act, is *in pari materia* with s 73B of the CLP Act and s 60 of the HK Ordinance. The respondents and the Judge relied on *Regal Castings* to highlight that the CPO claim was a personal one, while the appellants insisted that such a reading was erroneous. At [21] of *Regal Castings*, Elias CJ observed that:

> An application under s 60 [of the NZ Act] to set aside an alienation of property **is not a claim *in rem***. It **does not assert 'encumbrances, liens, estates, or interests', such as would amount to an attack on the title** obtained through registration contrary to s 62 of the Land Transfer Act. It is not properly described as an 'action for possession, or other action for the recovery of any land' … An application for remedy under s 60 of the Property Law Act 1952 in respect of the conveyance of land transfer land with intent to defraud creditors **does not assert defect in title**. The principles of indefeasibility, in protection of the title created by registration, are not engaged

> by the statutory remedy under s 60 *by which the registered proprietors can be compelled to provide satisfaction to the creditors, including by reconveyance of the property, declaration of trust in respect of it, or appointment of receivers for it.* **These remedies are granted against the registered proprietors personally**. …
>
> [emphasis added in (a) bold underline and (b) italics]

The mark-ups on the extract above underscore the different emphases the appellants and respondents placed on the same passage. The appellants chose to emphasise (as set out in italics) the specific *nature* of the remedies which may be ordered under s 60 of the NZ Act (and the CPO/CLPA claims more generally), pointing to the fact that remedies such as "reconveyance of the property, declaration of trust … or appointment of receivers" are proprietary remedies which take effect against the property and not as money judgments. By contrast, the respondents emphasised (as set out in bold underline) that the remedies which could be granted would be granted against the registered proprietors *personally*, and that the operation of s 60 of the NZ Act was "not a claim *in rem*", particularly since it "d[id] not assert 'encumbrances, liens, estates, or interests' such as would amount to an attack on the title obtained".

43 We preferred the respondents' interpretation of *Regal Castings* for two reasons:

> (a) First, it was clear from reading [21] of *Regal Castings* in context that emphasis was *not* being placed on the specific species of remedy ordered arising out of s 60 of the NZ Act. Rather, what Elias CJ had taken pains to point out was that the remedies ordered operated against *the registered proprietors* **personally** and did not amount to an attack on title to the *property*. Critically, s 60 did not assert any defect in title. This was incompatible with the appellants' suggestion that s 60 of the NZ Act provided a *proprietary* claim. If s 60 of the NZ Act was, as the

appellants contended, a proprietary claim for the purposes of interpleader proceedings, it would *necessarily* have to be a claim which mounted an attack on the title to the property in question, because otherwise there would not be multiple "competing" claims to title of the property in question (see Chong J's decision at [79] of *Precious Shipping*). *Regal Castings* thus could not be said to assist the appellants.

(b) Second, the appellants asserted that s 60 of the NZ Act did not "operate directly to divest the transferee of legal title and in that specific sense only [was] granted against respondents personally, rather than operating *in rem*" [emphasis in original]. This reasoning was critical for the appellants, in that they otherwise had no basis to explain why Elias CJ categorically stated that s 60 of the NZ Act did not operate "*in rem*". However, apart from their own insistence on carving out the "specific sense" of s 60 being a personal remedy as it did not operate to divest the transferee of legal title, the appellants were unable to point to any reasoned basis for why that "specific sense" should be carved out in such a manner and not apply to the effect of s 60 as a whole. There was, after all, no suggestion from Elias CJ in the entirety of the judgment in *Regal Castings* that her reference to s 60 not operating *in rem* operated *only* in the narrow and limited context of s 60 not directly divesting the transferee of legal title. The appellants' attempts to explain away the clear statement that s 60 of the NZ Act does not operate *in rem* were thus unpersuasive. They artificially contrived a "specific sense[s]" of operation *in rem* and then cherry-picked the "specific sense" of the phrase "*in rem*" which was congruent with their narrative, all while providing no justification for that particular approach to the phrase.

In sum, *Regal Castings* was authority for the respondents' position. The appellants' reading of the case was strained and unduly focused on a narrow segment of [21] of *Regal Castings* where Elias CJ was merely highlighting *examples* of the potential *forms* the remedy ordered might take.

Oswal

44 The next case the parties joined issue over was *Commissioner of Taxation v Oswal (No 6)* [2016] FCA 762 ("*Oswal*"), a decision of the Federal Court of Australia concerning the operation of s 89(1) of the Property Law Act 1969 (WA) ("WA Act"). That section is another clone of s 60 of the HK Ordinance. The relevant segments of *Oswal* were as follows:

> 53 The availability of *in personam* relief has been long recognised. In a New Zealand case, *Frazer v Walker* [1967] 1 AC 569 at 585, the Privy Council held that provisions conferring indefeasibility of title 'in no way denies the right of a plaintiff to bring against a registered proprietor a claim *in personam*, founded in law and equity, for such relief as a court acting *in personam* may grant. That this is so has frequently, and rightly, been recognised in the courts of New Zealand and of Australia'.
>
> 54 The Privy Council's decision has been adopted on numerous occasions by the High Court of Australia as declaratory of the law in Australia. In *Breskvar v Wall* (1971) 126 CLR 376, Barwick CJ reconciled the existence of such 'exceptions' to indefeasibility with the purpose of the Torrens legislation at 385 as follows:
>
> > 'The stated exceptions to the prohibition on actions for recovery of land against a registered proprietor do not mean that that 'indefeasibility' is not effective. It is really no impairment of the conclusiveness of the register that the proprietor remains liable to one of the excepted actions any more than his liability for 'personal equities' derogates from that conclusiveness. So long as the certificate is unamended it is conclusive and of course when amended it is conclusive of the new particulars it contains.'
>
> 55 Mercury submitted that a s 89 PLA claim should not be regarded as within the ambit of the *in personam* exception to indefeasibility or alternatively that to permit this is to introduce

> 'by the back door a means of undermining the doctrine of indefeasibility which the Torrens system establishes' … The premise of this submission is misconceived. Section 89 is not an exception to the indefeasibility of title conferred by the [Transfer of Land Act 1893]. ***<u>The statutory remedy does not seek to impugn the title to property</u>*** *but rather to render voidable an alienation of property, made with the intent to defraud the [disponor's] creditors*. The alienation of the Properties with the relevant intent was by means of the grant of the Mortgage. *It is this which gives rise to the statutory relief claimed and which operates in personam.*
>
> 56 This, it seems to me, is what Barwick CJ was explaining … To like effect is what Elias CJ said at [21] in *Regal Castings* set out earlier that '(t)he principles of indefeasibility … are not engaged by the statutory remedy … '.
>
> [emphasis added in (a) bold underline and (b) italics]

The emphasis placed on *Oswal* by the appellants and the respondents centred on [55] of that judgment. The appellants emphasised that the remedy under s 89 of the WA Act included rendering "voidable an alienation of property", and argued that the remedy available was thus a proprietary remedy, therefore indicating that s 89 was a proprietary claim. The respondents, on their part, focused on Gilmour J's observation at [55] that the statutory remedy provided for under s 89 "d[id] not seek to impugn the title to property", arguing that it therefore could not be proprietary.

45 Again, the respondents' approach to [55] of *Oswal* should be preferred, for three reasons.

(a) First, while the appellants had sought to rely on the final sentence of [55] of *Oswal*, that sentence did not in fact assist their case. There, Gilmour J observed that it was the alienation of the property with the relevant intent, in this case by means of the grant of the mortgage, which gave rise to the statutory relief claimed and which operated "*in personam*". This did not, however, shed any light on the *nature* of

the *statutory relief* itself. If anything, the statutory relief being (i) triggered by acts which operate *in personam*; and (ii) dependent on the *transferor* of the property acting with the "relevant intent", coupled with Gilmour J categorically stating that the statutory remedy "does not seek to impugn the title to property", strongly indicates that the remedy has a *personal* nature, and that it is not a proprietary claim for the purposes of the Court's interpleader jurisdiction. This was unsurprising when one read [55] of *Oswal* in context – Gilmour J was describing a *personal* remedy triggered by the "relevant intent" of a *person* and which operated because of the *persons* involved (as opposed to operating against the property directly). The respondents' reading of [55] of *Oswal* was also more congruent with the rest of the judgment, in particular [53] where Gilmour J pointed to "the right of a plaintiff to bring against a registered proprietor a claim *in personam*, founded in law and equity, **for such relief as a court acting *in personam* may grant**" [emphasis added].

(b) Second, even taking the appellants' position at its highest, s 89 of the WA Act only operated to "render *voidable* an alienation of property, made with the intent to defraud the [disponor's] creditors" [emphasis added] (*Oswal* at [55]). It did not, without more, affect title.

(c) Third, nothing in *Oswal* expressly supported the appellants' contention that the said s 89 gave rise to proprietary remedies and therefore was a proprietary claim. Quite simply, Gilmour J in *Oswal* did not appear to have relied on the type of remedies available under the section to draw any conclusions about the *nature* of a claim under s 89 of the WA Act.

In short, *Oswal*, like *Regal Castings*, did not assist the appellants. If anything, it was the respondents who were able to derive support from the case.

Skandinaviska Enskilda Banken v Conway

46 The next case which the parties joined issue over was *Skandinaviska Enskilda Banken AB (Publ) v Conway and another* [2020] AC 1111 ("*SEB v Conway*"), which concerned, at least in part, the application of s 145(1) of the Cayman Companies Law (2013 Revision). Section 145(1) of the Cayman Companies Law is a provision that, as its own title provides, addresses the issue of voidable preferences in insolvency. It is quite different from s 60 of the HK Ordinance and similar legislation. Section 145 provides that:

> **Voidable preference**
>
> 145(1) Every conveyance or transfer of property, or charge thereon, and every payment obligation and judicial proceeding made, incurred, taken or suffered by any company in favour of any creditor at a time when the company is unable to pay its debts within the meaning of section 93 with a view to giving such creditor a preference over the other creditors shall be invalid if made, incurred, taken or suffered within six months immediately preceding the commencement of a liquidation.
>
> (2) A payment made as aforesaid to a related party of the company shall be deemed to have been made with a view to giving such creditor a preference.
>
> (3) For the purposes of this section a creditor shall be treated as a "related party" if it has the ability to control the company or exercise significant influence over the company in making financial and operating decisions.

It was thus immediately apparent that the claim in *SEB v Conway* was not akin to claims such as the CPO or CLPA claim. To be fair to the appellants, they did not suggest so. Rather, the appellants sought to rely on two extracts, at [63] and [75].

47 At [63] of *SEB v Conway*, the Privy Council observed that:

> Section 145 invalidates any conveyance or payment which falls within its scope, but is silent as to the consequences of that invalidation. It can be contrasted with a provision such as section 239 of the United Kingdom Insolvency Act 1986, which also deals with preferences, but requires the court, on an application by the relevant office-holder, to 'make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference'. Section 241 then lists seven types of order which may be made, without prejudice to the generality of section 239. By contrast, since section 145(1) of the Cayman Companies Law is silent as to the consequences of the invalidation, those consequences must therefore be regulated by the general law which applies in the situation resulting from the avoidance of the transfer or payment in question: that is to say, by any other statutory provisions which may be applicable, or in their absence by the common law. *Depending on the circumstances, there may be a variety of remedies available, personal or proprietary, at common law or in equity. They will usually include a right to proprietary or personal restitution of the property or money transferred*, subject to any defences which may be available.
>
> [emphasis added by the appellants]

At [75] of *SEB v Conway*, the Privy Council went on to note that:

> Proceeding then on the basis that the consequences of the avoidance of a fraudulent preference under section 145 depend on the general law, it is apparent that they will vary according to the circumstances. A conveyance or payment which is voidable has full effect in law and equity until it is avoided. Dealings by the recipient with the property or money in question during the intervening period are legally effective, and can therefore limit the consequences of avoidance. The effect of statutory provisions (e g as to registration of title) may also need to be considered. In principle, however, *where property has been transferred and remains in the hands of the transferee, the consequence of the avoidance is to deprive the transferee of his title.* The liquidator therefore has a claim to recover the property on the basis of the company's title. If the property has passed into the hands of third parties, the liquidator may be able to trace into their hands at common law or in equity. As was mentioned earlier, that proprietorial approach was followed, in the context of personal bankruptcy, in *Alderson v Temple* 4 Burr 2235 [(1768) 96 ER 384].

While the appellants did not go on to cite [76], the very next paragraph, it was nonetheless instructive for reading [75] in its proper context:

> In the present case, however, no claim is advanced on a proprietary basis. It is not suggested that the avoidance of the payment has affected the title to any property in SEB's possession, and no attempt has been made to trace the money into the hands of the funds to which SEB transferred it, or their fundholders. Instead, the liquidators have based their claim to repayment on a statutory entitlement impliedly created by section 145. For the reasons we have explained, we do not accept that a claim lies on that basis. It is however accepted on behalf of SEB that, subject to its argument that it was not enriched by the payment, and its defence of change of position, the liquidators are in principle entitled to restitution of a payment which is avoided under section 145 at common law on the ground of unjust enrichment.

The appellants relied on *SEB v Conway* for the proposition that, if the statute concerned is silent as to the remedies available where a voidable transaction is set aside, the remedies available are those under general law, and include proprietary remedies. The appellants thus argued that *SEB v Conway* indicated that claims like the CPO and CLPA claims, which were silent as to the remedies available, could give rise to proprietary remedies, and that this sufficed to bring such claims within the Court's interpleader jurisdiction.

48 We were unpersuaded by the appellants' argument on *SEB v Conway*:

(a) First, the appellants' argument entailed at least two sleights of hand: In particular, (i) the appellant extrapolated the reasoning in *SEB v Conway* at [63] concerning the silence of s 145(1) of the Cayman Companies Law as to the available remedies to a general principle which governed *all* situations where remedies are not expressly provided for in a statute, even though the reasoning set out at [63] and [75] of the Privy Council's decision was limited to that specific statute. Moreover, (ii) the appellants regarded the mere *availability* of "proprietary remedies",

without more, as sufficing to bring a claim which might potentially give rise to such remedies within the Court's interpleader jurisdiction. *SEB v Conway* was applied out of its context in relation to (i), and was relied on for a proposition it simply did not make in (ii).

(b) Second, and related to the point above, *SEB v Conway* could not be said to assist the appellants in relation to claims like the CPO or CLPA claims. This was because *SEB v Conway* addressed a fundamentally different statutory provision. Section 145 of the Cayman Companies Law deals with situations of *preference* in insolvency. The CPO and CLPA claims do not concern that situation. This difference was further reflected by the provision in ss 145(2) and 145(3) of the Cayman Companies Law for related-party transactions, which are unsurprisingly absent from s 60 of the HK Ordinance and s 73B of the CLP Act. While the appellants sought to generalise comments made by the Privy Council in relation to s 145 of the Cayman Companies Law to *all* statutes which provide for avoidance of a transaction but do not prescribe the precise remedy, there was no suggestion from the Privy Council that such a generalisation could be drawn. Rather, the specific contours of each statutory provision ought to be considered.

SEB v Conway was thus readily distinguishable from the instant facts. The appellants' reliance on it rested on a number of leaps in logic and it thus did not assist the appellants.

49 Fundamentally, the cases cited above – in particular, *Regal Castings* and *Oswal*, which actually pertain to claims based on provisions similar to those underlying the CPO and CLPA claims – did not advance the appellants' case. In fact, *Regal Castings* and *Oswal* were at odds with the appellants' position.

Thus, even if one were to set aside the fact that the CPO and/or CLPA claims would not give the appellants themselves claim to title over the Monies, those claims would *nonetheless* still fall outside the Court's interpleader jurisdiction.

Is the CPO claim a contingent proprietary claim which falls within the Court's interpleader jurisdiction?

50 The appellants' alternative argument was that, even if the CPO and CLPA claims were not proprietary claims for the purposes of the Court's interpleader jurisdiction, they were nonetheless proprietary claims because they would allow the appellants to assert proprietary rights to the Monies contingent upon the setting aside of the transfers by LG Ltd to the second respondent. The sole case the appellants relied on for this proposition was *Global Currency Exchange Network Ltd v Osage 1 Ltd* [2019] 1 WLR 5865 ("*Osage*"). *Osage* concerned an interpleader application (now known as a stakeholder application in England and Wales) subject to Part 86 of the English Civil Procedure Rules (UK). The segment of *Osage* the appellants relied on was [52]:

> If investors do have a right to rescind, then they have prospective proprietary rights to the Funds contingent upon the exercise of the right to rescind. That is in my view sufficient – subject to the question I consider in section (E) below about whether there is a factual basis for expecting claims to be made – to satisfy the requirement of CPR Pt 86 for expected competing claims. A claim that can be brought provided that the claimant takes a prior legal step, here rescission, is still in my view a competing claim which may (depending on the facts) be expected to be made for CPR r 86.I(I)(b) purposes.

51 The appellants submitted that "even if the CPO Claim [was] regarded as a prior legal step to enable the Appellants to establish a direct proprietary right to the [Monies], it [was] a claim which [could] and should be determined in the Suit in order to decide to whom DBS should make payment of the [Monies]".

52 The appellants' reliance on *Osage* was misplaced:

(a) First, *Osage* was readily distinguishable from the present case. *Osage* concerned an application for interpleader relief by a currency exchange service provider where it expected competing claims to be made against the funds it held for and on behalf of an oil company, but where no such claims had yet been made. The issue in *Osage* was thus a threshold one of whether the Court had the jurisdiction to grant the application and give directions for the potential claimants to be notified of the proceedings. This would have had the effect of marking out the claims that might be made to the funds held by the applicant. It was in this context that the Court held that it did have such jurisdiction, because the investors would have competing claims so long as they exercised their rights to rescind their investment agreements with the oil company. By contrast, this threshold issue did not arise in the present proceedings. This was because there was no question that, at all material times, as a result of (i) the purported equitable proprietary claim asserted by the appellants to the Monies, and (ii) the respondents' own claim to own the sum as returns on their investments, the parties in the instant case *already* had competing claims to the Monies. Thus, no issue arose as to whether the Court had the jurisdiction to grant interpleader relief, and no complaints of this nature were placed before the Judge. Rather, unlike in *Osage*, the question in the instant appeal of whether a further claim could be added to *existing* interpleader proceedings was one which arose only *after* the question of jurisdiction addressed in *Osage* had already been resolved.

(b) Second, and critically, even if *Osage* were applicable to the instant facts, it did not provide support for the proposition the appellants

> attempted to rely on it for. In *Osage* at [52], the court observed that "[a] claim that can be brought provided that the claimant takes a prior legal step, here rescission, is still in my view a competing claim". By contrast, the appellants sought to argue that the "prior legal step", in this case the CPO and CLPA claims, were *in and of themselves* "competing claim[s]". This was *entirely* different from what the court in *Osage* had decided, and represented a clear sleight of hand. In *Osage*, the "prior legal step" was rescission, but significantly the claim which the prior legal step rested on (and which was permitted in the interpleader proceedings) was already a proprietary claim by virtue of constructive trust (see *Osage* at [38(ii)]). However, on the instant facts, the "prior legal step" the appellants pointed to was the CPO/CLPA claim, while the actual proprietary claim which rested on the prior legal step was not in fact set out. *Osage* thus did not at all stand for the proposition the appellants sought to foist upon it, and was not authority for a "prior legal step" being able to operate as a standalone claim in interpleader proceedings.

The appellants' alternative argument, which relied solely on *Osage* as support, was thus wholly without basis.

53 In sum, the CPO and CLPA claims did not assert title to the Monies for the appellants. Moreover, contrary to the appellants' suggestions, there was no basis for a "prior legal step" to morph into a standalone proprietary claim in and of itself. Accordingly, the bulk of the appellants' arguments fell away. In our view, permitting the claims the appellants sought to rely on would be an abuse of process and of the Court's interpleader jurisdiction:

(a) In *Commonwealth of Australia v Peacekeeper International FZC UAE* [2008] EWHC 1220 (QB) ("*Commonwealth of Australia*") at [42], Foskett J observed at [42] that:

> For my part, as the present rule relating to interpleader proceedings stands, it seems to me that there is very little scope within Order 17 itself for the court to transform interpleader proceedings into a substantive action … [emphasis in original omitted]

(b) *Commonwealth of Australia* was subsequently approved by the English Court of Appeal in *Stephenson Harwood LLP v Medien Patentverwaltung AG and another* [2021] 1 WLR 1775 ("*Stephenson Harwood*"), which itself cited the decision of Lord Esher MR in *Eschger Co v Morrison, Kekewich Co* (1890) 6 TLR 145, where His Lordship "doubted very much whether the court had the power to transform an interpleader issue into a wholly general action". At [20] of *Stephenson Harwood*, the English Court of Appeal went on to state that:

> It is clear therefore that the courts have been careful not to regard submission to the jurisdiction in the case of a stakeholder application as a submission to the jurisdiction for all purposes or for the purposes of extraneous claims against the stakeholder or the rival claimants …

The Court's interpleader jurisdiction is one which has to be carefully controlled. Considerations such as the extent of parties' submission to jurisdiction, and concern as to parties attempting to circumvent the rules on service out of jurisdiction by way of the Court's interpleader jurisdiction, militate in favour of the interpleader jurisdiction being applied only within its prescribed bounds. Claims such as the CPO and CLPA claims, being claims which did not assert title on behalf of the appellants to the Monies, fell outside those bounds. Accordingly, the appellants' appeal in relation to the CPO claim failed.

The consequential and further orders sought

54 We now consider the remaining matters, namely, (a) OS 16 and the appellants' application for leave to appeal out of time against the Judge's decision on the CLPA claim; (b) the joinder of LG Ltd; and (c) the IRDA claim.

55 We were not persuaded by the appellants on any of these matters.

(a) In relation to OS 16, we saw no need to consider whether an extension of time to appeal against the Judge's decision on the CLPA claim ought to be granted because even if such an extension were granted, the CLPA claim could not properly be brought in Suit 4 in so far as it does not fall within the Court's interpleader jurisdiction. This followed from the fact that the CLPA claim is the Singapore law equivalent of the CPO claim. Accordingly, OS 16 would make no difference even if it were successful – the CLPA claim would not be permitted in any event. We therefore dismissed OS 16.

(b) Turning next to the joinder of LG Ltd, the appellants themselves acknowledged that their submissions on joinder would only arise "[i]f it [was] determined that the CPO Claim may be properly brought in the Suit". Given our findings on the CPO claim, the issue of joinder was rendered moot. In any event, we were not persuaded to disturb the Judge's conclusions on the point, nor were we satisfied that the Court's interpleader jurisdiction was the proper avenue for the appellants' disputes with LG Ltd to be resolved.

(c) As for the IRDA claim, the appellants had sought to have the claim included as "consequential relief" assuming that the appeal to add

the CPO claim was successful. Accordingly, the failure of the appellants to persuade us to do so doomed their attempts to add the IRDA claim.

Conclusion

56 For the reasons set out above, we dismissed the appeal. The CPO and CLPA claims did not fall within the ambit of the Court's interpleader jurisdiction, and there was no basis to permit the joinder of LG Ltd. Similarly, the consequential relief sought in the form of adding the IRDA claim to the pleadings fell away given the failure of the substantive appeal. Therefore, OS 16 was also dismissed.

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Beverly McLachlin
International Judge

Mark Hubbard (New Square Chambers) (Co-counsel);
Yee Mun Howe Gerald and Jonathan Lim Shi Cao
(Premier Law LLC) (Co-counsel) for the appellants;
Colin Liew (Duxton Hill Chambers (Singapore Practice Group))
(Co-counsel); Kam Su Cheun Aurill, Lim Rui Hsien Esther, and
Valerie Thio Shu Jun (Legal Clinic LLC)
(Co-counsel) for the respondent.