

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

[2024] SGHCR 9

Originating Claim No 740 of 2023 (Summonses Nos 1276 and 1277 of 2024)

Between

Rohan St George

... Claimant

And

- (1) 4Fingers Pte Ltd
- (2) LS Investments Holdings Pte Ltd

... Defendants

GROUND OF DECISION

[Civil Procedure — Production of documents]

[Civil Procedure — Production of documents — Inspection of original of document produced]

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	2
THE CONTRACTS AND SUBSEQUENT MEETINGS.....	2
THE CLAIMS AND DEFENCES	5
SUM 1277	10
THE APPLICABLE PRINCIPLES.....	13
PRELIMINARY ISSUES	14
<i>Whether Mr Rohan had to satisfy the “plain and obvious” test</i>	15
<i>Whether the parol evidence rule is relevant in the assessment of the materiality of the requested documents</i>	21
MY DECISION	26
<i>Category 1</i>	27
<i>Category 2</i>	32
<i>Category 3</i>	37
<i>Category 4</i>	38
<i>Category 5</i>	42
<i>Category 6</i>	44
<i>Category 7</i>	46
SUM 1276	49
THE APPLICABLE PRINCIPLES.....	51
<i>Order 24 rr 9, 10 and 11 of the ROC 2014</i>	52
<i>Order 11 r 12 of the ROC 2021</i>	54
MY DECISION	58

<i>s/n 39 of the CLOD</i>	58
<i>s/n 42 of the CLOD</i>	60
THE OTHER DOCUMENTS LISTED IN THE CLOD FOR WHICH THE DEFENDANTS SOUGHT ORDERS IN SUM 1276	63
CONCLUSION AND COSTS	64

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Rohan St George
v
4Fingers Pte Ltd and another

[2024] SGHCR 9

General Division of the High Court — Originating Claim No 740 of 2023
(Summonses Nos 1276 and 1277 of 2024)

AR Perry Peh
12 June, 18 July 2024

23 August 2024

AR Perry Peh:

Introduction

1 HC/OC 740/2023 (“OC 740”) is the claimant’s claim against the first and second defendants for payments which he says are due and owing to him in connection with his employment by the first defendant. The defendants also pursue counterclaims against the claimant for the breaches of fiduciary duties and/or contractual duties owed to the first defendant, among others. There were two applications before me:

- (a) HC/SUM 1277/2024 (“SUM 1277”), which was an application by the claimant for the production of documents by the defendants, pursuant to O 11 r 3 of the Rules of Court 2021 (“ROC 2021”); and

(b) HC/SUM 1276/2024 (“SUM 1276”), which was an application by the defendants for the court to compel the claimant to provide the “originals and native format” of documents listed in the claimant’s list of documents dated 22 April 2024 (“the CLOD”) for inspection of originals by the defendants, pursuant to O 11 r 12(3) of the ROC 2021.

2 Having considered the submissions, I allowed both applications in part. These are my full reasons.

Background

3 The first defendant, 4Fingers Pte Ltd (“FPL”), is a Singapore-incorporated company in the food and beverage business. The second defendant, LS Investment Holdings Pte Ltd (“LSIH”), is the registered shareholder of 99.99% of FPL. Where appropriate, I refer to FPL and LSIH as “the Defendants”. The claimant, Mr Rohan St George (“Mr Rohan”) was employed as the Executive Chairman / Interim Chief Executive Officer of FPL between November 2019 and 3 July 2023.

The contracts and subsequent meetings

4 The claims in OC 740 are primarily based on two *written* agreements to which Mr Rohan is a party: (a) first, an employment contract entered into on 1 November 2019 between Mr Rohan and FPL (“the Employment Contract”); and (b) secondly, an agreement entered into on 11 November 2021 between Mr Rohan and LSIH (“the LSIH Agreement”). Both agreements relate to Mr Rohan’s employment by FPL. Subsequent to the Employment Contract, Mr Rohan and FPL entered into three separate *written* addenda in connection with Mr Rohan’s employment by FPL: (a) the first addendum was entered into on 27 May 2020 (“the First Addendum”); (b) the second addendum was entered

into on 16 November 2020 (“the Second Addendum”); and (c) the third addendum was entered into on 24 March 2021 (“the Third Addendum”) (collectively, “the Addenda”).

5 The Employment Contract provided for, among other things: (a) Mr Rohan’s entitlement to a performance-based bonus (“the Bonus Plan”); and (ii) the termination of the Employment Contract by either party giving the other at least three months’ notice in writing or three months’ salary in lieu of notice (“the Notice Provision”). The key written terms of the Addenda are largely undisputed, though the parties appear to be in dispute as to the *effect* of the Addenda on the pre-existing contractual relationship between Mr Rohan and FPL, as provided for under the Employment Contract,¹ a point which I will come to later. The First Addendum provided for, among other things: (i) the extension of Mr Rohan’s employment until 31 December 2022; (ii) the variation of the terms of the Bonus Plan; and (iii) a deferred payment of approximately S\$150,000 per year for 2021 and 2022 (“the Deferred Payment”).² The Second Addendum then varied the terms relating to the sums to be paid under the Bonus Plan as well as the sum to be paid for the Deferred Payment.³ The Third Addendum varied the Bonus Plan and instead provided for FPL to pay Mr Rohan a sum as annual profit share (“the Profit Share Payment”) and for FPL to pay a further sum to Mr Rohan on Mr Rohan’s exit from FPL (“the Exit Payment”).⁴

¹ Statement of Claim (“SOC”) at para 13; Defence and Counterclaim (“DCC”) at para 24.

² SOC at para 13; DCC at para 24.

³ SOC at para 15; DCC at para 39.

⁴ SOC at para 18; DCC at para 48.

6 In November 2021, Mr Rohan and LSIH entered into the LSIH Agreement.⁵ The parties do not appear to be in dispute that the LSIH Agreement had arisen as a result of discussions between Mr Rohan and one Ms June Lee (“Ms Lee”), who is FPL’s director, regarding a payment structure to incentivise Mr Rohan to continue his employment with FPL.⁶ The LSIH Agreement provides for LSIH to pay Mr Rohan a sum equivalent to 20% of the value of FPL (“the Ownership Remuneration”) should FPL achieve earnings before interest, tax, debt and amortisation (“EBITDA”) of \$20m when Mr Rohan ceases employment with FPL.⁷

7 According to the parties’ pleadings, there were a number of meetings that subsequently took place between Mr Rohan and Ms Lee where issues pertaining the Ownership Remuneration were discussed:

- (a) a meeting on 8 December 2022 (“the 8 Dec Meeting”);⁸
- (b) a meeting on 6 March 2023 (“the 6 Mar Meeting”);⁹
- (c) a meeting on 14 June 2023 (“the 14 Jun Meeting”);¹⁰
- (d) a meeting on 20 June 2023 (“the 20 Jun Meeting”).¹¹

⁵ SOC at para 36; DCC at para 89.

⁶ SOC at para 35; DCC at para 88.

⁷ SOC at para 37; DCC at para 90.

⁸ SOC at para 20; DCC at para 67.

⁹ SOC at para 42; DCC at para 104.

¹⁰ SOC at para 44; DCC at para 110.

¹¹ DCC at para 113.

8 On 3 July 2023, FPL terminated Mr Rohan’s employment with immediate effect with payment in lieu of notice pursuant to the Notice Provision.¹² According to the Defendants, also on or about 3 July 2023, a shareholders’ resolution in writing was passed for Mr Rohan to be removed as a director and as CEO of FPL.¹³

The claims and defences

9 Mr Rohan’s claims in OC 740 are as follows:

(a) First, the termination of his employment was unlawful because it had been an express term of the First Addendum and the Second Addendum that he would be employed for a fixed term until 31 December 2022 (“the Alleged Fixed Term”), which was further extended to 15 March 2024 by agreement of the parties at the 8 Dec Meeting. Mr Rohan’s case is that the provision for the Alleged Fixed Term had been incorporated into the Employment Contract,¹⁴ and he claims his salary from October 2023 to March 2024 as the loss and damage suffered.¹⁵

(b) Secondly, FPL breached the terms of the Employment Contract, which Mr Rohan says had been “amended and/or supplemented” by the Addenda, by failing to pay to Mr Rohan the various sums promised under the Addenda, such as the Deferred Payment, the Profit Share

¹² SOC at paras 22 and 49; DCC at para 121.

¹³ DCC at para 122.

¹⁴ SOC at para 13.

¹⁵ SOC at paras 24–25.

Payment and the Exit Payment, and he claims for these promised payments as loss and damage suffered.¹⁶

(c) Thirdly, LSIH breached the LSIH Agreement by failing to pay to Mr Rohan the Ownership Remuneration. Mr Rohan claims that at the 8 Dec Meeting, an agreement was reached for the LSIH Agreement to be varied so that the Ownership Remuneration would be paid to Mr Rohan regardless of FPL's EBITDA at the time when he ceases employment, and further, the parties would carry out a valuation of FPL in January 2024 for the purpose of calculating the Ownership Remuneration ("the Alleged Further Agreement").¹⁷ Mr Rohan further claims that at the 8 Dec Meeting, he had agreed to Ms Lee's proposal for the Ownership Remuneration to be paid in instalments, with the first instalment due by 31 March 2024.¹⁸ According to Mr Rohan, at a board meeting of FPL on 3 February 2023 ("the 3 Feb Board Meeting"), it was agreed that for the purposes of calculating the Ownership Remuneration, the valuation of FPL be fixed at \$75m and quantum of the Ownership Remuneration correspondingly be fixed at \$15m ("the Alleged Quantum Agreement").¹⁹ Mr Rohan further claims that Ms Lee had reaffirmed LSIH's agreement to pay the Ownership Remuneration, as agreed under the Alleged Further Agreement and the Alleged Quantum Agreement, at the 6 Mar Meeting and the 14 Jun Meeting, as well Ms Lee's proposal for the Ownership Remuneration to be paid by instalments as first proposed at the 8 Dec Meeting, though eventually, no such agreement

¹⁶ SOC at paras 26–34.

¹⁷ SOC at para 38.

¹⁸ SOC at para 39.

¹⁹ SOC at para 41.

on instalment payments had been reached at the time when Mr Rohan's employment was terminated.²⁰ In connection with the breach of the LSIH Agreement, Mr Rohan claims loss and damage in the sum of \$15m from LSIH.²¹

10 The Defendants' main defences to Mr Rohan's claims are as follows:

(a) The Defendants deny that the First Addendum and/or the Second Addendum contained an express provision for the Alleged Fixed Term. The Defendants also deny that an agreement was reached at the 8 Dec Meeting for the Alleged Fixed Term to be further extended until 15 March 2024.²²

(b) The Defendants deny that the termination of Mr Rohan's employment was unlawful, and they had terminated Mr Rohan's employment in accordance with the Notice Provision in the Employment Contract.²³

(c) The Defendants deny that Mr Rohan is entitled to the sums claimed under the Addenda, namely, the Deferred Payment, the Profit Share Payment and the Exit Payment,²⁴ because none of the Addenda were legally valid and binding on the parties, in view of the following circumstances and reasons:

²⁰ SOC at paras 43–45 and 50.

²¹ SOC at paras 42–46 and 50–51.

²² DCC at para 77.

²³ DCC at para 73.

²⁴ DCC at para 76.

(i) The First Addendum did not supersede or vary the Notice Provision or any of the termination clauses of the Employment Contract, which remained in full force and effect.²⁵ In any event, upon the Second Addendum being entered into on 16 November 2020, the First Addendum was no longer valid, binding or enforceable as it had been superseded in its entirety by the Second Addendum.²⁶

(ii) The Second Addendum was meant to “amend and/or supplement parts of the Employment Contract” and save for the provisions relating to the Deferred Payment and Bonus Plan, the other terms and conditions in the Employment Contract all remain unchanged unless FPL had issued a separate addendum.²⁷ In any event, following the entry into of the LSIH Agreement, the Second Addendum was no longer valid from the date the LSIH Agreement was entered into, because cl 2.1 of the LSIH Agreement provided for FPL and Mr Rohan to undertake to enter into a supplemental agreement to cancel both the Second Addendum and the Third Addendum,²⁸ though it appears that no such supplemental agreement had been entered into.

(iii) The Third Addendum contained provisions relating to the Bonus Plan and the Exit Payment, but all the other terms of the Employment Contract and the Second Addendum remain

²⁵ DCC at para 24.

²⁶ DCC at para 27.

²⁷ DCC at paras 38–40.

²⁸ DCC at para 41.

unchanged.²⁹ In any event, pursuant to cl 2.1 of the LSIH Agreement, the Third Addendum was no longer valid from the date the LSIH Agreement was entered into.³⁰

(d) Mr Rohan is not entitled to any payment under the LSIH Agreement. First, the LSIH Agreement is applicable only if Mr Rohan voluntarily resigned from his position as CEO and serve three months' notice of his intention to do so, which had not been the case since Mr Rohan's employment was terminated by FPL.³¹ Secondly, the LSIH Agreement was subject to a condition precedent that FPL achieve an EBITDA of \$20m, and it was not fulfilled because FPL did not at any material time achieve an EBITDA of \$20m.³²

(e) No agreement was reached to vary the terms of the Employment Contract (and/or any Addenda) or the LSIH Agreement at the 8 Dec Meeting, and all times, the parties operated on the basis that any contractual agreements (including any variation to the agreements, whether by way of an addendum or supplemental agreement) would be subject to the execution of a written contract.³³ In particular, there was no agreement reached between Mr Rohan and Ms Lee to vary the EBITDA targets that had to be met for Mr Rohan to be entitled to the Ownership Remuneration,³⁴ and there was also no agreement reached at the 3 Feb Board Meeting that the Ownership Remuneration be fixed at

²⁹ DCC at para 48.

³⁰ DCC at para 49.

³¹ DCC at paras 60–61.

³² DCC at para 61.

³³ DCC at paras 68–69.

³⁴ DCC at paras 93–94.

\$15m or that any internal valuation of FPL raised at the 3 Feb Board Meeting supersede the need for the value of FPL to be determined through a professional valuation exercise, as otherwise required by cl 5 of the LSIH Agreement.³⁵ In other words, the Defendants deny both the Alleged Further Agreement and the Alleged Quantum Agreement.

SUM 1277

11 SUM 1277 is Mr Rohan’s application against the Defendants for specific production of various categories of documents. By the time SUM 1277 came to be heard, two of the sub-categories in the Schedule to SUM 1277 have been dropped.³⁶ For the remaining categories which remain contested, I have categorised them as follows:

(a) Category 1: Minutes of, or any document setting out a summary of or decisions made at the following calls, meetings or discussions, arising out of or in connection with the claimant’s employment with FPL and subsequent termination, as well as the First Addendum, the Second Addendum, the Third Addendum and the LSIH Agreement (hereafter referred to as “Minutes/Documents”):³⁷

(i) Category 1(a): Discussions and negotiations between Mr Rohan and FPL’s representative(s) in late October to November 2019.

(ii) Category 1(b): Discussions and negotiations between Mr Rohan and Ms Lee in or around February to May 2020.

³⁵ DCC at paras 59 and 101.

³⁶ Schedule to HC/SUM 1277/2024, paras 3(a) and 3(c).

³⁷ Schedule to HC/SUM 1277/2024, paras 1(a), 1(b), 1(c) and 1(d).

- (iii) Category 1(c): Discussions between Mr Rohan and Ms Lee between July 2020 and November 2020.
- (iv) Category 1(d): Discussions between Mr Rohan and Ms Lee in or around November 2021.
- (b) Category 2: Minutes/Documents of:³⁸
 - (i) Category 2(a): discussions between Mr Rohan and Ms Lee on or around 24 November 2022 (“the 24 Nov Discussion”) and the call between Mr Rohan and Ms Lee on 25 November 2022 (“the 25 Nov Call”). According to the DCC, the 24 Nov Discussion and the 25 Nov Call took place prior to the 8 Dec Meeting.³⁹
 - (ii) Category 2(b): the 8 Dec Meeting.
 - (iii) Category 2(c): the 6 Mar Meeting.
 - (iv) Category 2(d): the 14 Jun Meeting.
 - (v) Category 2(e): the 20 Jun Meeting.
- (c) Category 3: Minutes/Documents of:⁴⁰
 - (i) Category 3(a): the 3 Feb Board Meeting.
 - (ii) Category 3(b): Board and/or Shareholders’ meetings of FPL after 3 February 2023, including a shareholders’ meeting on 3 July 2023.

³⁸ Schedule to HC/SUM 1277/2024, paras 1(e), 1(f), 1(i), 1(j) and 1(k).

³⁹ DCC at para 66.

⁴⁰ Schedule to HC/SUM 1277/2024, paras 1(h) and 1(m).

- (d) Category 4: Minutes/Documents of:⁴¹
- (i) Category 4(a): discussions between Ms Lee and her family in or around December 2022.
- (ii) Category 4(b): discussions between Ms Lee and her family in or around June 2023.
- (e) Category 5: Documents relating to the Defendants’ consideration and eventual decision to terminate Mr Rohan’s employment with Mr Rohan, including correspondence between Ms Lee on the one hand, and Mr Steen Puggard or any other person on the other, relating to the same.⁴²
- (f) Category 6: Copies of all attachments in the e-mail from one PembinaanFuji Baru Sdn Bhd (“PFBSB”) to “Michael Hoh” and “Elain (IDR)” dated 31 July 2019 (timestamped 11.17am).⁴³ The underlying e-mail had been produced by the Defendants at s/n 11 of the Defendants’ list of documents dated 22 April 2024 (“the DLOD”) and what this request seeks are the attachments in that e-mail.
- (g) Category 7: All communications over WhatsApp between Mr Rohan and Ms Lee between November 2019 and July 2023 arising out of or in connection with Mr Rohan’s employment with FPL and subsequent termination, as well as the First Addendum, the Second Addendum, the Third Addendum and the LSIH Agreement.⁴⁴

⁴¹ Schedule to HC/SUM 1277/2024, paras 1(g) and 1(l).

⁴² Schedule to HC/SUM 1277/2024, para 2.

⁴³ Schedule to HC/SUM 1277/2024, para 3(b).

⁴⁴ Schedule to HC/SUM 1277/2024, para 4.

The applicable principles

12 Order 11 r 3(1) of ROC 2021 states:

The Court may order any party to produce the original or a copy of a specific document or class of documents (called the requested documents) in the party’s possession or control, if the requesting party —

- (a) properly identifies the requested documents;
and
- (b) shows that the requested documents are material to the issues in the case.

13 As the High Court Registry explained in *Eng’s Wantan Noodle Pte Ltd and another v Eng’s Char Siew Wantan Mee Pte Ltd* [2023] SGHCR 17 (“*Eng’s Wantan Noodle*”) (at [48]–[50]), O 11 r 3 imposes three conditions for a party seeking an order for the production of requested documents (see also *Cachet Multi Strategy Fund SPC on behalf of Cachet Special Opportunities SP v Feng Shi and others* [2024] SGHCR 8 (“*Cachet Multi Strategy Fund SPC*”) at [25(a)]):

- (a) the requested documents must be described with sufficient particularity;
- (b) the requested documents must be “material” to the “issues in the case”, in that they must (i) bear a demonstrable nexus with at least one of those issues, which is determined by reference to the parties’ pleaded cases and (ii) have a significant bearing on that issue, such that it could potentially affect the court’s ultimate decision; and
- (c) the requesting party must provide sufficient evidence that the requested documents are in the possession or control of the producing

party, which is not difficult to satisfy and ordinarily a deposition to this effect in the requesting party's supporting affidavit would suffice.

Preliminary issues

14 In opposing SUM 1277, the Defendants relied on two overarching submissions.

(a) First, the Defendants took the position in SUM 1277 that all documents responsive to the application (save for Category 6) “have been listed ... and disclosed”, whether by way of the DLOD or by way of the Defendants' solicitors' previous responses to the Mr Rohan's requests for documents. As for Category 6, the Defendants took the position that they had no possession or control of the requested document. These positions were deposed to by Ms Lee in her affidavit filed on the Defendants' behalf in opposing SUM 1277.⁴⁵ The Defendants argued, in view of Ms Lee's depositions in the affidavit, which ought to be regarded as conclusive, the court should not make an order for production in SUM 1277.

(b) Secondly, since Mr Rohan's claims in OC 740 are based on *written* agreements (namely, the Employment Contract, the LSIH Agreement and the Addenda), the parol evidence rule prevents him from relying on any extrinsic evidence (such as the documents requested in SUM 1277), and further, none of the exceptions to the parol evidence rule contained in ss 94(a)–(f) of the Evidence Act 1893 (“the Evidence Act”), which would otherwise allow Mr Rohan to rely on extrinsic evidence, are applicable in this case. By virtue of the parol evidence rule,

⁴⁵ 2nd affidavit of Lee Seem Yee (“2L”) at para 15.

all of the documents requested in SUM 1277 would ultimately constitute inadmissible evidence in OC 740, and accordingly, the underlying application for production must also be refused.

15 I address each of these submissions in turn, before turning to my decision on the individual categories in SUM 1277.

Whether Mr Rohan had to satisfy the “plain and obvious” test

16 In connection with the Defendants’ first submission, I start by considering the High Court’s decision in *Lutfi Salim bin Talib and another v British and Malayan Trustees Ltd* [2024] SGHC 85 (“*Lutfi*”), where it was explained that a respondent objecting to an application for specific production under O 11 r 3 may, apart from taking the position that the documents requested have not been properly identified and/or are not material to the issues in the case, state one or more of the following in its responsive affidavit objecting the application (see *Lutfi* at [20]):

- (a) the requested documents do not *exist*;
- (b) the requested documents are protected from production by, *eg*, legal privilege;
- (c) the requested documents have *never* been his possession or control;
- (d) the requested documents were but are no longer in his possession or control, *in which case, the respondent should explain what has become of such documents*;
- (e) the respondent *does not know or cannot confirm* (i) whether the requested documents were *ever* in his possession or control; or (ii) *what has become of* the requested documents that were previously in his possession or control.

[emphasis added]

17 Any such affidavit filed by a respondent objecting to the application for production under O 11 r 3 of the ROC 2021 is regarded as conclusive and the court should not go behind the affidavit unless it is “plain and obvious” from the documents that have been produced, the respondent’s affidavits or pleadings, or some other objective evidence before the court, that the requested documents: (a) must exist or have existed; (b) must be or have been in the respondent’s possession or control; or (c) are not protected from production (see *Lutfi* at [32]). The rationale underlying the “plain and obvious” test, as the High Court explained, is that the court cannot resolve a dispute as to the sufficiency of affidavits relating to production based on contentious affidavits alone at this interlocutory stage of the proceedings, and a high threshold such as the “plain and obvious” test is meant to prevent parties from engaging in unnecessary requests and applications for production, which furthers the Ideals of expeditious proceedings, cost-effective work and efficient use of court resources in O 3 r 1 of the ROC 2021 (see *Lutfi* at [34]).

18 The common thread of the grounds set out in *Lutfi* that can come to attract the “plain and obvious” standard is, once viewed as conclusive, they have the effect of satisfying the court hearing the application for production of the respondent’s *inability* to produce the requested documents – which can either be in the nature of complete inability (such as where the documents *do not exist*, are *protected from production*, *have never been within the possession or control* of the respondent, or because the respondent has no knowledge of the status of whether he has possession or control of the documents) or partial inability (such as where the documents *previously were but are no longer* in the respondent’s possession or control). In the latter case, for the respondent to resist the making of any production order, the respondent must additionally also explain, for those documents which he alleges to not have possession or control of presently, when

he parted with possession or control of them, and what has become of those documents (see O 11 r 3(2) of the ROC 2021). What the respondent ultimately seeks to do, by relying on these grounds, is to satisfy the court of its *inability* to produce the documents requested by the applicant and so no order for production ought to be made.

19 Seen in this light, in the context of an application for specific production, the “plain and obvious” test in *Lutfi* can be situated within the third condition in *Eng’s Wantan Noodle* ([13] above), namely, the requirement that the applicant for specific production provide sufficient evidence that the requested documents are in the possession or control of the respondent. What the third condition in *Eng’s Wantan Noodle* is concerned with is whether the applicant for specific production has reason or basis for his belief that the documents requested are in the possession or control of the respondent (see *Eng’s Wantan Noodle* at [50]; Jeffrey Pinsler, *Singapore Court Practice* (LexisNexis, 2023) (“*Singapore Court Practice*”) at para 11.3.4). Ordinarily, this condition ought not to be difficult to satisfy and a deposition to this effect in the supporting affidavit for specific production by the applicant would suffice. However, where the respondent takes the position that it is *unable* to produce the requested documents by relying on one more of those grounds in *Lutfi*, and because this position is to be viewed as conclusive, the applicant for specific production must do more to justify his belief or assertion as to why the requested documents are in the possession or control of the producing party. In such a situation, the applicable threshold to be satisfied, in connection with the third condition in *Eng’s Wantan Noodle*, is the “plain and obvious” test.

20 Accordingly, the Defendants’ first overarching submission raises the issue of whether Mr Rohan has to satisfy the higher “plain and obvious” test in connection with the third condition in *Eng’s Wantan Noodle*. For reasons

explained above, this turns on whether Ms Lee’s depositions in the Defendants’ affidavit for SUM 1277 can be characterised as satisfying the court of the Defendants’ *inability* to produce the requested documents in each of the contested categories in SUM 1277, as to require Mr Rohan to do more to justify his belief and assertion that the requested documents are in the Defendants’ possession or control, and that an order for production should be made. Ms Lee stated, in respect of each of these categories, that “[a]ll documents ... have been listed in the DLOD ... and disclosed”.⁴⁶ In respect of the documents coming within Categories 1, 2, 3, and 4, I note Ms Lee had further stated that “all documents falling under [these] categor[ies] ... that are in [the Defendants’] possession or control have already been listed ... and disclosed”.⁴⁷ It is however patently ambiguous as to what these references to “[a]ll documents” might be – is Ms Lee referring to all such documents which the Defendants *presently* have possession or control of (in which case, what about those documents which the Defendants *presently* do *not* have possession or control of, and which they only *previously* had possession and control of)? *Additionally*, for Categories 5 and 7, where Ms Lee did not specify that the reference to “[a]ll documents” referred to those documents that are within the Defendants’ possession or control,⁴⁸ is Ms Lee simply referring to all such documents which the Defendants *presently* have within their possession (in which case, what of those documents which the Defendants *presently* do not have within their possession but have the practical ability to locate and obtain, *ie*, have control over)? As for Category 6, Ms Lee takes the position that the documents coming within “(assuming that they exist) are not in the Defendants’ possession or control”.⁴⁹ Again, is Ms Lee referring

⁴⁶ 2L at para 15.

⁴⁷ 2L at para 22.

⁴⁸ 2L at paras 78–80 and 102.

⁴⁹ 2L at para 93.

to what the Defendants *presently* have possession or control of, and if so, did the Defendants previously have possession or control over those documents? In any case, for Category 6, given that it is apparent from the from the underlying e-mail produced at s/n 11 of the DLOD that it indeed contains attachments (a point which the Defendants do not appear to dispute),⁵⁰ this constitutes objective evidence and sufficiently grounds Mr Rohan’s belief or assertion that the Defendants are in possession or control of the documents in Category 6. The “plain and obvious” test is obviously not engaged in connection with Category 6.

21 Overall, Ms Lee’s depositions in the affidavit speak more of the *sufficiency* of the Defendants’ disclosure *in terms of what they have already produced*, but not of the Defendants’ *ability* to produce all of the documents requested in SUM 1277. In my view, while Ms Lee’s depositions are to be regarded as conclusive, it does not in any way demonstrate the Defendants’ *inability* to produce the requested documents in SUM 1277 and I do not see any justification for Mr Rohan to be held to a higher standard in justifying his belief or assertion as to why the requested documents in SUM 1277 are in the possession or control of the Defendants. The “plain and obvious” test is therefore not engaged in SUM 1277.

22 Given my conclusion that the “plain and obvious” test is inapplicable to Mr Rohan’s application in SUM 1277, the arguments he had put forward on this issue need not be considered. However, as some length had been spent on these arguments, I briefly state my views on them. First, in connection with Categories 1, 2 and 4, Mr Rohan argued that the particularity with which the Defendants have been able to plead in the Defence and Counterclaim (“DCC”)

⁵⁰ 2L at para 90.

what had transpired at the discussions or negotiations forming the subject matter of these categories make it “plain and obvious” that the corresponding documents evidencing such discussions or negotiations must exist. If the “plain and obvious” test had been applicable, I do not think this submission would have been of much assistance to Mr Rohan. In my view, the “plain and obvious” test involves the application of an objective standard. Where a party relies on the other party’s pleadings in justifying his belief or assertion that the requested documents exist, there must be something *apparent on the face of the pleadings* which *immediately* and *on its own* show that the requested documents exist. What Mr Rohan relies on here is not any particular part of the DCC which shows the existence of the requested documents but his subjective belief that the Defendants must have kept contemporaneous written records given the Defendants’ ability to plead the said discussions or negotiations with particularity – this surely cannot come anywhere close to satisfying the “plain and obvious” test.

23 Secondly, in connection with Category 3, Mr Rohan pointed to s 188(1) of the Companies Act 1967 (2020 Rev Ed), which provide, among other things, that every company must cause “minutes of all proceedings of general meetings and of meetings of its directors and of its chief executive officers ... to be entered in books kept for that purpose”. In *Lutfi* (at [24]), the High Court held that it would be insufficient to satisfy the “plain and obvious” test by simply arguing that “requested documents must have existed merely because in the ordinary course of events such documents would exist”. Mr Rohan’s reliance on s 188(1) of the Companies Act appears to be one such argument, because the gist of his contention is that FPL *would have* maintained such minutes or documents in connection with the meetings referred to in Category 3, since FPL is required under the Companies Act to do so. Again, to satisfy the “plain and

obvious” test, Mr Rohan must point to some material whether in the affidavits, pleadings or other objective evidence put before the court which shows that s 188(1) of the Companies Act had in fact been adhered to by FPL and such records of meetings were indeed kept. No such material had been identified or relied upon by Mr Rohan.

Whether the parol evidence rule is relevant in the assessment of the materiality of the requested documents

24 In connection with the Defendants’ second submission, they relied on the parol evidence rule to contend that the requested documents constitute *inadmissible* evidence. However, O 11 r 3 of the ROC 2021 does not require the court to be satisfied of the admissibility of the requested documents, before it can make an order for specific production of the same. The relevance (if any) of the parol evidence rule therefore must be situated in the context of one of the threefold conditions in *Eng’s Wantan Noodle* ([13] above), and in my view, the only condition to which the parol evidence rule can *possibly* relate is that of materiality, that being the only condition which deals with the *substance* of the documents requested. On this note, the Defendants’ submission is somewhat attractive – if the requested documents *ultimately* constitute inadmissible evidence, then does it not follow that these documents cannot have a bearing on the issues in the case and thus cannot be material for the purposes of O 11 r 3? I am not persuaded that this is the case. Let me explain.

25 I start by briefly revisiting the relevant legal principles on the parol evidence rule. As the Court of Appeal observed in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 (“*Zurich Insurance*”) (at [32]–[33]), the parol evidence rule is an “oft-maligned” common law rule, the exact formulation of which is of some disagreement. For

present purposes, however, we need only be concerned with what the Court of Appeal had identified in *Zurich Insurance* as the “thin definition” of the parol evidence rule, which states that where a contract has been recorded in writing, extrinsic evidence cannot be admitted or used to add to, vary or contradict the written contract. It is this “thin definition” of the parol evidence rule that is embodied in s 94 of the Evidence Act (see *Zurich Insurance* at [71]). To provide context, I set out in full ss 93 and 94 of the Evidence Act, which are germane to the discussion that follows.

93. When the terms of a contract or of a grant or of any other disposition of property have been reduced by or by consent of the parties to the form of a document ..., no evidence shall be given in proof of the terms of such contract ... except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.

94. When the terms of any such contract ... have been proved according to section 93, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms subject to the following provisions:

- (a) any fact may be proved which would invalidate any document or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law;
- (b) the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved; in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document;
- (c) the existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract ..., may be proved;

- (d) the existence of any distinct subsequent oral agreement, to rescind or modify any such contract, grant or disposition of property, may be proved except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents;
- (e) any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved; except that the annexing of such incident would not be repugnant to or inconsistent with the express terms of the contract;
- (f) any fact may be proved which shows in what manner the language of a document is related to existing facts.

26 Sections 93 and 94 form part of the provisions of the Evidence Act which deal with the *admissibility* of extrinsic evidence, and the effect of these provisions, when read together, is that where the sole evidence of a contract consists of “the document itself”, that contract cannot be varied, contradicted, added to or subtracted from by virtue of extrinsic evidence, unless the circumstances described in one or more of the six subsections to s 94 are satisfied (see *Zurich Insurance* at [71]).

27 In my view, the parol evidence rule is not relevant in the court’s assessment of whether requested documents satisfy the requirement of materiality. This is for the following reasons.

28 First, I do not think the parol evidence rule can ever be relevant in the *legal context* of an application for specific production. For the parol evidence rule to become relevant, it must first be proven that the parties had intended a written contract to contain *all* the terms of their agreement (see *Zurich Insurance* at [40]). In determining whether the parties had intended to embody

their entire agreement in the written contract (so that the parol evidence rule operates), the court may take cognisance of extrinsic evidence or the surrounding circumstances of the contract (see *Zurich Insurance* at [112]). In other words, *before* the parol evidence rule as embodied in s 94 of the Evidence Act applies, the court must first be satisfied that the case before it concerns a contract coming within the terms of s 93 of the Evidence Act. In the context of an application for specific production, the court is in no position to determine if the written agreements which are the subject of the action have been intended by the parties to embody their entire agreement. That issue is plainly not before the court at such an interlocutory stage of the proceedings, and even if the parties had adduced evidence on that point, it is not one which the court can resolve on the basis of contentious affidavits alone.

29 Secondly, as a matter of principle, a court hearing an application for specific production should *not* be fettered by considerations relating to the parol evidence rule. The parol evidence rule, having its place in s 94 of the Evidence Act, deals with the *admissibility* of evidence (see *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 (“*Sembcorp Marine*”) at [40]). The admissibility of evidence determines how the parties are to convince the court of the existence of a particular state of facts which, according to provisions of substantive law, would establish the existence of the right or liability which they allege to exist (see *Sembcorp Marine* at [43], citing James Fitzjames Stephen, *An Introduction to the Indian Evidence Act* (Thacker, Spink & Co, 1904) at p 11). If a piece of evidence is found to be *inadmissible*, then a party cannot rely on the same in establishing its case *vis-à-vis* the pleaded facts. The question of admissibility of evidence is a matter for the *trial* judge as it is for the trial judge to decide what evidence to or not to rely on in finding for one party or the other. If a court hearing an application for

specific production were to refuse the production of certain documents on the basis of the parol evidence rule, it effectively (and prematurely) forms a view as to whether those documents constitute admissible evidence for the purposes of s 94 of the Evidence Act and predetermine a question which ought to have been dealt with later.

30 That being said, as I have observed earlier, there is some attraction in the Defendants’ submission because if a document would eventually constitute inadmissible evidence on the basis of the parol evidence rule, then what is the utility in the court ordering the production of that document in the first place? However, to accept this submission is to misappreciate the purpose of document production in our civil procedure regime – it is part of the tools in civil litigation that allows litigants to *gain access* to evidence that is material to their case or the case of the opposing side which the other side may be in possession or control of, and which is meant to level the playing field between the parties and ensure that the court can base its decisions on a firm foundation of fact (see, generally, *Dante Yap Go v Bank Austria Creditanstalt AG* [2007] SGHC 69 at [16]; *DFD v DFE and another* [2024] SGHCR 4 (“*DFD*”) at [29]). Put another way, the production of documents is effectively an information-gathering tool to aid a party in deciding whether or how to further particularise or whether to abandon certain causes of action, subject of course to that party satisfying the necessary legal requirements for obtaining production. On that note, it should not matter that documents requested might ultimately constitute inadmissible evidence because that document can serve other ends. A court should not have regard to the ends to which a document can ultimately be used at the trial of the action in deciding whether to order its production. It is true that the ROC 2021 imposes a new regime for the production of documents but that is only so in connection with the criteria on which production can be obtained which has now

been made more stringent to ensure parties do not engage in requests and applications that are ultimately disproportionate to the benefits to be obtained from that exercise (see Civil Justice Commission, *Civil Justice Commission Report* (29 December 2017) (Chairperson: Justice Tay Yong Kwang), Chapter 8 at para 1) – the place of document production within our civil procedure rules and its purpose remain unchanged.

31 Finally, the Defendants’ submission about the parol evidence rule is also incompatible with the scheme of O 11 in two ways. First, for the purposes of O 11 r 3, materiality is determined by reference to the *relationship* between a requested document and the issues in the case. No part of that *relationship* should turn on the admissibility of the requested document in evidence which, as I explained, is not a matter that the court has to and can determine at the stage when an application for specific production is heard anyway. Secondly, if the Defendants’ submission were accepted, it effectively expands the recognised grounds on which a party can *resist* the production of documents (see, for example, O 11 r 5 and r 8 of the ROC 2021) to also encompass those relating to the *admissibility* of evidence. This is plainly contrary to the scheme of O 11 of the ROC 2021 and also finds no authority in case law.

My decision

32 For the purposes of SUM 1277, I proceed on the basis that:

- (a) The first condition in *Eng’s Wantan Noodle* ([13] above) (of proper identification of documents) has been satisfied, since the Defendants did not contend that the documents in each of the requested categories have been improperly identified (save for Category 7). For Category 7, as I will explain later, I was not satisfied that the requested documents have been improperly identified.

(b) Except for Category 3(b), the third condition in *Eng's Wantan Noodle* (of the applicant providing sufficient evidence that the requested documents are in the possession or control of the respondent) has been satisfied in respect of all the other categories in SUM 1277, because Mr Rohan has provided sufficient reasons for his assertion and belief that the requested documents are in the possession or control of the Defendants.

Category 1

33 The documents requested in Category 1 pertain to discussions or negotiations which, according to the DCC, had taken place before each of the following written agreements were entered into – the Employment Contract (Category 1(a)),⁵¹ the First Addendum (Category 1(b)),⁵² the Second Addendum (Category 1(c))⁵³ and the LSIH Agreement (Category 1(d)).⁵⁴

34 I begin with **Category 1(a)**, the subject matter of which is the Employment Contract. The parties' pleadings show that their pleaded positions differ slightly as to the background in which the Employment Contract had been entered into – Mr Rohan's case is that the Employment Contract had been entered into to cater for the expansion of Mr Rohan's role in FPL pending the recovery of Mr Vijay Vijendra Sethu (hitherto the sole director of FPL and LSIH),⁵⁵ while the Defendants' case is that Mr Rohan had desired a formal employment agreement so that he could be entitled to medical insurance and

⁵¹ DCC at para 18.

⁵² DCC at para 23.

⁵³ DCC at paras 38–39.

⁵⁴ DCC at paras 59 and 88.

⁵⁵ SOC at para 9.

apply for the requisite employment pass to work in Singapore.⁵⁶ However, Mr Rohan does not rely on this background in support of his claims against the Defendants; neither do the Defendants rely on it in support of their defences to Mr Rohan's claims or their counterclaim against Mr Rohan (see [9]–[10] above). In connection with the Employment Contract, the only issue in contention is whether the terms relating to the termination of employment and the Notice Provision continue to remain in force when Mr Rohan's employment was terminated by FPL, or whether it had been superseded by the provision for the Alleged Fixed Term which the parties are said to have agreed to subsequently. That being the case, while the parties differ in their factual positions *vis-à-vis* the background in which the Employment Contract was entered into, this is not in any way relevant to their respective cases and accordingly any documents relating to that background bear no nexus to the "issues in the case" in OC 740. An "issue in the case" relates to matters which parties intend to rely on and make good at the trial of the action, and which ultimately relates to the adjudicative outcome of the matter (see generally, *DFD* ([30] above) at [26]; see also *Cachet Multi Strategy Fund SPC* ([13] above) at [33]). I was therefore not satisfied that there exists an issue in the case arising in connection with the Employment Contract to which the documents requested in Category 1(a) can relate. I therefore refused the request in Category 1(a).

35 I now turn to **Categories 1(b), 1(c) and 1(d)**. I consider them together because, based on the parties' pleadings, they appear to be in dispute as to the effect which the First Addendum, the Second Addendum and the LSIH Agreement had on the *existing* rights and obligations under the *prior* agreement(s) between the parties. To explain (see also [10(c)] above):

⁵⁶ DCC at para 18.

(a) In connection with the First Addendum (the subject matter of Category 1(b)), there is a dispute as to its effect on the existing terms of the Employment Contract. Mr Rohan’s case is that the First Addendum (including its provision for the Alleged Fixed Term) is *incorporated* into the Employment Contract, and that it is meant to “supersede the Notice Provision”.⁵⁷ On the other hand, the Defendants plead that one such term of the First Addendum is for Mr Rohan’s employment to be “extended ... until 31 December on the ‘*same terms and conditions*’ as stated [in] the Employment Contract”,⁵⁸ and their case is that the First Addendum did not supersede or vary the Notice Provision or any of the termination clauses in the Employment Contract, which remain in full force and effect.

(b) In connection with the Second Addendum (the subject matter of Category 1(c)), there is a dispute as to its effect on the Employment Contract and whether it superseded the First Addendum. Mr Rohan’s case is that the Second Addendum had the effect of reiterating the earlier agreement in the First Addendum regarding the Alleged Fixed Term, which was also to supersede the Notice Provision in the Employment Contract.⁵⁹ On the other hand, the Defendants’ case is that the Second Addendum superseded the First Addendum in entirety, and they rely on several grounds in support. Primarily, the Defendants appear to rely on the *contractual* effect of the Second Addendum, on the basis that it contains terms which are inconsistent and/or conflict with those in the First Addendum, and also because Second Addendum contains a

⁵⁷ SOC at para 13(a).

⁵⁸ DCC at para 25(a).

⁵⁹ SOC at para 15(a).

provision that “[a]ll other terms stated in your original employment contract [*ie*, the Employment Contract] remain unchanged, unless and until [FPL] issues a separate addendum”.⁶⁰ Further or in the alternative, the Defendants plead that Mr Rohan cannot deny that the First Addendum was no longer valid, binding or enforceable following the entry into of the Second Addendum, on the basis of estoppel by convention, promissory estoppel and/or estoppel by representation, arising from the terms contained in the Second Addendum and the discussions between the parties.

(c) In connection with the LSIH Agreement (the subject matter of Category 1(d)), there is a dispute as to its effect on the Second Addendum as well as the Third Addendum. Given Mr Rohan’s claims for the various sums provided for in the Employment Contract and the Addenda, his position is obviously that the Second Addendum and the Third Addendum remain valid and binding. On the other hand, the Defendants’ position is that the Second Addendum ceased to be valid, binding and/or enforceable from the date the LSIH Agreement was entered into, because cl 2.1 of the LSIH Agreement specifically provided for LSIH to procure that FPL and Mr Rohan undertake to enter into a supplemental agreement to cancel the Second Addendum and the Third Addendum in their entirety from the date of the LSIH Agreement.⁶¹ Further or in the alternative, the Defendants also plead that following the entry into of the LSIH Agreement, Mr Rohan is estopped from denying that the Second Addendum was no longer valid, binding or enforceable, on the basis of estoppel by convention, promissory

⁶⁰ DCC at para 27.

⁶¹ DCC at para 42.

estoppel and/or estoppel by representation, arising from cl 2.1 of the LSIH Agreement.⁶²

36 The parties’ dispute as to the effect which the First Addendum, the Second Addendum and the LSIH Agreement had on the existing rights and obligations under the prior agreement(s) between the parties disclose “issues in the case” for the purposes of O 11 r 3 because they relate to matters which Mr Rohan and the Defendants respectively rely for their claim and defence in OC 740. To illustrate as an example – the dispute concerning the effect of the subsequent agreements on the terms of the Employment Contract will determine whether it is the Employment Contract and its terms which govern Mr Rohan’s termination from FP, so that Mr Rohan’s termination was lawful, as the Defendants aver (see [10(b)] above)); the dispute regarding the effect of the LSIH Agreement on the Second Addendum and the Third Addendum will determine whether Mr Rohan is entitled to the sums which the latter two agreements purported to provide, which the Defendants aver have no legal effect and are not binding on the parties (see [10(c)(ii)]–[10(c)(iii)] above). The discussions and negotiations between the parties leading up to the entry into of each of these agreements provide a direct source by their contractual intentions regarding the effect of a subsequent agreement on the respective prior agreement(s) could be ascertained. That being the case, I was satisfied that documents evidencing each of these discussions and negotiations are material to the issues in the case. For these reasons, I allowed the request in Categories 1(b), 1(c) and 1(d).

⁶² DCC at paras 43–45.

Category 2

37 The documents in Category 2 relate to various meetings where the Ownership Remuneration, provided for under the LSIH Agreement, had been discussed. Based on the parties' pleadings, they appear to be in dispute on whether the Alleged Further Agreement (that is, the agreement for the Ownership Remuneration to be paid to Mr Rohan regardless of FPL's EBITDA at the time Mr Rohan ceases employment, as defined at [9(c)] above) and whether the Alleged Quantum Agreement (that is the agreement for the valuation of FPL to be fixed at \$75m and for the quantum of the Ownership Remuneration to be correspondingly fixed at \$15m, as defined at [9(c)] above) had been reached. Mr Rohan's claims in OC 740 are premised on the Alleged Further Agreement and the Alleged Quantum Agreement, both of which appear to take the form of a non-written or oral agreement. On the other hand, the Defendants' plead that the parties had operated at all times on the basis that any contractual agreements, including the variation of agreements already entered into, would be subject to the execution of a further written contract, and accordingly, they deny the existence of the Alleged Further Agreement and the Alleged Quantum Agreement. The parties are therefore in dispute on whether the Alleged Further Agreement and the Alleged Quantum Agreement exist, and this dispute discloses "issues in the case" for the purposes of O 11 r 3 because they relate to matters which Mr Rohan and the Defendants respectively rely for their claim and defence in OC 740. The only matter which remains to be decided is whether the documents in Category 2 have a significant bearing on those issues.

38 I begin first with **Category 2(b)**, the subject matter of which is the 8 Dec Meeting. According to Mr Rohan, the Alleged Further Agreement was first reached at the 8 Dec Meeting. Specifically, Mr Rohan pleaded that it was agreed

between Ms Lee and him at the 8 Dec Meeting that: (a) first, the Ownership Remuneration would be paid to him regardless of whether the EBITDA targets in the LSIH Agreement were met; and (b) secondly, a valuation of FPL will be conducted in January 2024 for the purpose of calculating the Ownership Remuneration.⁶³ On the basis of Mr Rohan's case that the 8 Dec Meeting was the very occasion on which the Alleged Further Agreement had been made, the discussions and negotiations at that meeting directly sheds light on whether the Alleged Further Agreement exists. I was therefore satisfied that documents evidencing the discussions and negotiations at the 8 Dec Meeting are material to the issue of whether the Alleged Further Agreement exists. I therefore allowed the request in Category 2(b).

39 Besides the Alleged Further Agreement, I note that the parties' pleadings show that they are in dispute as to whether an agreement had been reached at the 8 Dec Meeting for a further extension of the Alleged Fixed Term (said to end on 31 December 2022) until 15 March 2024.⁶⁴ Mr Rohan's case in OC 740 is founded also on the alleged agreement for a further extension of the Alleged Fixed Term until 15 March 2024, which is what rendered the termination of his employment unlawful and entitled him to the Exit Payment.⁶⁵ The Defendants deny that any such agreement for further extension had been reached had been reached.⁶⁶ The parties are therefore similarly in dispute as to whether there exists an agreement for a further extension of the Alleged Fixed Term and this similarly discloses an "issue in the case" for the purposes of O 11 r 3 as it directly relates to a matter which Mr Rohan and the Defendants respectively

⁶³ SOC at para 38.

⁶⁴ SOC at para 20.

⁶⁵ SOC at paras 24 and 32.

⁶⁶ DCC at para 68.

rely for their claim and defence in OC 740. Just as the above, the discussions and negotiations at the 8 Dec Meeting – which is pleaded by Mr Rohan as the very occasion on which the alleged agreement for a further extension was made – directly sheds light on whether the Alleged Extension Agreement exists and thus is material to that issue. This is a further reason on which I allowed the request in Category 2(b).

40 I turn now to **Category 2(a)**, the subject matter of which is the 24 Nov Discussion and the 25 Nov Call (as defined at [11(b)(i)] above). Mr Rohan’s pleadings do not refer to the 24 Nov Discussion and the 25 Nov Call. It is the Defendants who plead these events and they aver that, at the 24 Nov Discussion, Mr Rohan informed Ms Lee that it was no longer “worthwhile” for him to be involved with FPL given its changing business and growth trajectory. The next day, at the 25 Nov Call, Mr Rohan is said to have informed Ms Lee of his dissatisfaction with cl 5 of the LSIH Agreement, and in particular, he stated that the quantum of Ownership Remuneration provided for therein was insufficient, in response to which Ms Lee rejected Mr Rohan’s proposal to renegotiate the terms of the LSIH Agreement. I note that Mr Rohan’s case is that the Alleged Further Agreement was reached only at the 8 Dec Meeting, and so on the basis of Mr Rohan’s case, at the time of the 24 Nov Discussion and the 25 Nov Call, the Alleged Further Agreement would not yet have been in existence. However, in my view, the 24 Nov Discussion and the 25 Nov Call would not have taken place in the abstract, and they provide the backdrop to what subsequently came to be discussed at the 8 Dec Meeting and what was said to have been agreed at that meeting. What was discussed at the 24 Nov Discussion and the 25 Nov Call would have laid the foundation for, and are to be viewed in conjunction with, the further discussions at the 8 Dec Meeting which Mr Rohan claims had taken place in connection with the Alleged Further Agreement. I was therefore

satisfied that documents evidencing the discussions and negotiations at the 24 Nov Discussion and 25 Nov Call are similarly material to the issue of whether the Alleged Further Agreement exists. I therefore allowed the request in Category 2(a).

41 I now turn to **Categories 2(c), 2(d) and 2(e)**, the subject matter of which are the 6 Mar Meeting, the 14 Jun Meeting and the 20 Jun Meeting, respectively. Based on Mr Rohan’s pleadings about the 3 Feb Board Meeting (see [10(c)] above), by the time of the first of these meetings (*ie*, the 6 Mar Meeting), there had already been an agreement for the quantum of the Ownership Remuneration to be fixed at \$15m (*ie*, the Alleged Quantum Agreement had already been reached).

(a) In connection with the 6 Mar Meeting, Mr Rohan pleads that Ms Lee had affirmed the Alleged Further Agreement and the Alleged Quantum Agreement, and further, that the parties agreed for the \$15m to be paid by way of instalments, with the first tranche due on 31 December 2023.⁶⁷

(b) In connection with the 14 Jun Meeting, Mr Rohan pleads that Ms Lee affirmed what she had earlier agreed to at the 6 Mar Meeting.⁶⁸

(c) In connection with the 20 Jun Meeting (which is referenced in the DCC but not Mr Rohan’s Statement of Claim (“the SOC”)), the Defendants plead that Mr Rohan had raised the issue of his exit from FPL and the payment of the Ownership Remuneration at this meeting, but they plead that, “from the perspective of [Mr Rohan], [Ms Lee] had

⁶⁷ SOC at para 42.

⁶⁸ SOC at para 44.

not provided to Mr Rohan any written confirmation of any alleged agreement between [Mr Rohan] and the Defendants and/or [Ms Lee]”.⁶⁹ The SOC does not refer to the 20 Jun Meeting, but Mr Rohan pleads that on 24 June 2023, he had sent an e-mail to Ms Lee summarising what the parties had thus far agreed regarding the payment of the Ownership Remuneration (*ie*, the Alleged Further Agreement and the Alleged Quantum Agreement), to which Ms Lee did not reply and also did not disagree.⁷⁰ Therefore, while Mr Rohan does not plead the 20 Jun Meeting in connection with his case, it follows from his pleadings regarding the events said to have taken place on 24 June 2023 that the Alleged Further Agreement and the Alleged Quantum Agreement would have been raised and discussed at any meeting between the parties before 24 June 2023, which would include the 20 Jun Meeting, if it had taken place.

42 On the basis of Mr Rohan’s pleaded case that the Alleged Further Agreement and the Alleged Quantum Agreement were each raised and affirmed by the Defendants at the 6 Mar Meeting and the 14 Jun Meeting, and on the basis that it is implicit from Mr Rohan’s pleadings regarding the events on 24 June 2023 that the Alleged Further Agreement and the Alleged Quantum Agreement would have similarly been discussed and agreed to at the 20 Jun Meeting, the discussions and negotiations at those meetings directly shed light on whether the Alleged Further Agreement and the Alleged Quantum Agreement exist. I was therefore satisfied that documents evidencing the discussions and negotiations at the 6 Mar Meeting, the 14 Jun Meeting and the 20 Jun Meeting are material to the issue of whether the Alleged Further

⁶⁹ DCC at para 113.

⁷⁰ SOC at para 46.

Agreement and the Alleged Quantum Agreement exist. I therefore allowed the request in Categories 2(c), 2(d) and 2(e).

Category 3

43 I now turn to consider the documents requested in Category 3, which I have grouped together since they pertain to common subject matter – FPL’s meetings.

44 **Category 3(a)** relates specifically to the 3 Feb Board Meeting, and based on Mr Rohan’s pleadings, the Alleged Quantum Agreement was reached at this meeting. On the basis of Mr Rohan’s pleadings, whatever was discussed at the 3 Feb Board Meeting directly sheds light on the Alleged Quantum Agreement. Documents evidencing the 3 Feb Board Meeting are therefore material to the issue of whether the Alleged Quantum Agreement exists which, for the reasons explained earlier, forms part of the “issues in the case” in OC 740 for the purposes of O 11 r 3. For these reasons, I allowed the request in Category 3(a).

45 **Category 3(b)** relates to FPL’s meetings *after* the 3 Feb Board Meeting. However, neither Mr Rohan nor the Defendants plead that there were any such meetings which took place after the 3 Feb Board Meeting. Although the Defendants’ pleadings refer to a shareholders’ resolution in writing passed on 3 July 2023 to remove Mr Rohan as director and CEO of FPL, the Defendants have stated in their responsive affidavit in SUM 1277 that no shareholders’ meeting had been held on that date.⁷¹ Since both Mr Rohan and the Defendants do not expressly plead any such meetings of FPL which had taken place

⁷¹ 2L at para 76.

subsequent to the 3 Feb Board Meeting, and there is also no objective evidence before me suggesting that such meetings had taken place, I do not think Mr Rohan has provided sufficient reason to justify his belief or assertion that the documents in Category 3(b) exist. I therefore refused the request in Category 3(b) on the basis that the third condition in *Eng's Wantan Noodle* ([13] above) is not satisfied.

Category 4

46 I now turn to consider the documents requested in **Categories 4(a) and 4(b)**, which I have grouped together since they pertain to common subject matter – discussions between Ms Lee and her family said to have taken place in or around December 2022, and in or around June 2023. The Defendants plead these discussions in support of their case that no agreement whatsoever had been reached between Mr Rohan and Ms Lee at the conclusion of the 8 Dec Meeting as well as the 20 Jun Meeting because at each of these meetings, Ms Lee had informed Mr Rohan explicitly that no agreement had been reached between the parties and she had to discuss his proposals with her family separately.⁷² As mentioned earlier, Mr Rohan's case is that the Alleged Further Agreement had been reached at the 8 Dec Meeting, and also, Ms Lee had affirmed both the Alleged Further Agreement as well as the Alleged Quantum Agreement at the 20 Jun Meeting (see [38] and [41(c)] above).

47 The Defendants argued that O 11 r 5(2) of the ROC 2021 is applicable to the requests in Category 4, because any such documents coming within would constitute part of the Defendants' "private or internal correspondence" since they pertain to discussions between Ms Lee and her family. Order 11 r 5 of the

⁷² DCC at paras 92 and 113.

ROC 2021 provides that the court must not order the production of such documents except where it is a “special case”, or where such documents are “known adverse documents”. Order 11 r 5 is meant to give effect to the principle set out in O 11 r 1(2), namely, that a party who sues or is sued in court does not thereby give up its right to privacy and confidentiality in its documents and communications, and it also serves to prevent parties from inundating each other with lengthy correspondence that has little or no bearing on the issues in the case (see *Singapore Civil Procedure 2024* vol I (Cavinder Bull gen ed) (Sweet & Maxwell, 2024) (“*Singapore Civil Procedure*”) at para 11/5/3). As stated in O 11 r 1(2), this is a principle which the court must have regard to in exercising its powers to order production of documents under O 11.

48 The literal meaning of “private or internal correspondence” is plain and unambiguous and it refers to written communications exchanged between parties and which the parties at the material time intended that they be limited only to persons directly privy to those communications. The learned author of *Singapore Court Practice* ([19] above) (at para 11.5.5) defines private correspondence as “communications which are intended to be private as between the persons who corresponded with each other” and “internal correspondence” as “communications ... between individuals and/or departments within an organisation” that are “circulated within the organisation and not intended for publication outside that organisation”. It therefore appears that the phrase “private and internal correspondence” (and in turn O 11 r 5(2)) has a rather broad ambit because in most cases, the maker of communications is likely to have intended them only for persons directly privy to the communications and is unlikely to have had other persons, not privy to those communications, in mind. However, if O 11 r 5(2) is to meaningfully give effect to the principle of privacy and confidentiality in O 11 r 1(2), the phrase “private

and internal correspondence” must be given its literal meaning and it should not be delineated or restricted by any other criteria. In any case, O 11 r 5(2) does not exclude such correspondence from production entirely; a party can still obtain production where it demonstrates a “special case” or shows that such correspondence is a “known adverse document[.]”.

49 For these reasons, I accepted that any such documents concerning Ms Lee’s discussions with her family forming the subject matter of Categories 4(a) and 4(b) would constitute the Defendants’ “private and internal correspondence” since such correspondence would have been private to and also internal within Ms Lee and the family members whom she had discussions with. For Mr Rohan to obtain production of these documents, he must either demonstrate a “special case” or show that these documents are “known adverse documents”. As the High Court explained in *CZD v CZE* [2023] 5 SLR 806 (“*CZD*”) (at [19]–[20]), the term “special case” should be interpreted with the Ideals set out in O 3 r 1 in mind, and in the context of the relevant rule in which it appears. Bearing in mind the purpose of O 11 r 5(2), a relatively high bar should be imposed for a “special case” so that it does not render this rule nugatory (see also *Cachet Multi Strategy Fund SPC* ([13] above) at [59]). As for the phrase “known adverse documents” (which first appears in O 11 r 2(1)(b)), this should be given its ordinary meaning and it encompasses documents with two characteristics – first, that they are adverse, and secondly, that they are known to be adverse. Order 11 r 2(1)(b) further defines “known adverse documents” as including “documents which a party ought reasonably to know are adverse” (see *Singapore Civil Procedure* at para 11/2/6). Whether a document is a “known adverse document” is also to be assessed objectively, and so it includes both adverse documents that a party is actually aware of, as

well as those of which a party could acquire knowledge of through reasonable checks and searches (see *Singapore Civil Procedure* at para 11/2/6).

50 The Defendants’ plead that no agreement whatsoever had been reached at the 8 Dec Meeting and the 20 Jun Meeting, and in support of that, they say that Ms Lee had informed Mr Rohan that she had to discuss Mr Rohan’s proposals with her family. In any such discussions which Ms Lee subsequently had with her family, she obviously would recount to them whatever she had discussed with Mr Rohan, in order to provide her family with all the needed information for a meaningful discussion to take place. As such, if any agreement had been reached between Mr Rohan and the Defendants at the 8 Dec Meeting and the 20 Jun Meeting, the same would necessarily have been mentioned in the discussions which Ms Lee subsequently had with her family. I was therefore satisfied that documents evidencing such discussions Ms Lee had with her family coming within Categories 4(a) and 4(b), *in so far as they relate to the matters discussed at the 8 Dec Meeting (for Category 4(a)) and matters discussed at the 20 Jun Meeting (for Category 4(b))*, since these would necessarily be *adverse* documents as they directly evidence what exactly had been discussed between Ms Lee and Mr Rohan at the 8 Dec Meeting and the 20 Jun Meeting (and whether the Alleged Further Agreement and the Alleged Quantum Agreement had been reached), a matter which is also *known* to the Defendants because only the Defendants themselves are aware of the contents of Ms Lee’s discussions with he family. I therefore allowed the requests in Categories 4(a) and 4(b), but only to the extent of Ms Lee’s discussions with her family about the matters discussed at the 8 Dec Meeting (for Category 4(a)) and the matters discussed at the 20 Jun Meeting (for Category 4(b)), as I was satisfied that documents evidencing such discussions Ms Lee had with her family are “known adverse documents” for the purposes of O 11 r 5(2)(b) of the

ROC 2021. In these circumstances, it is not necessary for me to consider whether this is a “special case” for the purposes of O 11 r 5(2)(a). In any case, Mr Rohan did not make any submissions on this point.

Category 5

51 I now turn to consider the documents requested in **Category 5**, the subject matter of which is the termination of Mr Rohan’s employment with FPL. Mr Rohan explained that the request in Category 5 is made because the shareholders’ resolution dated 3 July 2023 passed to remove Mr Rohan as CEO and director of FPL was signed and executed by one “Mr Steen Puggard”, who was a director of FPL at the material time. Mr Rohan argued that, before the shareholders’ resolution came to be executed, there must have been correspondence within FPL and/or its shareholders regarding the grounds and reasons for terminating his employment as well as their deliberations on the same. Any such documents setting out the Defendants’ consideration and their eventual decision to terminate Mr Rohan’s employment would be relevant to the issue of whether the termination of Mr Rohan’s employment had been lawful.

52 It is undisputed that the Employment Contract contains the Notice Provision and various provisions relating to termination,⁷³ pursuant to which the Defendants claim Mr Rohan’s employment was lawfully terminated.⁷⁴ It is also not Mr Rohan’s pleaded case that the termination of his employment was unlawful under the terms of *the Employment Contract*; Mr Rohan’s case is that the termination had been unlawful because it was a breach of the Alleged Fixed

⁷³ SOC at para 11(c).

⁷⁴ DCC at para 70.

Term and the alleged agreement for its further extension until 15 March 2024 (see [9(a)] above).⁷⁵ Therefore, based on the parties' pleaded cases, whether the termination of Mr Rohan's employment was lawful or unlawful turns largely on whether Mr Rohan's case regarding the Alleged Fixed Term and the alleged agreement for its subsequent extension is to be accepted and whether any such agreement(s) superseded the Notice Provision and other provisions for termination in the Employment Contract.

53 The Defendants argued that the documents in Category 5 constitute "private and internal correspondence" and so O 11 r 5(2) of the ROC 2021 is similarly engaged. Applying the principles set out earlier (at [48]) as to what constitutes "private and internal correspondence", I agreed with the Defendants. The makers of the relevant correspondence within FPL and/or its shareholders would have intended that the same be limited only to the recipients of such correspondence and obviously, at the material time, they would not have intended Mr Rohan to have sight of those communications especially where what was discussed directly pertains to Mr Rohan. Accordingly, for Mr Rohan to obtain production of the documents in Category 5, he has to either demonstrate a "special case" or show that these documents are "known adverse documents".

54 Whether the parties had agreed on the Alleged Fixed Term and its subsequent extension, and whether this was to supersede the Notice Provision and termination clauses in the Employment Contract, turns on the content of the parties' discussions and negotiations prior to the entry into of the First Addendum and the Second Addendum, as well as the 8 Dec Meeting. While I accept that internal communications within FPL or its shareholders leading up

⁷⁵ SOC at para 22.

to the termination of Mr Rohan's employment might possibly make references to the legal basis of the termination and whether it was lawful, it is somewhat speculative to also say that these communications would have encompassed the terms on which Mr Rohan was employed by FPL and whether it included the Alleged Fixed Term and the Alleged Extension Agreement, which is needed for these communications to be characterised as being directly adverse to the Defendants' case. That being so, I do not think that documents evidencing such internal communications can qualify as "known adverse documents" for the purposes of O 11 r 5(2). Mr Rohan did not make any submissions in connection with Category 5 that there exists a "special case" but I would not have found any on the facts, especially in view of my conclusion that the documents in Category 5 do not qualify as "known adverse documents". For these reasons, I refused the request in Category 5.

Category 6

55 The documents requested in Category 6 are attachments contained in an e-mail which has been produced by the Defendants at s/n 11 of the DLOD, which is dated 31 July 2019 (timestamped 11.17am) and was sent by one "PembinaanFuji Baru" (which refers to PFBSB) to Michael Hoh ("Hoh") and "Elain (IDR)" ("the 31 Jul E-mail").⁷⁶ Of the two recipients of the 31 Jul E-mail, only Hoh was an employee of the Defendants' affiliate company in Malaysia, Gimme4Fingers Malaysia Sdn Bhd ("GMSB"). Ms Lee explained in the Defendants' responsive affidavit for SUM 1277 that Hoh has ceased to be employed by GMSB from 16 April 2020, and further, she has personally accessed Hoh's e-mails in his e-mail account with GMSB but she was unable to locate the original copy of the 31 Jul E-mail and its accompanying attachments.

⁷⁶ 1st affidavit of Rohan St George ("1R") at p 213.

The Defendants therefore take the position that the documents requested in Category 6 are not within their possession or control, and in the alternative, Mr Rohan has not shown that such attachments are material in connection with issues arising in the Defendants' counterclaim against him, namely, whether Mr Rohan had neglected and/or failed to discharge his duties by conducting the appropriate due diligence when appointing PFBSB as a contractor for the GMSB's stores in Malaysia.⁷⁷

56 Category 6 can be dealt with quite simply. S/n 11 of the DLOD did not describe the 31 Jul E-mail as excluding its accompanying attachments and, on that basis, the attachments *form part of* the 31 Jul E-mail (and in turn, the document produced at s/n 11 of the DLOD) and Mr Rohan is obviously entitled to obtain production of those attachments. In my view, it stands to reason that a requesting party is entitled to obtain the production of *attachments* in an e-mail that has already been produced, except where those attachments have been expressly excluded by the producing party in the relevant list of documents. As the High Court noted in *Interactive Digital Finance Ltd and another v Credit Suisse AG and another* [2023] SGHC 198 ("*Interactive Digital Finance*") (at [33]) albeit in a slightly different context, the *reference* in pleadings to documents in and of itself was a form of "disclosure" and where such documents are requested by the other party, they should be produced. This was because a reference to documents in the pleadings made those documents a part of the pleadings itself and the other party is entitled to the production of those documents before it filed its responsive pleading (see *Interactive Digital Finance* at [33]). Applying this principle by analogy in the present context, where an e-mail is produced without exclusion of its accompanying

⁷⁷ 2L at paras 88–94.

attachments, the attachments would form part of the document produced, and the other party is obviously entitled to have sight of the attachments, so it could decide whether further requests for specific production are needed. For these reasons, I allowed the request in Category 6.

Category 7

57 The documents requested in Category 7 are essentially a record of the discussions and negotiations between Mr Rohan and Ms Lee by WhatsApp in connection with the entry into of the Employment Contract and its subsequent termination, as well as each of the Addenda and the LSIH Agreement. The Defendants object to the request in Category 7 on the basis that it is impermissibly wide and constitutes a “fishing expedition”. I disagreed with this submission. The word “fishing” describes the *opportunistic use* of the process for production of documents by a party to *randomly* search for information in the *hope* that documents which may be beneficial or advantageous to it in some way will emerge (see *Banque Cantonale de Geneve SA v Allen & Gledhill LLP* [2010] SGHC 39 at [3]). Quite clearly, this is not the case here because Category 7 is limited both in terms of subject matter (each of the written agreements entered into between the parties) as well as timeframe (parallel to the time during which each of these agreements were entered and in the case of the Employment Contract, when it came to be terminated).

58 As I have explained earlier in these grounds, for the purposes of O 11 r 3, there exist the following “issues in the case” in OC 740:

- (a) In connection with First Addenda, the Second Addenda and the LSIH Agreement, there are issues concerning the effect which each of these agreements had on the rights and obligations under the prior existing agreement(s) between the parties.

(b) There are issues concerning whether, subsequent to the parties' entry into of the LSIH Agreement, they had entered into the Alleged Further Agreement and/or the Alleged Quantum Agreement.

(c) Further, there is also an issue as to whether the Alleged Extension Agreement had been reached at the 8 Dec Meeting (that is, the alleged agreement to further extend the Alleged Fixed Term, which itself was in dispute).

59 As for the Third Addendum (which had not been considered earlier), I note that the Defendants' pleadings do not raise an issue concerning its effect on the existing agreements between the parties; the Defendants' plead that, notwithstanding what was agreed in the Third Addendum, "[a]ll other terms of the Employment Contract and the Second Addendum remain unchanged".⁷⁸ This position is consistent with what Mr Rohan has pleaded about the Third Addendum, namely, that it was an agreement to vary the Bonus Plan.⁷⁹ I note further that the parties are not in dispute as to what had been agreed to by way of the Third Addendum.⁸⁰ That being the case, I do not find any "issues in the case" arising in connection with the Third Addendum.

60 In respect of the First Addendum, the Second Addendum and the LSIH Agreement, as explained earlier, I was satisfied that discussions and negotiations prior to the entry into of each of these agreements would directly shed light on the issue of what effect each of these agreements had on the prior existing agreement(s) between the parties, and I also found documents

⁷⁸ DCC at para 48.

⁷⁹ SOC at para 18.

⁸⁰ SOC at para 18, DCC at para 48.

evidencing these discussions and negotiations to be material to that issue (see [36] above). For the same reasons, any such discussions and negotiations between Mr Rohan and Ms Lee over WhatsApp would be similarly material. I therefore allowed Category 7 in respect of the relevant time period where these discussions and negotiations are said to have taken place, based on the parties' pleadings, namely, (a) from February 2020 to May 2020, (b) from July 2020 to November 2020 and (c) November 2021.

61 In respect of the Alleged Further Agreement and/or the Alleged Quantum Agreement, the 24 Nov Discussion provides the backdrop to the 8 Dec Meeting, where Mr Rohan says the Alleged Further Agreement was first reached, and according to Mr Rohan, subsequent to 8 Dec Meeting, there had been further discussions and agreements reached concerning the Alleged Further Agreement and the Alleged Quantum Agreement, which took place right up until 1 July 2023, when Mr Rohan had e-mailed Ms Lee to follow up on the payment date for the first instalment of the Ownership Remuneration.⁸¹ I therefore accepted that, for the period from November 2022 until July 2023, there would have been similar discussions between Mr Rohan and Ms Lee over WhatsApp concerning the Alleged Further Agreement and the Alleged Quantum Agreement, and these discussions directly shed light on whether each of these alleged agreements exist and are therefore material to the relevant issues. For these reasons, I also allowed Category 7 in respect of the period from November 2022 until July 2023.

⁸¹ SOC at para 49.

SUM 1276

62 In SUM 1276, the Defendants seek orders for Mr Rohan to provide “the originals and native format” of documents listed in the CLOD for inspection by the Defendants. The scope of SUM 1276 initially encompassed the entirety of the CLOD, but by the time of the hearing before me, it was narrowed to the following two documents (“the Disputed Documents”):

- (a) the document listed at s/n 39 of the CLOD (described as “Chicken Supply Update and Price comparisons 2022 vs. 2023 (with markings added by the Claimant)”); and
- (b) the document listed at s/n 42 of the CLOD (described as “WhatsApp conversation between Rohan St George and June Lee” and from the period of “12 June 2022 to 3 July 2023”).

63 For the remainder of the CLOD, the Defendants no longer pursued them on the merits, but in respect of some items listed in the CLOD (namely, s/n 28, 31, 37, 38, 40, 41, 43 and 44), it asked that orders be made for Mr Rohan to provide certain explanations on affidavit. I will come to those items and the orders made later.

64 The Defendants’ application is brought pursuant to O 11 r 12 of the ROC 2021, which I set out in full below:

12.—(1) If a party requests to inspect the original of any document produced, the party who produced the document must arrange a mutually convenient time and place for the inspection to take place.

(2) Such inspection must take place within 14 days after the request unless the parties otherwise agree.

(3) If the party who produced the document fails to comply with paragraph (1) or (2), the requesting party may apply to the Court to compel that party to do so.

65 The Defendants made the following arguments in support of SUM 1276. First, where documents have been produced under O 11 of the ROC 2021, they *must* be allowed for inspection by the other party, except where privilege is asserted by the producing party over those documents. Secondly, the circumstances of this case warrant the court making an order for the inspection of the Disputed Documents – in respect of s/n 39 of the CLOD, while the Defendants do not appear to dispute that the underlying document had been prepared by one of its employees, because Mr Rohan had made certain markings on his version of that document, there is a need for inspection so the Defendants can determine if they wish to dispute the authenticity of that document for the purposes of trial; in respect of s/n 42 of the CLOD, the Defendants state that the record of the WhatsApp conversation between Mr Rohan and Ms Lee as produced by Mr Rohan at s/n 42 of the CLOD is incomplete, and they identified specific exchanges which have been removed from what should otherwise have been the full record of the exchange, given how the document at s/n 42 of the CLOD has been described.

66 Mr Rohan made the following submissions in response. First, for the court to make an order for inspection under O 11 r 12(3) of the ROC 2021, the threefold criteria for the production of documents under O 11 r 3 as set out in *Eng's Wantan Noodle* ([13] above) has to be independently satisfied. Secondly, SUM 1276 is entirely frivolous because there is no necessity for the reliefs sought – for s/n 39 of the CLOD, that is a document prepared by one of the Defendants' employees for Mr Rohan, and the Defendants would have this same document in its possession or control; for s/n 42 of the CLOD, Mr Rohan has already stated in his responsive affidavit for SUM 1276 that he is prepared to

adopt the Defendants' version of the missing WhatsApp messages, as per what they have identified, for the purposes of trial.⁸² There is also no purpose in the production of originals because, based on the DCC, the Defendants have not taken issue with the authenticity of the documents in the CLOD.⁸³ Thirdly, Mr Rohan has already stated in his responsive affidavit for SUM 1276 that he has no possession or control of the "originals" of several of the documents in the CLOD (which includes the Disputed Documents) and the version of those documents which he has produced to the Defendants are already in their "original and native format" and/or are "the only documents in [his] possession or control".⁸⁴ In fact, the documents listed in the CLOD are "copies unless otherwise stated". As such, there is no utility for any order to be made in SUM 1276 as there is nothing to be obtained by the inspection of those same documents which have already been produced and extended to the Defendants. An order for the inspection of such documents surely cannot be consistent with the Ideals in O 3 r 1 of the ROC 2021.

The applicable principles

67 The derivative provision of O 11 r 12 of the ROC 2021 in the Rules of Court (2014 Rev Ed) ("ROC 2014") is O 24 r 9, r 10 and r 11 (see *Singapore Civil Procedure* ([47] above) at para 11/12/1), where a distinction is drawn between the following types of documents: (a) documents contained in a list of documents ("LOD") served pursuant to a party's general discovery obligations under O 24 r 1 (see O 24 r 9); (b) documents referred to in pleadings or affidavits (see O 24 r 10); and (c) "any documents in the possession, custody or power"

⁸² 2nd affidavit of Rohan St George ("2R") at para 78.

⁸³ Summary Table for HC/SUM 1276/2024, Column D at para 15.

⁸⁴ 2R at para 73.

of a party in respect of which discovery has been given under O 24 (see O 24 r 11(2)).

Order 24 rr 9, 10 and 11 of the ROC 2014

68 Order 24 r 9 states that for documents contained in a LOD served under O 24 r 1, the disclosing party must within seven days serve a notice on the other party stating the time and place at which documents listed in the said LOD may be inspected, *ie*, produce the documents listed in the said LOD for inspection. Order 24 r 10 states that a party is entitled at any time to serve a notice for the other party to produce documents which that other party has referred to in its pleadings or affidavits for inspection and take copies thereof, in response to which that party must produce those documents for inspection. Where the disclosing party fails to produce documents for inspection in the manner required under O 24 r 9 or O 24 r 10, the other party may obtain an order from the court to compel production for inspection under O 24 r 11(1):

11.—(1) If a party who is required by Rule 9 to serve such a notice as is therein mentioned or who is served with a notice under Rule 10(1) —

- (a) fails to serve a notice under Rule 9 or, as the case may be, Rule 10(2);
- (b) objects to produce any document for inspection;
or
- (c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there,

then, subject to Rule 13(1), the Court may, on the application of the party entitled to inspection, make an order in Form 42 for the production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

69 As for all other “documents in the possession, custody or power” of a party in respect of which discovery has been given under O 24, an order to

compel production for inspection is made pursuant to O 24 r 11(2), which provides as follows:

(2) Without prejudice to paragraph (1), but subject to Rule 13(1), the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party in respect of which discovery has been given under any Rule in this Order or in pursuance of any order made thereunder.

70 Three features of O 24 r 11(1) and r 11(2) may be noted. First, although O 24 r 11 does not explicitly say so, a party’s right of inspection arises in respect of the *originals* of the documents in question (see, generally, *Fermin Aldabe v Standard Chartered Bank* [2009] SGHC 194 at [37]–[39]; Charles Hollander QC MA, *Documentary Evidence* (Sweet & Maxwell, 18th Ed, 2021 (“*Documentary Evidence*”) at para 8-13). Secondly, under both O 24 r 11(1) and r 11(2), the court is not bound to make an order to compel production for inspection, and it has a discretion to do so or not as it sees fit (see the decision of the English Court of Appeal in *Rafidain Bank v Agom Universal Sugar Trading Co Ltd and another* [1987] 1 WLR 1606 (“*Rafidain*”) at 1611). Based on the authorities, the grounds on which a party can rely to resist the making of an order under O 24 r 11(1) or r 11(2) are: (a) where it is able to assert a right or duty to withhold inspection, such as if the documents are privileged from production or where there is some public interest in refusing production (see *Frogmore Estates Plc v Berger & others* [1992] Lexis Citation 3650 (“*Frogmore Estates*”)); and (b) where the production of inspection of documents is not necessary for disposing fairly of the cause or matter (see O 24 r 13; see also *DMX Technologies Group Ltd (in liquidation) v Deloitte & Touche LLP* [2022] SGHCR 2 at [32]). There is also English authority for the proposition that, in the case of a composite document containing both relevant and irrelevant material, the obligation to produce for inspection arises only in

respect of the relevant portion, and when the said document is produced for inspection, the irrelevant parts may be covered up (see *Frogmore Estates*).

71 Thirdly, while O 24 r 11(2) refers to “possession, custody or power” (“PCP”) as a requirement for the making of an order under that rule, O 24 r 11(1) does not contain any reference to PCP. This suggests that a party’s PCP of documents is not a *requirement* for the making of an order under O 24 r 11(1) in respect of documents contained in a LOD served pursuant to general discovery or documents referred to in affidavits or pleadings, whereas the same is an express *requirement* for an order under O 24 r 11(2). Put another way, a court has to be independently satisfied that the disclosing party has PCP of documents before it can make an order in respect of those documents under O 24 r 11(2). This means that, while a party can resist the making of an order under O 24 r 11(2) by relying on its absence of PCP over the documents in question, the absence of PCP would not “invariably” amount to good reason for the court to not make an order under O 24 r 11(1) (see *Rafidain* at 1611).

Order 11 r 12 of the ROC 2021

72 The regime under the ROC 2021 is relatively more straightforward in that O 11 r 12 does away with the distinction between the three types of documents drawn in O 24 rr 9, 10 and 11. Order 11 r 12(1) only contemplates a single class of documents – documents which have been “produced” under O 11, the main types of which include those produced voluntarily under O 11 r 2 or pursuant to a request for specific production under O 11 r 3. Order 11 r 12(1) and r 12(2) states that, upon a party’s request to inspect the “original” of any document produced, the producing party “must” allow for inspection within 14 days after the request, unless otherwise agreed. Under O 11 r 12(3), where the producing party fails to allow for inspection as required under O 11 r 12(1)

and r 12(2), the requesting party may apply to the court to compel the producing party to do so.

73 With the prior regime under the ROC 2014 in mind, I make four observations about O 11 r 12. First, O 11 r 12 provides for a party's *right* to inspect documents *produced* by the other party; that right arises when documents have been produced and in respect of those produced documents (see also *Singapore Rules of Court: A Practice Guide 2023 Edition* (Chua Lee Ming editor-in-chief) (Academy Publishing, 2023) at para 11.046). In other words, once documents have been produced pursuant to O 11 of the ROC 2021, the other party is entitled to the inspection of those documents, unless good reason is shown as to why the producing party is entitled to withhold inspection and so the court should not make an order under O 11 r 12(3); logically, it follows that the burden is on the *producing party* to demonstrate why it should be entitled to *withhold* inspection and/or why the court should *not* make an order under O 11 r 12(3). As a starting point, there is no need for the requesting party to separately or independently *justify* his entitlement to inspect those documents, save for *responding* to the grounds on which the producing party has relied to *withhold* inspection.

74 Secondly, O 11 r 12 refers to the "original" of a document. Although the term "original" is not defined, in my view, it simply refers to whatever had been produced by the producing party in discharge of his obligations of production under O 11, and so it can encompass both the "original" (understood literally) or the primary copy of a document, depending on the version of that document which came within the scope of its obligations of production. As explained in *Documentary Evidence* (at para 7-25, footnote 73):

If the disclosing party has the original, he must list it, and thus the obligation arises to permit inspection of the document

listed. If he only has a copy, it is the primary or original copy which he must technically list, so the obligation relates to that document.

75 Therefore, if the document produced is a *print* document, then the “original” simply refers to a *hardcopy* of that same document which had been used for production. If the document produced is an *electronically generated* document, then the “original” must refer to its native format. Specifically, what constitutes the “native format” is dependent on the type of the document in question. In a case where the produced document consists of e-mails, that would typically refer to e-mails in their original digital file format (such as the .pst file format). In a case where the produced documents consist of a record of phone messages, that would typically refer to the messages as displayed on the relevant device from which the record had been generated. I therefore disagreed with Mr Rohan’s submission that his description of the documents listed in the CLOD as “(copies unless otherwise stated)” in and of itself relieves him of his obligation to provide inspection of the same. Even if what had been produced in the CLOD were mere “copies”, the Defendants are *prima facie* entitled to inspection of the same, unless Mr Rohan demonstrates good reasons to the contrary.

76 Thirdly, since O 11 r 12 refers to documents which have been “produced”, at the risk of stating the obvious, by the time a request for inspection is made pursuant to O 11 r 12(1) or where an order is sought under O 11 r 12(3), the documents in respect of which inspection is sought would already have been *produced*. A party who refuses to allow a document for inspection or seeks to resist the making of an order under O 11 r 12(3) should therefore rely on grounds *apart* from those which entitle him to withhold the *production* of a document, because where those documents have already been *produced*, it would be supposed that these grounds no longer exist. Therefore, a

party should not be allowed to refuse inspection on the basis that it lacks possession or control over the document in question or that it is not material to the issues in the case (see O 11 r 2 and r 3), or because the said document is privileged or where its production would be contrary to the public interest (see O 11 r 5 and r 8) or because the document forms part of a party's "private or internal correspondence" (O 11 r 5).

77 This interpretation of O 11 r 12(3) in my view furthers the Ideals in O 3 r 1(2) of the ROC 2021 (and specifically those of expeditious proceedings and effective use of court resources) because it ensures that parties do not engage in a further round of litigation over substantially identical issues at the stage of *inspection* after the documents in question have already been *produced*. It is for this reason that I disagreed with Mr Rohan's submission that the court must be independently satisfied of the threefold criteria in *Eng's Wantan Noodle* ([13] above) before it can make an order under O 11 r 12(3). Of course, the making of an order under O 11 r 12(3) is in the discretion of the court and there can be circumstances where a producing party can be found to be *entitled* to withhold inspection of certain documents – the point I make here is simply that the producing party cannot rely on the same grounds which affect its obligation to *produce* a document as a ground for withholding *inspection* under O 11 r 12, where that document has already been *produced*.

78 Finally, unlike O 24 r 11(1) and r 11(2) of the ROC 2014 which expressly state that production for inspection is subject to the court being satisfied that this is "necessary either for disposing fairly of the cause or matter or for saving costs", O 11 r 12(3) contains no such limitation. Nonetheless, in my view, the *necessity* of inspection, whether from the perspective of saving costs or in achieving a fair disposal of the matter, continues to be a relevant consideration for the court when deciding whether an order for inspection is to

be made under O 11 r 12(3). This is because ultimately, an order under O 11 r 12(3) should be made with the aim of achieving the Ideals in O 3 r 1 of the ROC 2021 and such considerations of necessity would come within the Ideals of cost-effective work, efficient use of court resources, and fair and practical results suited to the needs of the parties.

My decision

79 Applying the principles I have outlined above, for the purposes of SUM 1276, the Defendants are *prima facie* entitled to the inspection of the Disputed Documents. If Mr Rohan seeks to resist SUM 1276, the burden is on him to demonstrate that: (a) inspection would be contrary to the Ideals of cost-effective work, efficient use of court resources, and fair and practical results suited to the needs of the parties; and/or (b) there is some other ground on which he is entitled to withhold *inspection* that is separate to and independent of his entitlement to withhold *production* of the document for which inspection is sought by the Defendants.

s/n 39 of the CLOD

80 For the document listed at s/n 39 of the CLOD, Mr Rohan's main argument is, since this is a document common to both himself and the Defendants (it being a document originating from the Defendants), the Defendants themselves would be in possession or control of this same document, and so there is no necessity for any order under O 11 r 12(3) to be made. I was unpersuaded by Mr Rohan's submissions, for two reasons.

81 First, I accept that it might not be cost-efficient for the court to make an order for inspection in respect of certain documents if all which the other party would inspect are the very same documents of which it already is in possession

or control of. However, if Mr Rohan seeks to rely on this contention against the Defendants to withhold inspection of the document listed at s/n 39 of the CLOD, it must point to some proof that this document is the same document which the Defendants already have possession or control of; that he has not done and it cannot suffice for him to barely assert that the document in s/n 39 of the CLOD is “common” to both parties.⁸⁵ In any event, such a contention would have been incorrect because the document listed at s/n 39 of the CLOD is unique to Mr Rohan as it bears “markings added by [Mr Rohan]”, which is how Mr Rohan has described the document listed at s/n 39 of the CLOD. So long as any such markings exist, the document is by definition distinct; whether or not these markings eventually come to be consequential or material for the purposes of the issues in the action is neither here nor there. In any event, I do not think requiring Mr Rohan to allow this single document for inspection would be contrary to the relevant Ideals in the ROC 2021 since the time and expense associated with allowing such a document for inspection is likely to be fairly limited anyway.

82 Secondly, the Defendants’ entitlement to inspect the document listed at s/n 39 of the CLOD arises by virtue of that document being *produced* by Mr Rohan, subject to Mr Rohan making good his case as to why he should be entitled to withhold inspection and/or why an order should not be made under O 11 r 12(3). It is not for the Defendants to *justify* their entitlement to an order under O 11 r 12(3). For these reasons, I found Mr Rohan’s submission about the Defendants not having raised in the DCC an issue as to the authenticity of the documents in the CLOD to be neither here nor there. This is simply not a relevant ground on which Mr Rohan can rely to resist the making of an order

⁸⁵ Summary Table for HC/SUM 1276/2024, Column D at paras 39–40.

under O 11 r 12(3). The Defendants do not have to raise an issue of authenticity to justify their entitlement to inspection, which arises as of right under O 11 r 12. In any case, without having viewed the “originals” of these documents, how is the Defendants to then decide whether a dispute as to authenticity is to be raised and how it is to be maintained?

83 For these reasons, I ordered that Mr Rohan provide to the Defendants for inspection the “original” of the document listed at s/n 39 of the CLOD, the reference to “original” being the version of the said document which Mr Rohan had produced for the purposes of complying with his general production obligations in exchanging the CLOD with the Defendants.

s/n 42 of the CLOD

84 For the document listed at s/n 42 of the CLOD, Mr Rohan’s main argument is that he is prepared to adopt for the purposes of trial the WhatsApp messages which the Defendants identified as having been removed from the record of the exchange between Ms Lee and Mr Rohan (and which s/n 42 of the CLOD is supposed to contain), and accordingly, there is no utility for an order to be made. I did not find this submission persuasive and certainly it did not constitute a reason why inspection would come to be contrary to the relevant Ideals in O 3 r 1 of the ROC 2021. Mr Rohan is prepared to adopt *certain* messages identified by the Defendants (which they say were removed) as forming part of the entire record of WhatsApp messages between himself and Ms Lee in the relevant period of time; Mr Rohan is not saying that he is prepared to adopt wholesale the Defendants’ record of WhatsApp messages as being the full record for the purposes of trial. That being the case, there is no basis on which Mr Rohan can contend that an order for the inspection of the WhatsApp messages which he has produced is unnecessary in terms of cost-efficiency and

the related Ideals. In any case, the Defendants do not appear to have listed in the DLOD (or in their supplementary list of documents dated 4 June 2024 (“the DSLOD”)) such a full record of the WhatsApp messages exchanged between Ms Lee and Mr Rohan for the same period of time as that specified for the document listed at s/n 42 of the CLOD. Mr Rohan also argued that what the Defendants have pointed out as the removed messages were in fact incomplete⁸⁶ – again, that is neither here nor there because the Defendants do not have to *justify* their entitlement to inspect the document listed at s/n 42 of the CLOD; it is for Mr Rohan to demonstrate reasons to the contrary if he seeks to resist SUM 1276, and in my view, he has not demonstrated any.

85 The document listed at s/n 42 of the CLOD was “extracted from the WhatsApp client” on Mr Rohan’s phone⁸⁷ and therefore it was electronically generated. In these circumstances, the Defendants’ right of inspection arises in connection with s/n 42 of the CLOD in its native format, being the record of WhatsApp messages as displayed on the WhatsApp client on the phone or device, from which this record had been generated. Accordingly, I ordered that Mr Rohan provide to the Defendants for inspection the “native format” of the document listed at s/n 42 of the of the CLOD, namely, that Mr Rohan allow for the Defendants’ inspection of the record of the WhatsApp messages in s/n 42 of the CLOD on the WhatsApp client of the phone or device from which this record had been generated.

86 I address a further point for completeness. As I mentioned earlier, one ground which the Defendants have relied on in seeking an order for the inspection of the document listed at s/n 42 of the CLOD is that the relevant

⁸⁶ 2R at para 78.

⁸⁷ 2R at para 75.

WhatsApp exchange produced by Mr Rohan is incomplete and to that end they had identified specific exchanges which they allege Mr Rohan had removed from the record. Mr Rohan does not directly take a position on this – he simply states that the “relevant and material parts” of the conversation between himself and Ms Lee has been produced.⁸⁸ For the purposes of SUM 1276, I need not deal with the merits of the Defendants’ submission about s/n 42 of the CLOD being incomplete because, as explained earlier, the Defendants’ right of inspection in this case arises by virtue of the document having been *produced* by Mr Rohan; the Defendants do not have to make good their case about Mr Rohan’s incomplete production in order to demonstrate their entitlement to inspect s/n 42 of the CLOD. Of course, if the allegation of incomplete production were made good, then all the more should the court make an order under O 11 r 12(3). Be that as it may, I would say that, given Mr Rohan’s description of s/n 42 of the CLOD as being the “WhatsApp conversation between [himself] and [Ms Lee]” in the period between “12 June 2022 and 3 July 2023” without any further limitation in the description in terms of its relevant time period or the subject matter to which it relates, by definition, the document at s/n 42 of the CLOD encompasses the *entirety* of the WhatsApp exchange between Mr Rohan and Ms Lee in the relevant period of time. Put another way, any such record of the WhatsApp exchange between Mr Rohan and Ms Lee extends to the entirety of the WhatsApp exchange, and is not only limited to those parts of the exchange which are “relevant and material”, as Mr Rohan attempts to suggest.

⁸⁸ 2R at para 75.

The other documents listed in the CLOD for which the Defendants sought orders in SUM 1276

87 I now come to the remaining documents for which the Defendants sought orders in SUM 1276.

88 For the documents listed at s/n 28 and 31 of the CLOD (which took the form of e-mails sent by Mr Rohan), Mr Rohan had confirmed in his responsive affidavit in SUM 1276 that he has managed to locate the “originals/native format” of these e-mails, and he is prepared to provide to the Defendants these e-mails “in their original native format”.⁸⁹ As such, by the consent of the parties, I ordered Mr Rohan to provide to the Defendants the native format of the documents listed at s/n 28 and 31 of the CLOD, the “native format” being these e-mails at s/n 28 and 31 of the CLOD in their digital file format.

89 For the documents listed at s/n 37, 38, 40 and 41 of the CLOD, the Defendants have confirmed that they were not pursuing them for the purposes of SUM 1276, subject to Mr Rohan stating on affidavit that the documents disclosed are originals and/or are already in their native format.⁹⁰ I note, however, that Mr Rohan has already confirmed in his responsive affidavit in SUM 1276 that in respect of these documents, “the documents disclosed ... are already in its original and native format and/or the only documents in my possession or control”.⁹¹ I therefore made no order in SUM 1276 in respect of the documents listed at s/n 37, 38, 40 and 41 of the CLOD.

⁸⁹ 2R at para 48.

⁹⁰ Summary Table for HC/SUM 1276/2024, Column E at para 7.

⁹¹ 2R at para 73.

90 For the documents listed at s/n 43 and 44 of the CLOD (which took the form of screenshots of WhatsApp messages exchanged between two sets of individuals and to which Mr Rohan was not party), the Defendants have confirmed that they were not pursuing them for the purposes of SUM 1276, subject to Mr Rohan stating on affidavit (a) that the documents produced are the only documents in his possession or control and (b) how these documents came into his possession or control.⁹² Mr Rohan confirmed in his responsive affidavit filed in SUM 1276 that for these documents, “the documents disclosed ... are already in its original and native format and/or the only documents in my possession or control”.⁹³ The documents listed at s/n 43 and 44 of the CLOD are digital images (being screenshots of WhatsApp messages) and hence electronically generated from the phone or device by which those screenshots were taken. The Defendants’ right of inspection *vis-à-vis* these documents therefore arise in connection with its native format, being the display of these screenshots on the relevant phone or device from which the screenshot had been created. By confirming that the *copies* of these screenshots as produced at s/n 43 and 44 of the CLOD are the only documents which he has possession and control of, Mr Rohan is effectively saying that he does not have in his possession or control the native format of these screenshots. In these circumstances, the Defendants are entitled to know why, despite not having possession or control of the native format of these screenshots, Mr Rohan was able to produce them in the CLOD.

Conclusion and costs

91 To summarise, I allowed SUM 1277, subject to the following:

⁹² Summary Table for HC/SUM 1276/2024, Column E at para 7.

⁹³ 2R at para 73.

- (a) The requests in Categories 1(a), 3(b) and 5 are refused.
- (b) The request in Category 4(a) is allowed, but only to the extent of the discussions between Ms Lee and her family in respect of the 8 Dec Meeting and matters arising therefrom.
- (c) The request in Category 4(b) is allowed, but only to the extent of the discussions between Ms Lee and her family in respect of the 20 Jun Meeting and matters arising therefrom.
- (d) The request in Category 7 is allowed, but only in respect of the following time periods: (i) February 2020 to May 2020; (ii) July 2020 to November 2020; (iii) November 2021; and (iv) November 2022 to July 2023.

92 In connection with SUM 1276, in addition to the orders above (at [88]–[90]), the application was allowed in respect of the Disputed Documents and I ordered Mr Rohan to provide to the Defendants for inspection:

- (a) the “original” of the document listed at s/n 39 of the CLOD, that being the version of the said document which Mr Rohan had produced in the CLOD exchanged with the Defendants; and
- (b) the “native format” of the document listed at s/n 42 of the CLOD, and Mr Rohan is to allow for the Defendants to inspect the record of the WhatsApp messages which s/n 42 of the CLOD contains (see [86] above) as displayed on the WhatsApp client of the phone or device from which this record had been generated.

93 Coming to the costs of SUM 1277, Mr Rohan submitted that he should be awarded costs of \$10,000, inclusive of disbursements. The Defendants

argued that no order as to costs be made and urged me to have regard to the fact that several categories of SUM 1277 had not been allowed, and further, two categories of requests initially pursued in SUM 1277 had been dropped subsequently. The dropping of the two categories of requests was the subject of some contention at the hearing where SUM 1277 was heard. For the first dropped request,⁹⁴ it had transpired, subsequent to the parties' filing of the summary table for SUM 1277, that the document requested therein (an e-mail sent by Ms Lee to Mr Rohan) had in fact already been produced at s/n 55 of the DLOD. Mr Rohan's position is that he only came to realise this after the Defendants put in their responsive submissions in the parties' summary table for SUM 1277. Mr Rohan further explained that the confusion had arisen because the timestamp of this document (6.48pm), as described at para 98 of the DCC where it is referred to, did not correspond to its actual timestamp and the manner in which it had been described at s/n 55 of the DLOD. The Defendants do not appear to deny that they only offered clarification by way of their responsive submissions for the summary table, but they say that Mr Rohan ought to have recognised this since the native copies of the e-mails produced in the DLOD had been made available for inspection by Mr Rohan's solicitors. For the second dropped request, it is not in dispute that this was produced by the Defendants (as part of the DSL/D) *after* SUM 1277 came to be filed.⁹⁵

94 The starting point is that costs are ordered in favour of a successful party except when it appears to the court that in the circumstances of the case, some other order should be made as to the whole or any part of the costs (see O 21 r 3 of the ROC 2021). In determining the identity of the successful party, the court looks at the outcome of the litigation overall, in a realistic and commercially

⁹⁴ Schedule to HC/SUM 1277/2024, para 3(a).

⁹⁵ 2L at para 97.

sensible way, asking which party in substance prevailed (see *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2022] SGHC 77 at [28]). In this case, only three of the various requests in SUM 1277 were refused in their entirety, and some adjustments in scope were made in respect of three other requests; Mr Rohan prevailed on all the other requests made in SUM 1277 as prayed for in their original form (see [91] above). I do not think it can be seriously disputed that Mr Rohan is the successful party in SUM 1277. In respect of those requests which were refused or moderated in scope, I do not think Mr Rohan had conducted the proceedings in such a manner that should deprive his *overall* entitlement to costs or warrant a *reduction* in the quantum of costs which he should be awarded.

95 That being the case, the only issue to be decided is whether the first and second dropped requests is in any way material. I did not think so. In respect of the second dropped request, while it was eventually not pursued, the point is the Defendants only acceded to produce the relevant document *after* SUM 1277 was filed. For the purposes of costs, I think Mr Rohan may be regarded as having effectively prevailed in this request. As for the first dropped request, I think the manner in which the parties argued at the hearing of SUM 1277 as to who is to blame for Mr Rohan not recognising earlier that the document therein had in fact been produced by way of s/n 55 of the DSLOD was rather disproportionate and excessive when things were viewed against the bigger picture. Be that as it may, I think both sides ought to bear some blame – Mr Rohan ought to have noted from the manner in which the document at s/n 55 of the DLOD had been described that it might correspond to the document which he requested for by way of the first dropped request (since the description at s/n 55 of the DLOD specifically said “Email ... from June Lee to Rohan dated 3 January 2023 (timestamped 6:48pm)”, and he also ought to have taken the

initiative to seek the Defendants' clarification; in the same vein, the Defendants could have provided the clarification when Mr Rohan first sought this document by way of a request made to the Defendants' solicitors on 30 April 2024, before SUM 1277 was filed.⁹⁶ In these circumstances, I do not think the first dropped request should have any bearing on Mr Rohan's entitlement to costs and the quantum of the same. Having regard to the costs guidelines in Appendix G of the Supreme Court Practice Directions 2021 ("Appendix G"), the length of the parties' written submissions as set out in the summary table for SUM 1277 and the time spent at the hearing, as well as the breadth of issues raised in SUM 1277, I order the Defendants to pay to Mr Rohan costs of \$10,000 (all in).

96 As for the costs of SUM 1276, in recognition of the significantly reduced scope of the application (which eventually was reduced to only two of several items listed in the CLOD, apart from the other items for which various orders were sought), the Defendants argued that the application nonetheless had been necessary because without it the clarifications offered by Mr Rohan (and which rendered the application in SUM 1276 unnecessary in respect of the other items) would not have been forthcoming. Mr Rohan argued that the Defendants had taken a "scattergun approach" in SUM 1276 and urged me to have regard that orders were eventually made in SUM 1276 only for a minority of the items in the CLOD, and further, that Mr Rohan had already taken the position that the version of the documents produced were the "the only documents in [his] possession or control". As such, SUM 1276 was frivolous, and Mr Rohan should be paid costs of \$11,000 (all in) for SUM 1276. It would be apparent from the reasons on which I allowed SUM 1276 in respect of the Disputed Documents that I disagreed entirely with Mr Rohan's characterisation of SUM 1276; by

⁹⁶ 2L at paras 9–12.

virtue of O 11 r 12, the Defendants were entitled to make the request for inspection in respect of documents in the CLOD, and they were fully justified in taking out SUM 1277 when Mr Rohan's clarifications or responses were to their mind unsatisfactory. Although the orders made in SUM 1276 pertained to a minority of the documents in the CLOD, the point is that satisfactory clarifications from Mr Rohan only came about *after* SUM 1276 was filed. I therefore did not think that the significantly reduced scope of the application in SUM 1276 ought to be a reason for denying the Defendants' entitlement to costs or for reducing such costs. Since SUM 1276 ultimately is an application relating to the production of documents, I took guidance from the corresponding section of the costs guidelines in Appendix G, and having regard the length of the parties' written submissions as set out in the summary table for SUM 1276 and the time spent at the hearing, I consider the costs of \$9,000 (all in) as sought by the Defendants from Mr Rohan to be reasonable and accordingly so order.

Perry Peh
Assistant Registrar

Joshua Quek (Drew & Napier LLC) for the claimant;
Li Jiabao and Thong Ying Xuan (LVM Law Chambers LLC) for the
defendants.
