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

[2024] SGHC 16

Suit No 1130 of 2020 (Summonses Nos 2544, 2545 and 2546 of 2023)

Between

Eugene Phoa (personal representative of the estate of Evelyn Phoa, @ Lauw, Evelyn Siew Chiang, deceased, and personal representative of the estate of William Phoa, deceased)

… *Plaintiff*

And

(1) Oey Liang Ho @ Henry Kasenda (sole executor of the estate of Wirio Kasenda @ Oey Giok Tjeng, deceased)
(2) Oey Liang Gie @ Jimmy Kasenda
(3) Salman Kasenda @ Oey Liang Hien @ Oei Liang Hien
(4) Ridwan Kasenda @ Oey Liang Ley @ Oei Liang Ley
(5) Joshua Huang Thien En
(6) Wellington Phoa
(7) Angeline Teh @ Angeline Phoa
(8) John Phoa (personal representative of the estate of Benjamin Phoa, deceased)

… *Defendants*

JUDGMENT

[Civil Procedure — Trial — Adducing fresh evidence after trial]
[Civil Procedure — Parties — Standing]
[Probate and Administration — Personal representatives]

TABLE OF CONTENTS

Phoa Eugene (personal representative of the estate of Evelyn Phoa (alias Lauw Evelyn Siew Chiang), deceased and personal representative of the estate of William Phoa, deceased)
v
Oey Liang Ho (alias Henry Kasenda) (sole executor of the estate of Wirio Kasenda (alias Oey Giok Tjeng), deceased) and others

[2024] SGHC 16

General Division of the High Court — Suit No 1130 of 2020 (Summonses Nos 2544, 2545 and 2546 of 2023)
Goh Yihan J
27, 31 October 2023

23 January 2024 Judgment reserved.

Goh Yihan J:

1 There are three applications before me, all of which were made by the plaintiff, Mr Eugene Phoa ("Eugene"), *after* the end of the trial for the underlying suit, HC/S 1130/2020 (the "Suit"). These applications were also made *after* the parties had filed their closing submissions and reply submissions. The three applications are as follows:

(a) HC/SUM 2544/2023 (the "Further Evidence Application") is Eugene's application to adduce further evidence after trial pertaining to the extraction of the resealed grant of foreign letters of administration in

relation to the estate of the deceased Mdm Evelyn Phoa ("Evelyn" and "Evelyn's Estate").

(b) HC/SUM 2546/2023 (the "Appointment Application") is Eugene's application for the court to appoint him, pursuant to O 15 r 15 of the Rules of Court (2014 Rev Ed) (the "ROC 2014"), as a person to represent Evelyn's Estate in the Suit, in the event that the court finds that Eugene does not already have valid representative capacity in respect of Evelyn's Estate.

(c) HC/SUM 2545/2023 (the "Amendment Application") is Eugene's application to amend the wording in the title-in-action in the Suit for the avoidance of confusion, in so far as Eugene has, within the Suit, already demonstrated that he appears before the court in his personal capacity, as a one-fifth beneficiary of Evelyn's Estate.

2 After taking some time to consider the parties' submissions and the relevant documents, I dismiss all three applications for the reasons below.

Background facts

The background leading to the present applications

3 It is not necessary to set out the material facts of the Suit in detail. It suffices to explain that the Suit is in relation to the beneficial interests of Evelyn in the shareholding of Supratechnic Pte Ltd ("Supratechnic") against the Kasenda family, who comprise some of the defendants. In particular, the Suit concerns the claims of Evelyn's Estate and the estate of Mr William Phoa ("William" and "William's Estate") (collectively, "the Estates") to such interests. Supratechnic is in turn a private company incorporated in Singapore

on 11 April 1968, with 300 shares originally subscribed to.[1] The entire business was sold to USPI Investment Pte Ltd, which is a wholly owned subsidiary of USP Group Limited ("USP Group"), in March 2016 for more than $14m.[2]

4 According to Eugene, the present applications have been necessitated by the defendants' argument in their Closing Submissions that Eugene does not have standing to bring the Suit.[3] In those Closing Submissions, the defendants had argued that Eugene's claims should fail because he did not extract the resealed grant of the foreign letters of administration for either of the Estates in Singapore. Thus, until and unless Eugene has done so, the defendants submitted that Eugene has no standing as the personal representative of the Estates to bring the Suit in either Evelyn's Estate's or William's Estate's name.[4] To resolve this matter, it is useful to traverse the sequence of events that have led to the defendants' challenge to Eugene's standing to bring the Suit.

Eugene's attempt to extract the resealed grant of Canadian letters of administration in Singapore

5 The relevance of the foreign letters of administration began when Evelyn passed away intestate in Canada on 7 November 1981.[5] On 4 April 2005, William passed away.[6] On 11 October 2005, the beneficiaries to Evelyn's Estate, which included Eugene, obtained the grant of letters of

---

1 Affidavit of Evidence-in-Chief ("AEIC") of Eugene Phoa filed on 3 October 2022 ("Eugene Phoa's AEIC") at paras 27 and 31–32.

2 Eugene Phoa's AEIC at pp 1468–1469.

3 4th Affidavit of Kimberly Ng Qi Yuet filed on 22 August 2023 ("Kimberly Ng's Affidavit") at para 8.2.

4 Defendants' Closing Submissions for HC/S 1130/2020 filed on 26 July 2023 ("DCS") at paras 38–43.

5 Eugene Phoa's AEIC at para 8.

6 Eugene Phoa's AEIC at para 178.

administration in Canada (the "Canadian LA").[7] Each of the beneficiaries was named as an authorised administrator "of all rights of action of the Deceased's property".[8] In 2006, the authorised administrators engaged solicitors to extract the resealed grant of the Canadian LA in Singapore.[9] On 21 July 2006, the application to do so was filed as P 129/2006 ("P 129").[10] On 21 August 2006, the Family Justice Courts (the "FJC") granted an order-in-terms on P 129 but, in Eugene's own words in his Affidavit of Evidence-in-Chief ("AEIC") filed on 3 October 2022, "there was still the *need* to complete the extraction of the Singapore Letter of Administration" [emphasis added].[11] The extraction remained pending because Singapore still imposed estate duty tax for deaths in 1981. Thus, as Eugene himself explains, in order to extract the "Singapore probate papers", the Commissioner for Estate Duty (the "CED") of the Inland Revenue Authority of Singapore ("IRAS") must either provide a certification of payment or a certificate of postponement (the "Certificate of Postponement") of the tax concerned.[12] On 5 December 2006, because Eugene was unable to ascertain the value of Evelyn's Estate pending the resolution of a share dispute with the defendants, he wrote to the CED to request a postponement of estate duty until the question of beneficial ownership was resolved.[13] By February 2008, despite the exchange of subsequent correspondence with the CED, the CED had not decided on the postponement that Eugene requested.[14]

---

7 Eugene Phoa's AEIC at para 182.

8 Eugene Phoa's AEIC at p 1407.

9 Eugene Phoa's AEIC at para 183.

10 Eugene Phoa's AEIC at para 183 and pp 1471–1472.

11 Eugene Phoa's AEIC at para 184.

12 Eugene Phoa's AEIC at para 184.

13 Eugene Phoa's AEIC at para 185.

14 Eugene Phoa's AEIC at para 186.

6 After this, Eugene engaged in further discussions with the Kasendas. These discussions continued until a final email from Mr Wellington Phoa to Mr Ridwan Kasenda (alias Oey Liang Ley) dated 28 September 2011.[15] Since the Kasendas did not reply to that email, Eugene instructed his solicitors to resume communications with the CED from September 2011. The purpose of those communications was, as with before, to procure the CED to issue a Certificate of Postponement. According to Eugene, he received a last communication from the CED on 5 September 2012, where the CED provided an estimated amount of estate tax.[16] However, the CED had yet to decide whether to issue a Certificate of Postponement. A significant time then passed with no reply from the CED. However, from Eugene's perspective, there was "nothing required of the Phoas or [their solicitors] in order for [the CED] to make its decision" and that "they may have overlooked issuing a response entirely".[17]

Commencement of the Suit and the trial

7 Despite knowing that the CED had not issued a Certificate of Postponement, Eugene commenced the Suit on 20 November 2020. Indeed, Eugene provides no further substantive reference to his dealings with the CED in his AEIC after the communications in September 2012. In his Statement of Claim, Eugene pleaded the capacity in which he is bringing the Suit in these terms:[18]

> The Plaintiff in this Suit is Eugene Phoa, QC, a retired barrister residing in Alberta, Canada. He makes claim in his capacity as

---

15 Eugene Phoa's AEIC at paras 198 and 203.

16 Eugene Phoa's AEIC at para 204.

17 Eugene Phoa's AEIC at para 205.

18 Statement of Claim (Amendment No. 1) filed on 9 June 2022 at para 11.

> *personal representative* of the estate of Mdm Evelyn Phoa. He also represents the estate of William Phoa (as *personal representative*) insofar as that estate is a one-fifth beneficiary of the estate of Mdm Evelyn Phoa.
>
> [emphasis added]

The defendants did not admit to this paragraph of the Statement of Claim in the original Defence filed on 16 February 2021, as well as all subsequent amended versions.[19]

8 The parties filed their AEICs on 4 October 2022. The parties later filed supplementary AEICs on 10 April 2023. The parties then filed their respective opening statements on 23 May 2023. Pertinently, the defendants raised the issue of Eugene's standing, albeit in relation to William's Estate.[20] In particular, the defendants stated that "[t]here is no evidence that Eugene has resealed probate in Singapore in respect of William's [E]state absent which William's [E]state has no standing to sue".[21] In the present application, the defendants assert that Eugene must have appreciated that his standing was a live issue because, three days after the exchange of the opening statements, his present solicitors, Salem Ibrahim LLC ("SILLC"), wrote to the CED on 26 May 2023 asking them to issue the Certificate of Postponement.[22]

9 The trial for the Suit started on 30 May 2023. In the midst of trial, on 12 June 2023, Eugene disclosed post-2012 communications that SILLC had

---

19 Defence filed on 16 February 2021 at para 8; Defence (Amendment No. 1) filed on 29 September 2021 at para 8; Defence (Amendment No. 2) filed on 28 April 2022 at para 8; Defence (Amendment No. 3) filed on 19 July 2022 at para 8; Defence (Amendment No. 4) filed on 2 December 2022 at para 8.

20 Defendants' Opening Statement filed on 23 May 2023 at para 23.

21 Defendants' Opening Statement filed on 23 May 2023 at para 23.

22 Defendants' Written Submissions for HC/SUM 2544/2023, HC/SUM 2545/2023, and HC/SUM 2546/2023 filed on 16 October 2023 ("DWS") at para 84.

with the CED and the FJC. One of those communications was a letter from the FJC dated 30 March 2022. In that letter, the FJC informed SILLC that Eugene's request for leave to extract the resealed grant of foreign letters of administration for Evelyn's Estate was refused. Thus, on the second last day of trial, the defendants' solicitors, LVM Law Chambers LLC ("LVMLC"), highlighted that these issues included "issues relating to discovery and standing".[23] On the last day of trial, LVMLC again emphasised that these issues should be dealt with "by way of submissions as part of the closing submissions".[24] SILLC's lead counsel confirmed that he was fine with this.[25]

Events after the trial leading to the present applications

10 After the trial, the parties filed their closing submissions on 26 July 2023. The defendants in their Closing Submissions challenged Eugene's standing to sue in the Suit. In particular, they argued that Eugene's claims should fail because he had not extracted the resealed grant of foreign letters of administration for either of the Estates in Singapore.[26] Eugene did not, in his Closing Submissions, address the issue of his standing to sue in the Suit.

11 On 11 August 2023, which was just three working days before the parties were due to submit their reply submissions on 16 August 2023, SILLC wrote to the court. Among other matters, SILLC proposed that the parties defer dealing with the issue of standing in their reply submissions until after Eugene finally obtained the Certificate of Postponement and extracted the resealed grant of foreign letters of administration. On 15 August 2023, SILLC tendered

---

23 Certified Transcript 14 June 2023 at p 2 line 3.

24 Certified Transcript 15 June 2023 at p 218 lines 21–22.

25 Certified Transcript 15 June 2023 at p 219 line 23.

26 DCS at paras 38–43.

another letter to court, in which it requested for an extension of time to file the reply submissions due to their lead counsel's bereavement. By way of a letter to the parties dated 15 August 2023, I allowed the parties to file their reply submissions only on 21 August 2023. However, I made it clear that I had granted the extension of time due to the unfortunate bereavement and *not* because I agreed with SILLC that the parties should defer addressing the issue of standing. In particular, I had said this:

> On the probate matter, the Court declines to extend the deadline for the reply submissions on this basis. In essence, the plaintiff bears the burden of establishing his claim against the defendant, including satisfying the question of standing. The plaintiff has conducted his case in a manner of his choosing to date, and the defendant should not have to bear the consequences of any change in his case. Should the plaintiff wish to make any application to adduce further evidence post-trial, he should take out such an application expeditiously.

12 On 18 August 2023, the CED issued the Certificate of Postponement to the FJC.[27]

13 One day after the parties filed their reply submissions on 21 August 2023, Eugene filed the present three applications on 22 August 2023.

14 On 25 September 2023, the FJC allowed the extraction of the resealed grant of the Canadian LA.[28] It bears emphasising that this was long after the present Suit was commenced on 20 November 2020.

15 It is against this background that I have to consider the present applications.

---

27 Plaintiff's Written Submissions for HC/SUM 2544/2023, HC/SUM 2545/2023, and HC/SUM 2546/2023 filed on 16 October 2023 ("PWS") at para 32.2.

28 PWS at para 32.3.

Eugene's position and the relevant issues

16 As a preliminary point, I note that prayer 1 of the Amendment Application seeks leave to include the words "and also in his personal capacity" after the words "Personal Representative of [Evelyn's Estate] and Personal Representative of [William's Estate]". This suggests that Eugene's standing in his personal capacity applies to both Evelyn's Estate and William's Estate. However, because the parties disputed only on Eugene's capacity to bring the Suit in respect of Evelyn's Estate, I focus only on that part of the prayer. Indeed, this is also evident from the stated grounds for the Amendment Application, where Eugene explains (at para 3) that "he has always been additionally suing in his personal capacity as [a] one-fifth beneficiary of [Evelyn's Estate]", without stating the same with regard to William's Estate.[29]

17 With this preliminary point in mind, it is helpful to first understand Eugene's position in the present applications. As Eugene explains in his submissions, he has a four-tiered response to the defendants' challenge on his standing to bring the Suit:

(a) First, Eugene's primary case is that he *already* has standing to bring the Suit in his capacity as a personal representative of Evelyn's Estate. This is by virtue of the Canadian LA, which vested authority in him to act in such a capacity.[30]

(b) Second, if the court does not recognise Eugene to have standing by virtue of the Canadian LA, it should adopt the approach applicable to executors when commencing legal proceedings on behalf of an estate

29 HC/SUM 2545/2023 at para 3.

30 Kimberly Ng's Affidavit at para 36; Eugene Phoa's AEIC at para 182.

before a grant of probate has been extracted. More specifically, this court should stay the proceedings pending the extraction of the grant of resealing in P 129.[31]

(c) Third, Eugene's alternative case is that, if the court finds that Eugene is not the personal representative of the Estates, and it is not amendable to stay the proceedings pending the extraction of the grant of resealing in P 129, then this court should appoint Eugene to represent the Estates pursuant to O 15 r 15(1) of the ROC 2014.[32]

(d) Fourth, Eugene's further alternative case is that, in any event, even if the court rejects Eugene's standing to sue as the personal representative of the Estates, he has always been suing in his *personal capacity* as a one-fifth beneficiary of Evelyn's Estate.[33] Pursuant to this personal capacity, Eugene has standing to sue for the benefit of an unadministered estate because there exist "special circumstances" in the present case.[34] In particular, the court should recognise Eugene's personal standing to sue on behalf of the Estates, albeit formally in his personal capacity, because the reason why he could not extract the order was not within his control.

18 It is important to clarify Eugene's position as above because this leads me to the relevant issues in these applications:

---

31 Kimberly Ng's Affidavit at para 14, referring to Plaintiff's Reply Submissions for HC/S 1130/2020 filed on 21 August 2023 ("PRS") at para 19.

32 Kimberly Ng's Affidavit at para 27, referring to PRS at para 32.

33 Kimberly Ng's Affidavit at para 36, referring to PRS at paras 37–41.

34 Kimberly Ng's Affidavit at para 15, referring to PRS at paras 34–36.

(a) First, Eugene is using the Further Evidence Application to support his secondary case at [17(b)], as the further evidence would show that the CED issued the Certificate of Postponement on 18 August 2023 and that the FJC ultimately allowed the extraction of the order for the resealing of the Canadian LA on 25 September 2023.

(b) Second, in the event that I do not grant Eugene the opportunity to extract the resealed grant of the Canadian LA, Eugene is using the Appointment Application to support his alternative case at [17(c)]. In that case, Eugene would ask that I appoint him as the personal representative of the Estates despite him not having taken the formal steps to do so.

(c) Third, in the event that I find that Eugene does not have capacity to sue as the personal representative of the Estates, and I also decline to appoint him as such, Eugene is using the Amendment Application to support his further alternative case at [17(d)]. In that case, Eugene seeks clarification that he was also *always* suing in his personal capacity. From that personal capacity, Eugene would urge me to follow the exception laid down in the Court of Appeal decision of *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1996] 3 SLR(R) 27 ("*Wong Moy (CA)*"), which would allow me to recognise Eugene having the standing to sue on behalf of the Estates from him suing in his personal capacity. This is necessarily predicated on Eugene establishing that he has always sued in his personal capacity.

19 With this broad overview in mind, I turn to consider each of the present applications.

Whether the Further Evidence Application should be allowed

The parties' positions

20 Eugene seeks to adduce two categories of further evidence, namely: (a) recent correspondence between 28 June 2023 and 18 August 2023; and (b) correspondence and documents that were issued after 18 August 2023 and up to the date when the order for resealing in P 129 is extracted.[35] Eugene argues that this evidence is relevant to the Suit because they will show that: (a) the CED had, on 2 August 2023, taken the new position, after the trial had ended, that it was amendable to issuing the Certificate of Postponement; (b) the CED did issue the Certificate of Postponement on 18 August 2023; and (c) it is therefore likely that the extraction of the resealed grant of the Canadian LA will be "in the coming weeks".[36] As I mentioned (see [14] above), at the time of the hearing of these applications, the FJC allowed the extraction of the resealed grant of the Canadian LA on 25 September 2023.

21 The defendants object to the Further Evidence Application on the basis that, among others, Eugene could have done the necessary to obtain the resealing much earlier. This is whether it was to obtain the Certificate of Postponement or simply to pay estate duty. As such, Eugene's failure to first obtain the resealing before commencing the Suit is entirely his own doing. Eugene should therefore not be allowed a chance to belatedly salvage his lack of standing.[37]

---

35 Kimberly Ng's Affidavit at para 12.

36 Kimberly Ng's Affidavit at para 13.

37 DWS at paras 139–141.

My decision: the Further Evidence Application is dismissed

The applicable law

(1) Admitting further evidence

22 The curious point about the Further Evidence Application is that Eugene is seeking to adduce evidence *after* he had closed his case at trial. In fact, Eugene has already tendered his Closing Submissions and Reply Submissions after trial. As such, if Eugene is to adduce further evidence, and if he is successful in doing so, he needs to concurrently apply to reopen his case and explain the relevance of such evidence. I therefore disagree with Eugene's attempt to characterise the Further Evidence Application as his adherence to an "ongoing duty of disclosure pursuant to O 20 r 8 [of the] ROC 2014".[38] In this regard, Eugene cites the English Court of Appeal decision of *Vernon v Bosley (No 2)* [1997] 3 WLR 683, and submits that he has a continuing obligation until the conclusion of the proceedings to disclose all relevant documents whenever they came into his possession, even if discovery by list or affidavit had already been made.[39] In my view, Eugene's characterisation creates the wrong impression that the court should accept his evidence unquestionably as he is simply fulfilling his duty to the court. While I accept that litigants can have such a duty of disclosure, that scope of disclosure must be limited to the case that a party has run. Thus, a party cannot rely on this duty to introduce evidence about a case that the party had never previously run. There can be no duty of disclosure in relation to such evidence because the issue was never before the court. Otherwise, that party would be allowed the opportunity to salvage its case after having had the advantage of seeing the counterparty's witnesses and submissions.

---

38 Kimberly Ng's Affidavit at para 11.

39 PWS at para 53.

23 I turn now to the applicable law to govern the admission of further evidence after trial. In the Malaysian Court of Appeal decision of *Prince Court Medical Centre Sdn Bhd v Germguard Technologies (M) Sdn Bhd* [2016] 4 MLJ 1 ("*Prince Court*"), one party sought to reopen its case to adduce further evidence after the trial had concluded and before judgment was pronounced. The court observed (at [9]) that "the discretion to reopen a trial before judgment is entered is an unfettered discretion but one that should be used sparingly … and has its purpose the correction of what would otherwise be a miscarriage of justice". In *Prince Court*, the court dismissed the application to reopen the trial to admit further evidence. The court explained (at [10]) that, if the application were allowed, it would "allow the appellant to rectify, repair or cover up any loophole in their case after having the benefit of evaluating the evidence of the respondent's witnesses and the respondent's submissions". This would "not be fair to the respondent and is not how litigation should be conducted in our adversarial system of justice" (at [10]). The court further held (at [11]–[12]) that the "discretion to allow a party to reopen its case is a discretion that should be exercised sparingly", and the "policy consideration behind this is obvious, and that is to avoid opening the floodgates for similar applications in the future". Instead, the court stressed (at [12]) that this discretion "should only be exercised in exceptional circumstances and to prevent a miscarriage of justice".

24 Accordingly, the test of "exceptional circumstances" governs whether to allow a party to reopen its case to adduce further evidence. While the court in *Prince Court* did not explain what constitutes "exceptional circumstances", I agree with the defendants that guidance can be taken from the *Ladd v Marshall*

requirements.[40] In this regard, the courts have consistently imposed the threefold requirements set out in the seminal English Court of Appeal decision of *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") to govern the admission of further evidence on appeal (see, *eg*, the Court of Appeal decisions of *Toh Eng Lan v Foong Fook Yue and another appeal* [1998] 3 SLR(R) 833 at [34], *ARW v Comptroller of Income Tax and another and another appeal* [2019] 1 SLR 499 at [99], and *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 ("*Anan Group*") at [21]). In this regard, the three requirements in *Ladd v Marshall* are:

(a) first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial or hearing;

(b) second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; and

(c) third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.

25 However, the *Ladd v Marshall* requirements do not apply with full force in all appeals. In this regard, the Court of Appeal in *Anan Group* set out a two-step analysis that a court should adopt in dealing with an application to adduce fresh evidence on appeal. At the first stage, the court should consider the nature of the proceedings below and evaluate the extent to which it bore the characteristics of a full trial. At the second stage, the court should determine whether there are any other reasons for which the *Ladd v Marshall* requirements

[40] DWS at para 121.

ought to be relaxed in the interests of justice (see *Anan Group* at [37]–[55]). In any event, the court should conduct a balancing exercise between the interests of finality and the right of an applicant to put forth relevant and credible evidence, having regard to the considerations of proportionality and prejudice (see *Anan Group* at [59]). However, given that the present applications concern an attempt to adduce evidence *after* trial when there is nothing left except for the pronouncement of judgment, the *Ladd v Marshall* requirements should apply very strictly. This is because if those requirements apply strictly when an attempt is made to adduce evidence on appeal against proceedings below that approach a full trial, then they must all the more apply even *more* strictly when a party is seeking to adduce evidence in respect of a trial that has already closed, and for which there is no pending appeal.

26 In this regard, because the Further Evidence Application involves the admission of further evidence after trial, instead of the admission of further evidence on appeal, I do not think that the two-step analysis set out in *Anan Group* (see [25] above) is applicable here. However, in my view, the three requirements in *Ladd v Marshall* (see [24] above) are applicable in the present case as requirements to aid a court in deciding whether there existed "exceptional circumstances" to allow a party to reopen its case to adduce further evidence.

(2) The process for extracting a resealed grant of foreign letters of administration

27 I have referred to the extraction of the resealed grant of letters of administration several times thus far. It is therefore apt for me to set out how this process operates. The process for the extraction of sealed grant of letters of administration has been helpfully summarised by the learned Assistant

Registrar Wong Hee Jinn ("AR Wong") in *Chye Hwa Luan and others v Do, Allyn T* [2023] SGHCR 10 ("*Chye Hwa Luan*"), as follows:

> (a) To begin with, a person who dies with a valid will dies testate, while a person who dies without a valid will dies intestate. The term "personal representative" comprises both an executor (or executrix) – who executes the deceased's will – and an administrator (or administratrix), who administers the deceased's estate (see *Chye Hwa Luan* at [34]).
>
> (b) In the context of an intestate death, a grant of letters of administration must first be obtained. The procedural steps that must be taken can be located in the Probate and Administration Act 1934 (2020 Rev Ed) (the "PAA"), the Family Justice Rules 2014, and the Family Justice Court Practice Directions dated 1 January 2015. In particular, an application for a grant of letters of administration must be made by an originating summons filed without notice supported by an affidavit exhibiting a statement in Form 51. The applicant must, within 14 days of filing the application, file an affidavit verifying the information in the Statement, exhibiting the Statement, the Schedule of Assets and all other supporting papers as the Registrar may require. The grant of letters of administration, which bears the court's seal, may be extracted after estate duty formalities have been completed (see *Chye Hwa Luan* at [34]–[35]).
>
> (c) An administrator's authority to act on behalf of the deceased's estate is derived from the grant of letters of administration. Until the grant of the letters of administration, the deceased's real and personal estate vests in the Public Trustee, pursuant to s 37 of the PAA. There is

> thus a distinction between: (i) the grant of the application for letters of administration; and (ii) the extraction of the sealed grant of the letters of administration. It is upon the former that the property of the intestate is vested in the administrator, but only upon the latter that authority is conferred upon the administrator to administer the deceased's estate (see *Chye Hwa Luan* at [36]–[40], and the authorities cited therein, such as the High Court decision of *Singapore Gems Co v Personal representatives of the estate of Akber Ali Mohamed Bukardeem, deceased* [1992] 1 SLR(R) 362, where Chao Hick Tin J (as he then was) observed (at [19]) that "an administrator has not clothed himself with that status until he has *extracted* the grant" [emphasis added]).

28 In contrast, the extraction of resealed grant of *foreign* letters of administration differs because of the foreign origin of such letters. As provided for in s 47 of the PAA, where letters of administration are granted and sealed by a foreign court, they may be subsequently sealed by the FJC in Singapore (see s 47(1)). This process gives the letters of administration force and effect as if granted by the General Division of the High Court in Singapore (see s 47(2)). The nomenclature of "reseal" is used because the foreign letters of administration would have been sealed once by the foreign court, before they are resealed by the Singapore court. Further, foreign letters of administration will not *automatically* be resealed by the Singapore court, as the court will have to determine whether the deceased person was, at the time of their death, domiciled within the jurisdiction of the court from which the grant was issued. If the deceased person was not, at the time of their death, domiciled as such, the seal shall not be affixed unless the grant is such as the General Division of the High Court would have made (see ss 47(3)–47(4)). It remains, however, that

until the resealed grant of foreign letters of administration are extracted, the administrator has no authority to administer the deceased's estate.

29 Therefore, in respect of all letters of administration, the process for an administrator to be clothed with authority to administer the deceased's estate requires: (a) the court to grant and *seal* the letters of administration; and (b) the administrator to *extract* the sealed grant of letter of administration, or the resealed grant of foreign letters of administration.

Eugene could have obtained the further evidence with reasonable diligence for use at the trial

30 With these principles in mind, I turn to the first *Ladd v Marshall* requirement about whether Eugene could have obtained the further evidence with reasonable diligence for use at the trial. It goes without saying that Eugene is seeking to adduce evidence that is of recent origin or has not even been produced (that is, documents to be issued up to when the order for resealing in P 129 is extracted). As such, Eugene may well argue that he could not have obtained the further evidence in time for the trial because they never existed until after trial. I reject this argument to the extent that Eugene made it before me. This is because I am concerned with whether Eugene *could have* obtained these documents by taking steps leading to their creation by the time of the trial.

(1) Eugene knowingly commenced the Suit only in his capacity as the personal representative of Evelyn's Estate

31 In my judgment, Eugene knowingly commenced the Suit only in his capacity as the personal representative of Evelyn's Estate. As such, it is entirely his own doing that he failed to extract the resealed grant of the Canadian LA before commencing the Suit. First, Eugene has always been advised on this

issue before the Suit. Indeed, he confirmed on the stand that he had been advised on this matter by his former Singapore solicitors:[41]

> That was always at the back of my mind and everybody else's mind, I think, at the relevant time. We might end up in a situation -- in a situation, in a litigation situation. Now, I should perhaps advise -- not advise -- I should perhaps let the court know that this was all -- the getting -- obtaining of the letters of administration and getting it resealed was something which came as a result of my attention being brought to a Malaysian decision where the court decided that an action could not proceed unless the letters of administration were obtained. So that was taken as a preliminary step.
>
> …
>
> My Lord, perhaps I should again explain the situation, which I thought I had about five minutes ago. I was advised, I think it was by [redacted], I won't say that for sure, but I was certainly advised that there was a Malaysian decision which said that you could not maintain a case in Singapore on -- with respect to a deceased estate until and unless you had letters of administration. The obtaining of letters of administration was just a preliminary step to the possibility of this whole thing. I did not want to be caught in a situation whereby I decided to -- I decided for whatever reason to go ahead and I could not do so because we did not have letters of administration.
>
> Now, this is -- this is contrary to the English position. The English position basically is that there is the doctrine of relation back, which allows you to commence action and then once you get letters of administration, the terms will be imposed I think with the assistance of the court in England to relate back to -- to the grant to the commencement of the action. But apparently that's not the position here. And the advice I received is that that Malaysian decision would be considered good law in Singapore.

32 Thus, although Eugene knew before he commenced the Suit that he needed to extract the resealed grant of the Canadian LA, he did not do so. Nor has he provided any good reason why he commenced the Suit without having done so. Indeed, the evidence shows that Eugene could have procured the CED

---

41 Certified Transcript 31 May 2023 at p 99 lines 7 to 19, and p 100 line 25 to p 101 line 24.

to issue the Certificate of Postponement. By his own admission in his AEIC, the CED's letter of 5 September 2012 did not indicate that "nothing [was] required of the Phoas or [Eugene's former Singapore solicitors] in order for [the CED] to make its decision" on whether to issue a Certificate of Postponement.[42] To the contrary, while the letter states that Eugene's request for a Certificate of Postponement was "being considered", the CED did advise Eugene's former Singapore solicitors "to make some payment to account of estate duty early to prevent interest from accumulating".[43] Therefore, it was certainly open to Eugene to pay the estate duty, resolve the matter with the CED, and extract the resealed grant of the Canadian LA before commencing the Suit. In this regard, it does not matter whether Eugene had the means to pay or not, but I do note that he had offered a banker's guarantee as security to secure the payment.[44]

33 Also, even if Eugene thought that the CED had been considering his request for the Certificate of Postponement in September 2012, it defies logic that he would let matters rest for many years before commencing the Suit in 2020. At the very least, given the advice that he had obtained, and his understanding that "the Payment, inclusive of all accruing interest, still must be paid *prior to [his] commencing an action in Singapore*",[45] it is puzzling that Eugene did not even follow up with the CED prior to commencing the Suit in November 2020. It is not right, to the extent that he does, that Eugene now casts the blame on the CED for not responding to him.

---

42 Eugene Phoa's AEIC at para 205.

43 Eugene Phoa's AEIC at para 204 and p 1434.

44 Kimberly Ng's Affidavit at p 26 para 27.

45 Kimberly Ng's Affidavit at p 26 para 28.

34 Moreover, it is clear that Eugene did not disclose the post-2012 communications with the CED and the FJC in his AEIC even though these were plainly material to his standing to bring the Suit. In this regard, the documents show that on 15 June 2021, the CED wrote to SILLC to say that there is no need to request for the Certificate of Postponement.[46] However, Eugene took about eight months after that to request the FJC to extract the Grant of Probate on 14 March 2022. After the FJC refused his request on 30 March 2022, Eugene took no action until 26 May 2023 to follow up with the CED to repeat his request for a Certificate of Postponement. It is inexplicable why Eugene would choose to do this, when he knew that he had to extract the resealed grant of the Canadian LA before commencing any legal action in Singapore.

35 Accordingly, I find that it is entirely Eugene's own doing that he failed to obtain the resealing before commencing the Suit. He therefore cannot satisfy the first of the *Ladd v Marshall* requirements in that he clearly could have obtained the further evidence with reasonable diligence for use at the trial. For this reason alone, I dismiss the Further Evidence Application.

(2) The further evidence would not have an important influence on the result of the case

36 In any event, I find that the second *Ladd v Marshall* requirement is also not satisfied, *ie*, the further evidence would not have an important influence on the result of the case. This is because even if Eugene were to now extract the resealed grant, the action remains a substantive nullity. This is because a plaintiff who sues as an administrator must extract the resealed grant of the foreign letters of administration *before* starting action. The extraction and resealing are the keys to a plaintiff establishing standing to sue (see the

[46] Kimberly Ng's Affidavit at p 94 para 7.5.

Malaysian decision of *Issar Singh, Son of Bhola Singh and another v Samund Singh, Son of Mayiah* [1941] MLJ 28). Thus, in the High Court decision of *Re Ong Soon Chuan* [1999] 2 SLR(R) 380, G P Selvam J said this (at [5(c)]):

> (c) An administrator may not even commence proceedings until he has obtained the grant of letters of administration. Accordingly:
>
> > [I]f a plaintiff brings an action in a representative capacity as administratrix, then that action is a nullity if she was not at that date by law administratrix with a proper grant. Even if she obtains a grant within a week, a month or a year afterwards it does not relate back. The writ is a nullity from the beginning.
>
> See *Bowler v John Mowlem & Co* [1954] 3 All ER 556 at 558; [1954] 1 WLR 1445 at 1446–1447 *per* Denning LJ. See also the cases cited by Denning LJ and *Issar Singh v Samund Singh* [1941] MLJ 28.

37 In this regard, the English Court of Appeal in *Jennison (as personal representative of the estate of Graham Jennison (deceased)) v Jennison and another* [2023] 2 WLR 1017 ("*Jennison*") (at [30]) held that this principle also applies to the resealing of foreign letters of administration under s 2 of the Colonial Probates Act 1892 (c 6) (UK) (the "CPA"). This is because the provision does not indicate that the resealing has retrospective effect. For some context, s 2 of the CPA governs the resealing of foreign letters of administration in the UK, and it provides as follows:

> **2 Sealing in United Kingdom of colonial probates and letters of administration.**
>
> (1) Where a court of probate in a British possession to which this Act applies has granted probate or letters of administration in respect of the estate of a deceased person then (subject to section 109 of the Senior Courts Act 1981, section 42 of the Probate and Legacy Duties Act 1808 and section 99A of the Probates and Letters of Administration Act (Ireland) 1857), the probate or letters so granted may, on being produced to, and a copy thereof deposited with, a court of probate in the United Kingdom, be sealed with the seal of that court, and, thereupon,

> shall be of the like force and effect, and have the same operation in the United Kingdom, as if granted by that court.
>
> (2) Provided that the court shall, before sealing a probate or letters of administration under this section, be satisfied—
>
> > (a) that probate duty has been paid in respect of so much (if any) of the estate as is liable to probate duty in the United Kingdom; and
> >
> > (b) in the case of letters of administration, that security has been given in a sum sufficient in amount to cover the property (if any) in the United Kingdom to which letters of administration relate;
> >
> > and may require such evidence, if any, as it thinks fit as to the domicile of the deceased person.
>
> (3) The court may also, if it thinks fit, on the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in the United Kingdom.
>
> (4) For the purposes of this section, a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.
>
> (5) Rules of court may be made for regulating the procedure and practice, including fees and costs, in courts of the United Kingdom, on and incidental to an application for sealing a probate or letters of administration granted in a British possession to which this Act applies. Such rules shall, so far as they relate to probate duty, be made with the consent of the Treasury, and subject to any exceptions and modifications made by such rules, the enactments for the time being in force in relation to probate duty (including the penal provisions thereof) shall apply as if the person who applies for sealing under this section were a person applying for probate or letters of administration.

38 In *Jennison*, the executrix under the will of the deceased obtained a grant of probate from a court in Australia, where the deceased had been domiciled. The executrix commenced proceedings in England and Wales as the personal representative of the deceased's estate. The executrix only subsequently extracted the resealed grant of the Australian probate pursuant to s 2 of the CPA.

It was against this background that the English Court of Appeal held that s 2 does not apply retrospectively, though the court found that the executrix did not have to first obtain a grant of probate in England and Wales before proving that she had title to the deceased's estate, because she had been named as executrix in the deceased's will.

39 In my view, s 47 of the PAA is substantially similar to s 2 of the CPA. Section 47 provides as follows:

> **Power of court to re-seal**
>
> **47.**—(1) Subject to subsections (3) and (4), where —
>
> > (*a*) a court of probate in any part of the Commonwealth has, either before, on or after 25 February 1999, granted probate or letters of administration in respect of the estate of a deceased person; or
> >
> > (*b*) a court of probate in a country or territory, being a country or territory declared by the Minister under subsection (5) as a country or territory to which this subsection applies, has, on or after a date specified by the Minister in respect of that country or territory (referred to in this section as the relevant date), granted probate or letters of administration in respect of the estate of a deceased person,
>
> the probate or letters of administration so granted, or a certified copy thereof, sealed with the seal of the court granting the same, may, on being produced to and a copy thereof deposited in the General Division of the High Court, be sealed with the seal of the Family Justice Courts.
>
> (2) Upon sealing under subsection (1), the probate or letters of administration shall be of the like force and effect, and have the same operation in Singapore, as if granted by the General Division of the High Court to the person by whom or on whose behalf the application for sealing was made.
>
> (3) Before the probate or letters of administration is sealed with the seal of the Family Justice Courts, the General Division of the High Court may require such evidence as it thinks fit as to the domicile of the deceased person.
>
> (4) If it appears that the deceased was not, at the time of his death, domiciled within the jurisdiction of the court from which

> the grant was issued, the seal shall not be affixed unless the grant is such as the General Division of the High Court would have made.
>
> (5) For the purposes of subsection (1)(*b*), the Minister may, by notification in the *Gazette* —
>
> > (*a*) declare any country or territory, which is not a part of the Commonwealth, as a country or territory to which subsection (1) applies; and
> >
> > (*b*) specify the relevant date in respect of that country or territory which may be a date before, on or after 25 February 1999.

40 As can be observed, s 47 of the PAA, similar to s 2 of the CPA, does not indicate that the resealing can have retrospective effect. Therefore, following the reasoning in *Jennison*, I find that for the resealing of foreign letters of administration in Singapore, the resealing should not have retrospective effect.

41 In other words, whatever Eugene is seeking to do now to reseal the foreign letters of administration for Evelyn's Estate is immaterial. It is much too late for him to do so and salvage his existing lack of standing to commence the Suit. As such, Eugene does not satisfy the second of the *Ladd v Marshall* requirements in relation to evidence showing such. This is thus also sufficient for me to dismiss the Further Evidence Application.

(3) The defendants would be prejudiced if Eugene is allowed to patch up a glaring defect in his case that he knowingly assumed

42 Further, while not part of the *Ladd v Marshall* test, I find that it is also relevant to consider any prejudice to the defendants if I allow the further evidence to be admitted (see, *eg*, the High Court decisions of *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2003] 3 SLR(R) 666 at [32] and *Ang Leng Hock v Leo Ee Ah* [2004] 2 SLR(R) 361 at [15]).

43 In this regard, Eugene complains that the defendants have known that he has never extracted the resealed grant of the Canadian LA since before the Suit was commenced.[47] However, it remains Eugene's burden to establish that he has the standing to commence this Suit. Indeed, a claimant's legal standing to commence an action is of paramount importance to the sustainability of the action and a failure to establish this can result in an action being struck out due to its disentitlement to the reliefs sought (see *Chye Hwa Luan* at [19]–[26]). In this regard, the learned AR Wong had said as follows (at [26]):

> Having surveyed the cases above, it is apparent that a plaintiff's legal standing to commence an action is of paramount importance to the sustainability of its action and a failure to establish this can result in an action being struck out due to its disentitlement to the reliefs sought. The corollary, as a matter of legal principle, must equally be true. For a defendant that has does not possess the requisite standing, there would be simply no basis on which the court can grant the reliefs sought or make the orders sought against that defendant, nor does the defendant have the legal capacity to comply with any orders made against it. In my view, when determining whether a reasonable cause of action has been disclosed, the court can and should consider both the plaintiff's as well as the defendant's legal standing (or lack thereof) to prosecute and defend an action, respectively. In either case, where such legal standing has not been shown, the legal basis for the plaintiff's claim is inherently flawed. …

Thus, as the Court of Appeal observed in *Hin Leong Trading (Pte) Ltd (in liquidation) v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 253 (at [15]), striking out is warranted when there is an absence of legal standing, such that proceedings ought not, and indeed could not validly, have been brought at all.

44 In the present case, Eugene cannot say that the defendants kept this point until the end of trial. The defendants are not mounting a fresh defence, for which

---

47 Kimberly Ng's Affidavit at paras 21–23.

they bear the burden of proving. Instead, Eugene knowingly commenced this Suit despite not extracting the resealed grant of the Canadian LA. Indeed, there seems to be evidence that he knew this could be an issue. Thus, it does not lie in his mouth to complain that the defendants did not bring this issue up early enough for him to respond. Indeed, a court can always bring up issues of standing on its own accord because the court has to be satisfied that the parties before it are competent to advance their claims.

45 In any event, I do not think the defendants were, as Eugene puts it, "aware of the obstacle in extraction of the order for [resealing] the grant since September 2019".[48] To begin with, the relevant paragraphs in Eugene's Canadian Affidavit that he cites in support of this allegation do not show any problems with obtaining the Certificate of Postponement:[49]

> **Inability to Commence Action in Singapore**
>
> 24. I investigated the possibility of commencing an action against the Defendants in Singapore relating to some of the allegations more fully outlined in the Statement of Claim.
>
> 25. In order to do so, the Inland Revenue Authority required the payment of a large amount of estate tax in the amount of $56,081.60 as at September 5, 2012 with interest continuing to accrue thereafter (the "**Payment**"). Attached to my Affidavit as **Exhibit "B"** is a copy of the September 5, 2012 letter from the Inland Revenue Authority requiring the payment of this amount with interest accruing thereon at the rate of 12 per cent per annum or $4.00 daily.
>
> 26. The Payment was not economically feasible.
>
> 27. A Banker's Guarantee was offered by me as security as an alternative to the Payment but the Banker's Guarantee was not accepted.

---

48 Kimberly Ng's Affidavit at para 21.

49 Kimberly Ng's Affidavit at pp 25–26 paras 24–28.

> 28. I understand that the Payment, inclusive of all accruing interest, still must be paid prior to my commencing an action in Singapore.
>
> [text in bold in original]

46 Further, it is not fair to the defendants for them to fight a new case *after* trial. On the last day of trial, LVMLC had specified that, for the post-2012 communications admitted into evidence, the parties had agreed that Eugene's covering affidavit would not contain any explanation or embellishment, so as to avoid the need for cross-examination. SILLC's lead counsel agreed with this arrangement:[50]

> DC: As for how the documents are to be introduced, again, [Y]our Honour, to avoid the costs and expense of getting any witness back --
>
> Court: That's right.
>
> DC: -- which we would have grave issues with, [Y]our Honour, given that they have already gone off the stand, the suggestion that my learned friend and I have discussed and is acceptable to both sides is my learned friend's client will file an affidavit that simply exhibits the additional documents contained in I think it's two of his letters, 12 June and 14 June 2023.
>
> Court: Okay.
>
> DC: But it won't contain any explanation.
>
> Court: Yes.
>
> DC: It won't have any embellishment.
>
> Court: It is purely just to exhibit.
>
> DC: Yes, so we don't have the cross-examination.
>
> Court: I understand.
>
> DC: And then the parties just submit on it.
>
> Court: That's fine. Mr Raeza, you confirm?
>
> PC: Yes, that's right.

---

[50] Certified Transcript 15 June 2023 at p 219 lines 2–23.

47 Thus, there ought not to be any further evidence beyond the post-2012 communications exhibited in Eugene's 14th Affidavit filed on 29 June 2023. The Further Evidence Application is contrary to this arrangement. Also, if the further evidence is admitted, the defendants would be prejudiced because it is now not open to them to cross-examine various parties, including Eugene, on the issue of Eugene's standing to bring the Suit. It may be relevant, for example, for the defendants to call the relevant IRAS officer to give evidence as to why the Certificate of Postponement was not granted. But more fundamentally, the defendants have now shown their hand in relation to the issue of Eugene's standing. It would go against all sense of fair play if Eugene were now allowed to make up that point by adducing evidence after trial.

48 For all the reasons above, I dismiss the Further Evidence Application.

Whether the Appointment Application should be allowed

The parties' positions

49 I turn now to the Appointment Application, which Eugene argues should be allowed because the four requirements in O 15 r 15(1) of the ROC 2014 are satisfied. Accordingly, the court's discretion is triggered as set out in the High Court decision of *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1995] 3 SLR(R) 822 ("*Wong Moy (HC)*") (at [20]):

> … when any application under this rule is made, four elements have to be present before the court can exercise its power to appoint a person to represent the estate of a deceased person. The requirements are:
>
> (a) the presence of existing proceedings;
>
> (b) the deceased must have been interested in the matter in question in the proceedings;
>
> (c) the deceased must not have a personal representative; and

(d) the applicant must be a party to the existing proceedings.

50 As requirement (d) stands, and as Eugene also agrees, this requires Eugene to be currently suing in his personal capacity as a one-fifth beneficiary of Evelyn's Estate.[51] Unsurprisingly, the defendants submit the Appointment Application must fail if the court finds that Eugene is not suing in his personal capacity.[52]

My decision: the Appointment Application is dismissed

The applicable law

51 I start by setting out the requirements for the Appointment Application, which is stated in O 15 r 15(1) of the ROC 2014, as follows:

> **Representation of deceased person interested in proceedings (O. 15, r. 15)**
>
> **15.**—(1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.

52 It is also helpful to provide some context to the decisions of *Wong Moy (HC)* and *Wong Moy (CA)*, which explained the application of O 15 r 15. In *Wong Moy (HC)*, the plaintiff claimed to have married the deceased in accordance with Chinese customary rites in 1952, while the defendant married

---

51 Kimberly Ng's Affidavit at para 32.

52 DWS at para 175.

the deceased at the Registry of Marriages in 1964. When the deceased passed away intestate in 1995, the plaintiff was granted letters of administration to the deceased's estate, but they were not extracted. The plaintiff claimed this was because she was unable to file an estate duty affidavit as she could not specify the properties belonging to the estate that were held by the defendant. The plaintiff commenced an action as administratrix of the deceased's estate. The defendant applied to dismiss the writ of summons, which the High Court granted. This was for the primary reasons that: (a) the plaintiff failed to extract the grant of letters of administration, and therefore did not have authority to deal with the property of the deceased; and (b) the requirements in O 15 r 15(1) were not satisfied because the plaintiff had sued in her purported capacity as administratrix of the deceased's estate, but O 15 r 15(1) was meant to apply to a person who was a party to existing proceedings in a separate capacity.

53 The plaintiff appealed the decision in *Wong Moy (HC)*. In *Wong Moy (CA)*, the primary issue was whether the plaintiff *qua* a beneficiary of the deceased's estate was entitled to institute an action against the defendant to protect the assets of the deceased's estate. The Court of Appeal allowed the appeal because it disagreed with the High Court's finding that there was no evidence of the plaintiff having asked the defendant to furnish details of the deceased's assets. Instead, the Court of Appeal found that because of the acrimony between the parties, it is unlikely that the defendant would have been forthcoming with any disclosure, and indeed there was no such disclosure until the defendant was ordered to file an affidavit disclosing her assets to the court. The Court of Appeal therefore held that the plaintiff's inability to extract the grant of letters of administration was not of her own doing. These were special circumstances that enabled her to bring the action *qua* a beneficiary and on behalf of her children as beneficiaries of the estate of the deceased.

54 The facts of *Wong Moy (HC)* and *Wong Moy (CA)* provide the relevant background to understand the applicable principles. To begin with, the High Court in *Wong Moy (HC)* observed the purpose behind O 15 r 15(1) to be as follows (at [22]):

> It appeared to me that *O15 r 15(1) is directed at the situation where after an action had been started and both plaintiff and defendant were litigating it, it became apparent that a deceased person who was neither the plaintiff nor the defendant and thus not a party to the litigation had an interest in the subject matter of the litigation and therefore his estate should be represented in the action. This was not the case here because when the suit had started, the plaintiff had sued in her purported capacity as administratrix of the deceased's estate*. She had brought an action on behalf of the deceased and not an action on her own behalf. There was no pending proceeding between third parties in which the deceased had an interest because the plaintiff was in fact the deceased in other clothing. The plaintiff could not, therefore satisfy this requirement of the rule.
>
> [emphasis added]

From this, it is clear that a party who wishes to rely on O 15 r 15(1) must have originally been a party to the proceedings in their personal capacity. This is since the very purpose of O 15 r 15(1) is to provide a remedy when it later becomes clear that a deceased person had an interest in the subject matter of the litigation and therefore his estate should be represented in the action. If a party is part of the proceedings in their representative capacity, then O 15 r 15(1) is nugatory, since that party was part of the proceedings as "the deceased in other clothing".

55 However, as discussed in *Wong Moy (CA)*, there is an exception to the four requirements in O 15 r 15(1), *ie*, that if there are special circumstances justifying the delay or failure to extract the grant of letters of administration. The court must then consider all the circumstances of the case, including the nature of the assets, the position of the personal representative, and the reason

for the default of the personal representative, to see whether the circumstances made it "impossible, or at least seriously inconvenient for the representatives to take proceedings" (see *Wong Moy (CA)* at [28]). In this regard, special circumstances are not confined solely to cases where the personal representative had defaulted in acting to recover the property, because such a rule would be too inflexible and may lead to injustice (see *Wong Moy (CA)* at [24]). One example is where "the executor's position has been compromised in some way", such as where there is "a failure, excusable or inexcusable, by the [executors] in the performance of the duty [owed] … to protect the … estate or to protect the interests of the beneficiary" (see the High Court decision of *Fong Wai Lyn Carolyn v Kao Chai-Chau Linda and others* [2017] 4 SLR 1018 at [8], citing the Privy Council decision of *Joseph Hayim Hayim v Citibank NA* [1987] AC 730 at 748F).

Eugene has commenced this Suit as a personal representative of Evelyn's Estate and not in his personal capacity

56 With the above principles in mind, Eugene's reliance on O 15 r 15(1), and correspondingly, the Appointment Application, fails for the following reasons.

57 First, it is clear that Eugene has commenced this Suit as a personal representative of Evelyn's Estate and not in his personal capacity. This is fatal to Eugene's reliance on O 15 r 15(1) because to rely on that provision, he needs to have *originally* been a party to the proceedings in his personal capacity (see *Wong Moy (HC)* at [20]–[24]). Indeed, when filing the present action, Eugene indicated his representative capacities in the title-in-action:[53]

---

53 Writ of Summons for HC/S 1130/2020 filed on 20 November 2020.

> EUGENE PHOA
>
> (Canadian Passport No. [redacted])
>
> Personal Representative of the estate of Evelyn Phoa @ Lauw, Evelyn Siew Chiang, deceased, and Personal Representative of the Estate of William Phoa, deceased

58 Even if the title-in-action is not conclusive, Eugene's pleaded case is that "he makes claim in his capacity as personal representative of the estate of [Evelyn]" and that he "also represents [William's Estate] (as personal representative) in so far as that estate is a one-fifth beneficiary of [Evelyn's Estate]".[54] Despite Eugene's request that I take a "purposive reading" of the writ,[55] there is no mention in the pleadings that Eugene is suing in a personal capacity. While Eugene relies on paras 10 and 13 of his AEIC to argue that he is suing in his personal capacity as a one-fifth beneficiary of Evelyn's Estate, this is not clearly borne out by the paragraphs, which provide as follows:[56]

> 10. Insofar as I am one of the named personal representatives of Mdm Evelyn Phoa (discussed at [180] to [182] below), I am suing in the capacity of the personal representative of the estate of Mdm Evelyn Phoa. I also am a party to the Suit personally, as a one-fifth direct beneficiary of the estate of Mdm Evelyn Phoa.
>
> …
>
> 13. My brother, William Phoa, passed away on 4 April 2005. I am the personal representative of his estate. In this regard, I am also suing in the capacity of the personal representative of the estate of William Phoa insofar as William Phoa was a one-fifth direct beneficiary of the estate of Mdm Evelyn Phoa.

The only indication in these paragraphs that Eugene is suing in his personal capacity is where he says "I also am a party to the Suit personally". However, I

---

54 Statement of Claim (Amendment No. 1) filed on 9 June 2022 at para 11.

55 Kimberly's Affidavit at para 32.

56 Eugene Phoa's AEIC at paras 10 and 13.

do not think this is sufficient to establish his case. This position is inconsistent with his pleadings, which he is now trying to resolve, albeit indirectly, through the Amendment Application. Further, this position is also inconsistent with the contrary one he has taken throughout this Suit, as I will go on to explain.

59 Further, Eugene repeated his aforementioned pleaded position in all the interlocutory affidavits filed in this Suit. For example, in Eugene's 3rd Affidavit filed on 26 May 2021 to oppose the defendants' application for security for costs, he expressly said that it was "obvious" that he was not suing in his personal capacity:[57]

> **III. THE CLAIM IS FOR THE ESTATE AND NOT ME PERSONALLY**
>
> 24. As should be obvious, the true plaintiff in this Suit is the estate of Mdm Phoa, and not me personally; my role is in a representative capacity as one of the personal representatives of the estate.

60 Similarly, the manner in which Eugene has pleaded the reliefs sought is inconsistent with his assertion that he had alternatively sued in his personal capacity as a beneficiary of Evelyn's Estate. This is because Eugene had not asked for an apportionment of any damages or disgorgement sought. If Eugene was suing in his personal capacity, it would have made sense for him to seek his apportioned share of these awards (if so granted). However, because he has not asked for such apportionment, he must be suing in his capacity as the personal representative of Evelyn's Estate. Indeed, this would explain why he is seeking 100% of any damages or disgorgements awarded. Also, Eugene would not have a right to William's Estate as he is not a named beneficiary for that Estate. Yet, Eugene has not maintained any distinction in his claims as such.

---

[57] 3rd Affidavit of Eugene Phoa filed on 26 May 2021 at para 24.

61 Above all, Eugene, who is a lawyer with the distinction of being appointed a King's Counsel, confirmed on the stand that he was not suing in his personal capacity. During cross-examination by counsel for the defendants, Mr Joseph Lee, Eugene had said this:[58]

> Q: You have brought this action in two capacities: as the personal representative of your mother's estate and of William Phoa's estate. You will see that in the title in action.
>
> A: Yes.
>
> Q: You are not bringing this action in your personal capacity; correct?
>
> A: No -- well, yes and no. I'm also one of the heirs of my mother's estate.
>
> Q: But that's not the capacity you have named; correct? As a plaintiff?
>
> A: I -- I don't know what -- yes, you are right. It doesn't actually say "in his personal capacity and as personal representative". You are right. Technically speaking, you are right. But you are asking the question, but you are not bringing this in my personal capacity. To some extent I am because I'm an heir of my mother's estate as well.

62 While Eugene qualified his answer by saying that he is bringing this Suit in his personal capacity "[t]o some extent", I do not regard that as decisive. Rather, it is clear that Eugene admitted that "technically", which I take it to mean "legally", he is bringing this Suit in his capacity as the personal representative of the Estates. As a highly experienced lawyer, Eugene must have understood the implications of his answer when he said that "technically" he was suing only as Evelyn's personal representative and not in his personal capacity.

---

[58] Certified Transcript 30 May 2023 at p 83 lines 6 to 23.

63 Second, Eugene's reliance on O 15 r 15(1) also fails because he lacks standing to bring the Suit due to his failure to extract the resealed grant at the time of the filing of the Suit. Therefore, Eugene has no standing at all in the Suit. In this regard, the court in *Wong Moy (HC)* had said (at [24]):

> … according to r 15(1), the application had to be made by a person who was already a party to the existing proceedings. The applicant here was Madam Wong Moy, the plaintiff. Technically, however, as I had found her action to be a nullity she was no longer a party to any existing proceedings. Further she was not the independent third party whose participation in the proceedings would constitute them pre-existing proceedings for the purpose of the rule. She thus did not have the status to make such application. In any event, what she wanted was to substitute her status as representative of the deceased's estate for her status as administratrix and thus she would be effecting a change of plaintiff, which is not something contemplated by this rule. The purpose of the rule is to allow an additional party who may be affected thereby to have a say in the litigation and not to replace one party to the litigation by another.

Applying this reasoning, since the Suit is a nullity owing to Eugene's failure to extract the resealed grant at the filing of the Suit, it follows that he is not a party to these proceedings. He is therefore not able to satisfy the requirement under O 15 r 15(1) of being a party to the existing proceedings.

There are no special circumstances for Eugene to rely on the exception in Wong Moy (CA)

64 For completeness, Eugene would also not be able to rely on the special circumstances exception laid down in *Wong Moy (CA)*.

65 In the present case, for the reasons that I have already explained earlier, there was nothing to prevent Eugene from procuring the Certificate of Postponement and the resealing to clothe him with the powers to sue in his representative capacity. There are thus no special circumstances for this court to permit Eugene to bring an action as a beneficiary on behalf of the Estates. In

any event, I mention the exception for completeness only because Eugene has confirmed in his 16th Affidavit filed on 28 September 2023 that he does not rely on this exception in relation to the Appointment Application.[59]

66 For all these reasons, I dismiss the Appointment Application.

Whether the Amendment Application should be allowed

The parties' positions

67 I turn finally to the Amendment Application. Eugene seeks to amend the title-in-action to clarify that he is suing in his personal capacity. The defendants object to this for a number of reasons which are related to the reasons they have advanced in respect of the Further Evidence Application.

My decision: the Amendment Application is dismissed

The applicable law

68 I begin with the applicable principles. In *Wang Piao v Lee Wee Ching* [2023] SGHC 216 ("*Wang Piao*"), the High Court set out the following analytical framework with respect to applications for an amendment of pleadings (at [40]):

> (a) First, the court should determine the stage of proceedings at which the amendments are sought. This would affect how the general principles apply. More broadly, the later an application is made, the stronger would be the grounds required to justify it.

---

[59] 16th Affidavit of Eugene Phua filed on 28 September 2023 at para 60.

(b) Second, the court should consider whether the amendments sought would enable the real question or issue in controversy between the parties to be determined. It is relevant to consider whether the application is made in good faith, and whether the proposed amendments are material.

(c) Third, the court should consider whether it is just to allow the amendments, by assessing, *eg*, whether the amendments would cause any prejudice to the other party which cannot be compensated in costs, and whether the applying party is effectively asking for a second bite of the cherry.

69 While these principles were laid down in relation to the amendment of pleadings, they can be sensibly applied to the Amendment Application, which concerns the amendment of a title-in-action. When these principles are applied to the Amendment Application, I conclude that it should be dismissed for the following reasons.

By Eugene's own case, the amendments are not necessary

70 First, if necessity is the bedrock behind a court allowing a party to amend, then Eugene's own case shows that the amendments are not necessary. This is because Eugene has always maintained that he is suing in his personal capacity regardless of what the title-in-action says. Thus, it is for the court to interpret the documents to ascertain if Eugene is indeed suing in his personal capacity. Since it is for the court to ascertain this by an objective interpretation of the documents, it follows that the amendments are not necessary to allow the real question in controversy between the parties to be determined. By Eugene's own case, I find that the proposed amendments are not necessary and hence dismiss the Amendment Application.

The amendments have come too late with no good reason

71 Second, the amendments have come too late with no good reason for the lateness. I have already explained why Eugene provided no good reason and will not repeat myself.

72 This also means that, on balance, the defendants will be prejudiced by any amendments, if they would effect a substantive change in the Suit. In this regard, the amendments will allow Eugene to repair his lack of standing after evaluating the defendants' case. This cannot be the reason on which to allow the amendments nor, to be fair to Eugene's counsel, Mr Raeza Ibrahim ("Mr Raeza"), constituted what was argued before me. Moreover, if the amendments are needed, the defendants would fairly be given the chance to amend their pleadings and take consequential actions. This will delay the resolution of the Suit even further, which is a consequential fact given that many of the defendants are old and in poor health.

73 For all these reasons, I dismiss the Amendment Application.

Conclusion

74 For all these reasons, I dismiss all three applications before me. The parties are to submit on the costs of these applications when dealing with costs of the entire action in the round.

75 During the hearing of these applications, Mr Raeza suggested that if I should reserve my decision in relation to these applications and decide them together with judgment in the Suit. I have, instead, dealt with the applications separately in this judgment because they raise some issues that are discrete from those raised in the Suit. It is therefore neater, to my mind, to deal with these

applications here. This also means that I will issue my judgment in relation to the Suit shortly after this judgment.

Goh Yihan
Judge of the High Court

Raeza Khaled Salem Ibrahim, Hoon Wei Yang Benedict and Kimberly Ng Qi Yuet (Salem Ibrahim LLC) for the plaintiff;
Lee Sien Liang Joseph, Chan Junhao Justin, Ow Jiang Meng Benjamin, Yong Walter, Ling Ying Hong Samuel and Dyason Isabel Mary (LVM Law Chambers LLC) for the first to fifth defendants;
The sixth to eight defendants absent and unrepresented.