IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 30

Court of Appeal / Civil Appeal No 62 of 2024

Between

Da Hui Shipping (Pte) Ltd (in creditors' voluntary liquidation)

… *Appellant*

And

An Rong Shipping Pte Ltd (in liquidation)

… *Respondent*

And

(1) Societe Generale, Singapore Branch
(2) PetroChina International (Singapore) Pte Ltd

… *Non-parties*

In the matter of Originating Application No 418 of 2023

Between

Da Hui Shipping (Pte) Ltd (in creditors' voluntary liquidation)

… *Claimant*

And

An Rong Shipping Pte Ltd (in liquidation)

… *Defendant*

And

(1) Societe Generale, Singapore Branch
(2) PetroChina International (Singapore) Pte Ltd

… *Non-parties*

JUDGMENT

[Admiralty and Shipping — Admiralty jurisdiction and arrest — Action in rem — Whether a proprietary claim to the sale proceeds of an arrested vessel may be made without invoking admiralty jurisdiction]
[Admiralty and Shipping — Admiralty jurisdiction and arrest — Action in rem — Whether variation of a priority order can be sought by a claimant without a judgment *in rem*]
[Restitution — Subrogation]

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Da Hui Shipping (Pte) Ltd (in creditors' voluntary liquidation)
v
An Rong Shipping Pte Ltd (in liquidation)
(Societe Generale, Singapore Branch and another, non-parties)

[2025] SGCA 30

Court of Appeal — Civil Appeal No 62 of 2024
Sundaresh Menon CJ, Belinda Ang Saw Ean JCA and Kannan Ramesh JAD
5, 12 March 2025

23 June 2025 Judgment reserved.

Belinda Ang Saw Ean JCA (delivering the judgment of the court):

1 The appellant in CA/CA 62/2024 ("CA 62") is Da Hui Shipping (Pte) Ltd ("Da Hui"), a company in liquidation. In the underlying application to this appeal, HC/OA 418/2023 ("OA 418"), Da Hui sought declaratory orders against the respondent, An Rong Shipping Pte Ltd ("An Rong"), a company in liquidation. The liquidators of An Rong did not participate in OA 418 and in this appeal. Nonetheless, PetroChina International (Singapore) Pte Ltd ("PetroChina") participated as a non-party and resisted Da Hui's application in OA 418.

2 In brief, Bank of America NA, Singapore Branch ("BOA") had granted a loan facility to Da Hui and An Rong. Both were jointly and severally liable as borrowers to repay the loan. Da Hui's vessel, the *Sea Equatorial*, and An Rong's two vessels, the *Ocean Goby* and the *Ocean Jack*, were cross-collateralised as

security for that loan facility. The parties subsequently defaulted on the loan. The *Sea Equatorial* was sold with the agreement of the parties. The sale proceeds were utilised to discharge Da Hui's indebtedness (represented by the amount of the loan facility that was drawn down by Da Hui and any interest thereon) and to partially repay An Rong's debt (similarly represented by the amount of the loan facility that was drawn down by An Rong and any interest thereon), as well as any costs and expenses BOA incurred under the loan agreement. Later, BOA, as the registered mortgagee of the *Ocean Goby* and the *Ocean Jack*, brought admiralty proceedings *in rem* and arrested the mortgaged vessels to enforce repayment of the outstanding loan. Both vessels were duly sold by orders of court. The sale proceeds of the judicial sales were utilised to satisfy BOA's outstanding loan together with other sums due under the loan agreement, leaving the remaining proceeds in court to be distributed to other *in rem* creditors with maritime claims against the *Ocean Goby* and the *Ocean Jack*. However, it appears that Da Hui wants those residual proceeds to be distributed to it ahead of at least An Rong's unsecured creditors in liquidation as well as creditors with claims brought within the admiralty jurisdiction of the High Court (Admiralty Jurisdiction) Act 1961 (2020 Rev Ed) ("HCAJA").

3 Through OA 418, Da Hui sought, amongst others, a declaratory order that it is entitled to be subrogated to any extinguished securities held by BOA pursuant to the loan agreement, including the latter's legal mortgages over An Rong's vessels (the *Ocean Goby* and the *Ocean Jack*). Da Hui argues that it has a claim for contribution against An Rong because as a co-debtor, it had paid BOA out of the sale proceeds of the *Sea Equatorial* to partially discharge An Rong's indebtedness under the loan facility. Da Hui invokes subrogation as a means to obtain the benefit of BOA's extinguished security rights against the *Ocean Goby* and the *Ocean Jack*, and consequently a proprietary right to the sale proceeds, to the extent that the proceeds from the sale of the *Sea Equatorial*

were used to discharge part of the loan that had been drawn down by An Rong. This proprietary right would effectively defeat the claims by other *in rem* claimants with a lower order of ranking since the balance sale proceeds of An Rong's vessels are insufficient to meet all of the claims *in rem*.

4 A judge sitting in the General Division of the High Court (the "Judge") held that no remedy of subrogation arose on the facts, and he accordingly dismissed Da Hui's application in OA 418 for a declaratory order that Da Hui be subrogated to the extinguished security rights of BOA (see *Da Hui Shipping Pte Ltd (in creditors' voluntary liquidation) v An Rong Shipping Pte Ltd (in liquidation) (Societe Generale, Singapore Branch and another, non-parties)* [2024] SGHC 166 (the "GD")). CA 62 is Da Hui's appeal against the Judge's decision in OA 418.

5 This court indicated at the hearing of this appeal on 5 March 2025 that Da Hui's application in OA 418 raised a fundamental procedural objection to this appeal being considered on the merits by this court. Our concern is – even assuming that Da Hui is entitled to have the appeal considered – whether the relief it seeks in CA 62 through the remedy of subrogation should be granted by this court in the circumstances. Specifically, the sale proceeds of the *Ocean Goby* and the *Ocean Jack* in court have been claimed in various parallel admiralty proceedings involving those vessels, and priority orders have already been made in HC/ADM 92/2021 ("ADM 92") and HC/ADM 94/2021 ("ADM 94") in relation to the distribution of those sale proceeds to *in rem* judgment creditors like PetroChina and Societe Generale, Singapore Branch ("SocGen"). This question raises various conceptual and practical difficulties for an appeal from the court below that was not seised of admiralty jurisdiction.

6 What we have before us is a non-admiralty *in personam* action that seeks to overreach into the sale proceeds paid into court. Those proceeds, however, are only available to persons with claims *in rem* against the vessels brought under the court's admiralty jurisdiction, despite the insolvency of the vessels' registered owner. Da Hui did not commence proceedings *in rem* against the remaining sale proceeds after it intervened in ADM 92 and ADM 94. Instead, it chose to advance the proceedings in OA 418. ADM 92 and ADM 94 have all been concluded. The priorities to the sale proceeds in court have already been determined in favour of the other claimants with statutory rights of action *in rem* who had obtained judgment against the *Ocean Goby* and the *Ocean Jack*. Even if it is still open to Da Hui to seek a variation of the priority orders made in ADM 92 and ADM 94 to scoop up the entire balance sale proceeds in court, this is a matter for the court seised of admiralty jurisdiction.

7 All said, the matters raised in CA 62 fall under the court's admiralty jurisdiction involving distinct legal principles that are in many ways *sui generis* and they are best resolved in a coherent way within the system of admiralty law and procedure.

8 For these reasons, we decline to hear CA 62 in the exercise of the court's power to control proceedings brought before it. We accordingly dismiss CA 62. We will elaborate on our decision in this judgment.

Background Facts

The parties

9 Da Hui is a company incorporated in Singapore and is a subsidiary of Xihe Capital (Pte) Ltd ("Xihe Capital"). On or around 22 October 2020, it entered member's voluntary liquidation and, on or around 19 November 2021,

it entered creditors' voluntary liquidation. At all material times, Da Hui was the registered owner of the *Sea Equatorial*.

10 An Rong is similarly a company incorporated in Singapore and is a subsidiary of Xihe Capital. On or around 10 February 2021, it was placed under judicial management and, on or around 4 July 2022, was compulsorily wound up. At all material times, An Rong was the registered owner of the *Ocean Goby* and the *Ocean Jack*.

11 At all material times, both Da Hui and An Rong were part of a group of vessel-owning companies (the "Xihe Group"). The Xihe Group owned vessels which were chartered by Ocean Tankers (Pte) Ltd ("OTPL"), a ship chartering and ship management company incorporated in Singapore. OTPL would in turn sub-charter the vessels owed by the Xihe Group or enter into contracts of carriage involving the Xihe Group's vessels with Hin Leong Trading (Pte) Ltd ("HLT"), which collapsed in 2020. HLT, OTPL and the Xihe Group were all beneficially owned and/or controlled by Mr Lim Oon Kuin and his family. Both HLT and OTPL are currently in liquidation.

12 SocGen and PetroChina, the first and second non-parties respectively, are entities that have commenced proceedings *in rem* against the *Ocean Goby* and the *Ocean Jack*. Default judgments in those proceedings have been entered in their favour (see [22] and [33] below). At the hearing below, PetroChina contested the application, while SocGen maintained a watching brief but indicated that Da Hui should be denied the reliefs it sought. At the hearing of this appeal, PetroChina's counsel was in attendance on a watching brief and, on our invitation, addressed this court on the procedural issues of Da Hui's application.

Relevant facts and events leading to Da Hui's claim for contribution against An Rong

BOA's loan facility to Da Hui and An Rong

13 On or around 24 August 2018, Da Hui and An Rong jointly entered into a secured term facility agreement (the "Loan Agreement") with BOA. The purpose of the Loan Agreement was to refinance Da Hui's vessel, the *Sea Equatorial*, and An Rong's vessels, the *Ocean Goby* and the *Ocean Jack*.

14 Under the Loan Agreement, BOA agreed to make available to Da Hui and An Rong a term loan facility not exceeding US$37.2m. As borrowers, Da Hui and An Rong were jointly and severally liable to repay the loan. The facility was to be drawn down in the following three tranches:

(a) Tranche A: the lower of US$12m and 60% of the fair market value (as defined in the Loan Agreement) of the *Sea Equatorial* (*ie*, Da Hui's vessel);

(b) Tranche B: the lower of US$12.6m and 70% of the fair market value (as defined in the Loan Agreement) of the *Ocean Goby* (*ie*, An Rong's vessel); and

(c) Tranche C: the lower of US$12.6m and 70% of the fair market value (as defined in the Loan Agreement) of the *Ocean Jack* (*ie*, An Rong's vessel).

15 The Loan Agreement also expressly envisaged that Tranches A, B and C were to be used for the refinancing of the *Sea Equatorial*, the *Ocean Goby* and the *Ocean Jack*, respectively.

16 The loan was secured by a mortgage over each vessel executed by the respective owner of the vessel in favour of BOA. Interest was payable on the loan, calculable against a reference rate.

17 Between 2018 and 2020, Da Hui and An Rong drew down the following principal amounts under the facility:

(a) Tranche A: US$8.4m was drawn down for the purpose of refinancing the *Sea Equatorial*; and

(b) Tranches B and C: US$20,562,500 was drawn down for the purposes of refinancing the *Ocean Goby* and the *Ocean Jack*. This amount was to be split equally between both tranches.

18 In total, US$28,962,500 was drawn down, in the ratio of 29:71 between Tranche A on one hand and Tranches B and C on the other hand.

The sale of the Sea Equatorial

19 On or around 22 September 2020, against the backdrop of the financial difficulties of HLT, OTPL and the Xihe Group, the parties to the Loan Agreement agreed to sell the *Sea Equatorial*, and thereafter apply the proceeds towards, among other things, discharging any amount owing to BOA under the Loan Agreement. On or around 14 October 2020, the *Sea Equatorial* was sold for the sum of US$21,477,121.86. Of this sum:

(a) US$8,351,177.94 and US$74,087.25 were applied towards the outstanding principal and the outstanding default interest, respectively, of Tranche A. As a result of the application of this total sum of US$8,425,265.19, Tranche A was fully paid off.

(b) US$12,278,802.11 and US$181,359.44 were applied towards the outstanding principal and the outstanding default interest, respectively, of Tranches B and C. This totalled a sum of US$12,460,161.55. As a result of this application of proceeds, as of 10 August 2021, there was an outstanding total principal of US$8,164,185.59 and outstanding total interest of US$317,072.00 in respect of Tranches B and C.

(c) The remaining US$561,695.12 was applied towards various costs and expenses incurred by BOA under the Loan Agreement.

20 Da Hui claims a contribution from An Rong in respect of the excess sum mentioned in [19(b)] above and a rateable portion of the costs and expenses incurred by BOA under the Loan Agreement mentioned in [19(c)] above.

Procedural history of admiralty proceedings against the Ocean Goby and the Ocean Jack

21 To recover the outstanding debt owed to it, BOA commenced actions *in rem* and arrested (a) the *Ocean Goby* in ADM 92 on 23 August 2021; and (b) the *Ocean Jack* in ADM 94 on 26 August 2021.

22 Prior to this, and prior to the sale of the *Sea Equatorial*, other actions *in rem* had been brought against the same two vessels, namely:

(a) HC/ADM 88/2020 ("ADM 88") and HC/ADM 89/2020 ("ADM 89") commenced by PetroChina on 22 April 2020, against the *Ocean Goby* and the *Ocean Jack*, respectively; and

(b) HC/ADM 143/2020, HC/ADM 144/2020 and HC/ADM 145/2020 ("ADMs 143–145") commenced by SocGen on 17 June 2020 against the *Ocean Goby*.

All five admiralty actions were grounded in claims arising from the misdelivery of cargo on board the two vessels.

23 Shortly after the commencement of ADM 92 and ADM 94, PetroChina intervened in those actions. On 22 September 2021, SocGen intervened in ADM 92 (concerning the *Ocean Goby*).

24 On 13 September 2021, BOA applied for judgment in default of appearance in both ADM 92 and ADM 94. On 6 October 2021, BOA applied for the vessels to be appraised and sold by the Sheriff of Singapore (the "Sheriff").

25 To consolidate the above facts, by this time (*ie*, 6 October 2021),

(a) both the *Ocean Goby* and the *Ocean Jack* were arrested (but not sold);

(b) the *Ocean Goby* was the subject of proceedings in ADM 88 (with PetroChina), ADMs 143–145 (with SocGen) and ADM 92 (with BOA, alongside PetroChina and SocGen as interveners), while the *Ocean Jack* was the subject of proceedings in ADM 89 (with PetroChina) and ADM 94 (with BOA, alongside PetroChina as an intervener);

(c) An Rong had not entered appearance to defend any of these actions;

(d) no default judgment had been entered against the two vessels in any of these actions; and

(e) Da Hui had not yet intervened in any of these admiralty actions.

26 On 14 October 2021, the court granted BOA's application in ADM 94 for default judgment in respect of the *Ocean Jack* and its application for both vessels to be appraised and sold. A week later, on 20 October 2021, the court granted BOA's application in ADM 92 for default judgment in respect of the *Ocean Goby*.

27 On 30 December 2021 and 10 February 2022, the *Ocean Jack* and the *Ocean Goby* respectively were sold. The proceeds of sale were paid into court on the same days, as was the usual course.

28 While the admiralty actions were ongoing, An Rong was placed in liquidation on 4 July 2022. On 20 October 2022, Da Hui filed its proof of debt with An Rong's liquidators for the sum of US$13,021,856.67 corresponding to what was said to be its "[p]ayment of An Rong's tranches of outstanding loan with BOA (incurred for the purpose of financing An Rong's vessels, the *Ocean Goby* & the *Ocean Jack*) by applying sale proceeds of [Da Hui's] vessel (*Sea Equatorial*)". At this point, Da Hui had not yet intervened in any of the above admiralty actions nor commenced an admiralty action of its own against An Rong's vessels.

29 Returning to the admiralty actions, on 29 March 2023, SocGen applied for default judgment in ADMs 143–145.

30 A day later, on 30 March 2023, BOA applied for the determination of priorities and for payment out of court of the proceeds of sale of the *Ocean Jack* in ADM 94. On 20 April 2023, the court determined the priority of claims in ADM 94 against the said sale proceeds and any interest thereon, then standing at US$9,220,430, as:

(a) first, the commission and expenses of the Sheriff;

(b) second, BOA's expenses incurred as the Sheriff's expenses;

(c) third, BOA's legal costs and disbursements;

(d) fourth, BOA's judgment debt pursuant to the default judgment obtained in ADM 94, *ie*, for the outstanding principal and accrued interest under the Loan Agreement and for costs and expenses incurred; and

(e) fifth, for the balance sums (if any) to be distributed to the "Intervener [*ie*, PetroChina]" in satisfaction of its judgment debts, and the balance (if any) to be paid to An Rong.

31 The court further ordered that, in accordance with the above priorities, the following sums be paid out:

(a) US$550,433.85 and S$143,013.40 to the Sheriff, the Maritime & Port Authority of Singapore (the "MPA"), Thome Ship Management Pte Ltd and M/s AsiaLegal LLC for the Sheriff's costs and expenses and port dues; and

(b) US$8,369,710.04 in partial satisfaction of BOA's judgment debt obtained in ADM 94.

32 Da Hui then began legal proceedings on 24 April 2023 by filing its application in OA 418. On 27 April 2023, it also applied to intervene in ADM 92 and ADM 94 and filed its memorandum of appearance in each of these two actions a day later. But it did not commence any admiralty action *in rem* against the *Ocean Goby* or the *Ocean Jack*, or against the proceeds of sale of those vessels.

33 Meanwhile, on 5 May 2023, the court granted SocGen's applications for default judgments in ADMs 143–145 concerning the *Ocean Goby* for damages totalling more than US$1.8m. This was followed by PetroChina applying for default judgment in ADM 89 (against the *Ocean Jack*) and ADM 88 (against the *Ocean Goby*) on 22 May and 1 June 2023 respectively. On 5 July 2023, default judgments were entered in favour of PetroChina for damages, each in excess of US$2m.

34 Having obtained judgment against the *Ocean Jack*, PetroChina filed an application on 12 July 2023 for payment out of court of the remaining sale proceeds of the *Ocean Jack* in ADM 94 *vide* HC/SUM 2077/2023 ("SUM 2077").

35 BOA, having already been once successful in its application for payment out in ADM 94, applied for *further* payment out of court of the proceeds for additional interest due under the Loan Agreement, as well as other costs and expenses incurred. This was granted on 12 October 2023, with the court ordering a further US$395,711.70 and S$21,420 to be paid out of the sale proceeds and interest thereon.

36 On the same day, PetroChina's application for payment out in SUM 2077 was heard. Da Hui took the position that the proceedings in SUM 2077 should be held in abeyance and the hearing of that application be adjourned to a date after the final disposal of OA 418. The court adjourned the application in SUM 2077, noting that the prejudice that PetroChina might suffer could be addressed by: (a) Da Hui's payment of interest running from the date of that hearing if Da Hui subsequently did not succeed in proving its claim to the sale proceeds, which Da Hui was agreeable to bear; and (b) Da Hui's payment of costs incurred by PetroChina (which would have to be thrown away

as a result of Da Hui's late entry) that was not contingent on Da Hui proving its priority.

37 As for ADM 92, BOA applied for the determination of priorities and for payment out of court of the sale proceeds of the *Ocean Goby* on 12 October 2023. On 16 October 2023, the court determined the priority of claims in ADM 92 against the said sale proceeds and any interest thereon, then standing at US$8,878,390, as:

(a) first, the Sheriff's commission and expenses;

(b) second, BOA's expenses incurred as the Sheriff's expenses;

(c) third, BOA's legal costs and disbursements;

(d) fourth, BOA's judgment debt pursuant to the order obtained in ADM 92, *ie*, for the outstanding principal and accrued interest under the Loan Agreement and for costs and expenses incurred; and

(e) fifth, for the balance sums (if any) to be distributed to the "Interveners [*ie*, SocGen, PetroChina and Da Hui]" in satisfaction of their judgment debts, and the balance (if any) to be paid to An Rong.

38 The court further ordered that, in accordance with the above priorities, the following sums be paid out:

(a) US$677,624.64 and S$963,115.51 to the Sheriff, the MPA, Thome Ship Management Pte Ltd and M/s AsiaLegal LLC for the Sheriff's costs and expenses and port dues; and

(b) US$6,169,010.79 and S$110,968.19 in satisfaction of BOA's judgment debt obtained in ADM 92.

39 Unlike the priority orders in ADM 94 which were made before Da Hui intervened, the above orders in ADM 92 were made with Da Hui's counsel in attendance at the hearing. The court was informed that Da Hui took no position on the matter of the order of ranking, but that it "may need to make prayer under prayer 5, to be subrogated to [BOA's] position". Prayer 5, as sought by BOA, was for all parties to have the liberty to apply for further orders or directions as may be necessary.

40 Finally, on 7 March 2024, BOA applied to pay *into* court excess moneys previously paid out of the sale proceeds of the *Ocean Goby* in ADM 92 due to accounting errors in its previous application for payment out. This application was heard on 11 July and 17 September 2024, with the court ordering BOA and/or its solicitors to pay in the relevant sums.

41 As of February 2025, the balance sale proceeds that remained in court were US$2,236,015.49 and S$786,685.90 for the *Ocean Goby* and US$39,217.73 for the *Ocean Jack*.

Da Hui's application in OA 418

42 Da Hui sought three principal reliefs in OA 418:

(a) a declaration that An Rong is indebted to Da Hui in the sum of US$13,021,856.67, being the latter's claim in contribution against An Rong arising from the Loan Agreement;

(b) a declaration that Da Hui is entitled to be subrogated to any extinguished securities held by BOA pursuant to the Loan Agreement,

including the latter's mortgage over An Rong's vessels (*ie*, the *Ocean Goby* and the *Ocean Jack*) in order to satisfy Da Hui's claim in contribution as declared above; and

(c) leave for Da Hui to commence and continue OA 418 against An Rong, pursuant to s 133(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed).

43 Da Hui subsequently reduced its claim in contribution from US$13,021,856.67 to US$12,858,965.09 in its written submissions.

Da Hui's submissions in OA 418

44 With respect to its claim in contribution, Da Hui argued that the presumption of equal contribution between borrowers did not apply because it was clear that only Tranche A was for its own benefit and Tranches B and C were solely for An Rong's benefit. Therefore, an equitable apportionment of the borrowers' liabilities under the Loan Agreement would be in accordance with the following:

(a) Da Hui shall be liable for all outstanding principal and interest arising from Tranche A;

(b) An Rong shall be liable for all outstanding principal and interest arising from Tranches B and C; and

(c) Da Hui and An Rong shall share the other costs and expenses claimed, in proportion to the respective loan amounts drawn under Tranche A for Da Hui and Tranches B and C for An Rong, *ie*, in the ratio of 29:71 (see [18] above).

45 On this basis, the sum of US$12,858,965.09 that was paid out of the sale proceeds of the *Sea Equatorial* belonging to Da Hui, for the benefit of An Rong, was more than Da Hui's rateable portion of the borrowers' liabilities under the Loan Agreement. Da Hui was therefore entitled to a claim in contribution for the same.

46 In addition, Da Hui contended that it was entitled to be subrogated to BOA's extinguished securities pursuant to the Loan Agreement, including the latter's legal mortgage over the *Ocean Goby* and the *Ocean Jack*. First, it fell squarely within the common law rule providing that a co-debtor is entitled to be subrogated to any securities held by the creditor in order to obtain payment of any amount paid in excess of their share of the liability; and second, Da Hui was entitled to subrogation under s 2 of the Mercantile Law Amendment Act 1856 (2020 Rev Ed) ("MLAA").

47 Finally, Da Hui justified its prayer for leave to commence and continue OA 418 on the basis that An Rong was unlikely to incur any costs in defending the action. Indeed, An Rong did not defend OA 418.

PetroChina's submissions in OA 418

48 PetroChina argued that Da Hui should not be granted leave to commence and continue OA 418 as it was effectively seeking to create security rights post-commencement of An Rong's winding up. Specifically, PetroChina submitted that through OA 418, Da Hui was impermissibly attempting to obtain security and bypass the statutory scheme of *pari passu* treatment for all unsecured creditors. This attempt was evidenced by Da Hui filing its proof of debt against An Rong on 20 October 2022, wherein it took the position that it held no security in relation to the debt. However, more than five months later, on 24 April 2023, Da Hui filed OA 418. By doing so, Da Hui acknowledged and

recognised that it did not hold any security prior to the commencement of An Rong's winding up and continued to be an unsecured creditor.

49 In any event, Da Hui should not be entitled to be subrogated to any of BOA's extinguished securities pursuant to the Loan Agreement as there was no basis for Da Hui's claim in unjust enrichment against An Rong. PetroChina referred to this court's remarks in *United Overseas Bank Ltd v Bank of China* [2006] 1 SLR(R) 57 at [27] (taking reference from the decision of the UK House of Lords in *Banque Financiere de la Cite SA v Parc (Battersea) Ltd* [1999] 1 AC 221) that "an essential prerequisite for the application of the equitable doctrine of subrogation is the presence of unjust enrichment". In the present case, there was no unjust factor available to Da Hui upon which it could rely to establish its claim in unjust enrichment against An Rong. Accordingly, no question of the remedy of subrogation arose.

50 To the extent that Da Hui was able to establish its claim in unjust enrichment and was entitled to subrogation, the effect of this remedy should be limited to An Rong only. Although Da Hui was effectively seeking to be paid in priority to all creditors, including the *in rem* claimants (like PetroChina), there was no evidence of any contractual arrangement or evidence of the parties to the Loan Agreement contemplating that Da Hui would be afforded greater rights beyond seeking *in personam* recourse against An Rong for the excess sum and costs paid that represented more than its rateable portion.

The Judge's decision below

51 On 16 November 2023, the Judge granted leave for Da Hui to commence and continue OA 418 against An Rong but dismissed the rest of the application. The written grounds of decision dated 28 June 2024 set out three principal holdings.

52 First, having considered the relevant principles on the right of contribution and the Loan Agreement – particularly the structuring of the loan in three distinct tranches, each with a separate purpose – the Judge was prepared to proceed on the basis that the burden of repaying BOA's debt could be equitably apportioned in the manner contended by Da Hui (see [44] above), with the result that Da Hui did, in principle, have a claim in contribution against An Rong for the excess that it had repaid for An Rong's benefit: GD at [38].

53 Second, the Judge declined to hold that Da Hui was subrogated to BOA's extinguished securities in the *Ocean Goby* and the *Ocean Jack*. In this regard, the Judge arrived at three conclusions:

(a) There was no bar to the grant of subrogation even where Da Hui had only contributed towards the partial discharge of the co-borrowers' joint and several liability: GD at [48]–[51] and [53]–[56].

(b) Da Hui could not be subrogated to a security interest that had already been spent, *ie*, enforced by BOA. The injustice that subrogation seeks to cure is the unconscionability of a defendant (in this case, An Rong) insisting on being restored to its collateral in circumstances where the claimant had met the burden of discharging the defendant's liability to his creditor. However, in this case, there was no question of An Rong regaining any securities unfairly as it retained no residual interest in its vessels after the enforcement of the mortgages (and the sale of the vessels): GD at [57]–[63].

(c) There were policy reasons for refusing subrogation, namely that: (i) the net result would be an *ex post* enlargement of the amount secured by the mortgages over An Rong's vessels (*ie*, the value of BOA's (remaining) mortgage debt plus the value of Da Hui's claim in

contribution); and (ii) Da Hui was attempting to steal a march on other lower-ranking *in rem* claimants (*ie*, PetroChina and SocGen) looking to recover their judgment debts from An Rong: GD at [64]–[66].

54 The Judge held that while Da Hui submitted that its right of subrogation was also grounded in s 2 of the MLAA, this provision essentially codified the common law rules on subrogation to extinguished security interests, and therefore the provision confers nothing more or less than what has long been available at common law: GD at [46].

55 Hence, the Judge declined to declare that Da Hui was entitled to be subrogated to any extinguished securities held by BOA. Accordingly, the Judge found no basis or justification to grant a declaration that An Rong was indebted to Da Hui in the sum prayed for, without prejudice to the adjudication of the proof of debt filed by Da Hui with An Rong's liquidators: GD at [67]–[68].

56 Third, and finally, because PetroChina was prepared to accept that the question of Da Hui's entitlement to the remedy of subrogation was not a matter that An Rong's liquidators could determine, the Judge granted leave for Da Hui to commence and continue OA 418 to regularise the substantive determinations on the rest of the application: GD at [69]–[71].

57 On the question of costs, the Judge fixed costs at $7,000 (all-in) to be paid by Da Hui to PetroChina: GD at [72].

Da Hui's appeal in CA 62

58 Da Hui's appeal is primarily against the Judge's holding that the remedy of subrogation was not available because BOA had fully enforced the mortgages over An Rong's vessels. There was no principled reason for the Judge to

distinguish between securities that were extinguished upon the discharge of the secured debt without any creditor's enforcement action, and those that were so extinguished upon a similar discharge of debt following a creditor's enforcement action.

59 Further, the Judge erred in holding that there was no unconscionability or unjust enrichment which justified the remedy of subrogation since An Rong would not recover any residual equity on the mortgaged vessels. In this regard, the Judge failed to consider "secondary" enrichments which accrued to lower-ranking *in rem* claimants like PetroChina and SocGen, whose positions were materially improved by Da Hui's contribution to the partial satisfaction of An Rong's liabilities to BOA. Those claimants would be unjustly enriched at the expense of Da Hui if the remedy of subrogation were not granted.

60 Third, the Judge erred in holding that there were policy reasons for refusing the remedy of subrogation in this case. The grant of subrogation will always result in an "*ex post* enlargement" of the amount secured by the subject securities, and there is no difference between the present case and the paradigm scenario of equitable subrogation. Further, it was unclear how granting Da Hui priority over other claimants *in rem* would be against the "fair distribution of an insolvent debtor's assets" when the administration and distribution of the subject assets (*ie*, the residual sale proceeds from the *Ocean Goby* and the *Ocean Jack*) fell outside the ambit of An Rong's liquidation.

Characteristics of an admiralty action *in rem*

61 Earlier on in this judgment, we alluded to some areas of admiralty law and procedure that would pose problems to this appeal as it stands. These problems arose because of the nature of the action and relief sought in OA 418:

OA 418 was against An Rong, and in that application, Da Hui sought to acquire proprietary rights *via* subrogation to the extinguished security rights of BOA.

62 The subrogation question relates to a proprietary right to sale proceeds from a judicial sale of vessels arrested in admiralty proceedings. In our view, the first consideration is the jurisdictional foundation for proprietary claims in respect of a mortgage or a charge on a vessel (like the *Ocean Goby* and the *Ocean Jack*). This is a matter that falls within the jurisdiction of the court seised of admiralty jurisdiction under the HCAJA. The rules peculiar to admiralty law would apply in respect of an admiralty action *in rem*. However, OA 418 was commenced against An Rong, a company in liquidation, within the *civil* jurisdiction of the High Court. It was not an action *in personam* in admiralty proceedings.

63 At this juncture, it is important to highlight the relevant characteristics of an admiralty action *in rem* for context:

> (a) The issuance of a claim *in rem* is a procedural step that has the effect of crystallising the claim against the ship as a statutory lien *in rem* with regard to claims that do not attract a maritime lien. A "statutory lien *in rem*", a known colloquial terminology, is a convenient label given to an irrevocably accrued statutory right of action *in rem* by which such a writ action is unaffected by any subsequent change in the beneficial ownership of the ship (see *The Monica S* [1968] P 741 at 768G–769B; *The Helene Roth* [1980] QB 273 at 282).
>
> (b) An action *in rem* allows the claimant to proceed directly against the ship as the defendant. If the shipowner or the person interested in the ship does appear to defend the action, and/or challenges the application for the sale of the ship by the court, the action becomes also against that

person. Conversely, the action is against the ship only if the shipowner or the person interested in the ship allows the ship to be sold without appearing in the action to oppose the sale or defend the action (see Aleka Mandaraka-Sheppard, *Modern Maritime Law* vol 1 (Informa Law, 3rd Ed, 2013) at p 10; Toh Kian Sing SC, *Admiralty Law and Practice* (LexisNexis, 3rd Ed, 2017) ("*Admiralty Law and Practice*") at pp 19–20). Once the ship under arrest is sold by the court, all outstanding claims which are or could be brought by an action *in rem* against the ship are transferred to the sale proceeds in court (see *Bank of Tokyo-Mitsubishi UFJ Ltd v MV Sanko Mineral (owners) (Glencore Ltd, cautioner)* [2015] 2 All ER (Comm) 979 at [41]–[42], referring to, among other cases, *The Queen of the South* [1968] P 449 at 461–462).

(c) As regards the sale proceeds, other parties may intervene in the proceedings *in rem* to assert or protect their own rights or the priority accorded to them. However, subject to the question of priority, the sale proceeds are made available for claimants *in rem* – *ie*, all those who had issued writs *in rem* against the ship prior to the distribution of the sale proceeds. The sale proceeds of the *res* are then to be distributed to those claimants with judgments *in rem*, whose claims would be ranked in accordance with principles of priority.

(d) In the case of two or more statutory liens competing for priority of payment of the sale proceeds of the same vessel, they rank *pari passu*, irrespective of whether the competition is between statutory liens arising from different types of claim, and irrespective of the order of creation of those liens (see *Admiralty Law and Practice* at p 392; Nigel Meeson and John A Kimbell, *Admiralty Jurisdiction and Practice* (Informa Law, 5th Ed, 2018) at para 6.65).

(e) Maritime claimants other than maritime lien holders and mortgagees are not treated as secured creditors unless they issue a claim *in rem before* the commencement of the winding up of the company as illustrated by the case of *Re Aro Co Ltd* [1980] 1 Ch 196 (see also *Admiralty Law and Practice* at p 153).

64 As summarised above, the following matters are ordinarily resolved within the system of admiralty law: the procedure applicable to statutory claims *in rem*, the effect of a judicial sale, and the distribution of the sale proceeds after the determination of priorities of claimants with judgments *in rem* against vessels. On the undisputed facts here, the admiralty actions against the *Ocean Goby* and the *Ocean Jack* have been so resolved. To recap the salient facts:

(a) BOA, PetroChina and SocGen commenced admiralty actions against the *Ocean Goby* and the *Ocean Jack* well before the compulsory winding up of An Rong on 4 July 2022. An Rong did not defend any of the admiralty actions *in rem*.

(b) BOA obtained default judgments against the *Ocean Goby* in ADM 92 and the *Ocean Jack* in ADM 94 on 14 and 20 October 2021, respectively.

(c) On 30 December 2021 and 10 February 2022, the *Ocean Jack* and the *Ocean Goby* respectively were sold. The proceeds of sale were paid into court on the respective days.

(d) An Rong was compulsorily wound up in July 2022 and the liquidators of Da Hui then filed proof of debt against An Rong in October 2022.

(e) On 20 April 2023, the court in ADM 94 determined the priority of claims against the sale proceeds of the *Ocean Jack* (at [30] above). Only PetroChina had intervened in ADM 94.

(f) On 24 April 2023, Da Hui filed OA 418 (the underlying application to this appeal) and intervened in ADM 92 and ADM 94.

(g) On 5 May 2023, the court granted default judgment in favour of SocGen in ADMs 143–145 concerning the *Ocean Goby*. On 5 July 2023, default judgments were entered in favour of PetroChina in ADM 89 (against the *Ocean Jack*) and ADM 88 (against the *Ocean Goby*).

(h) Pursuant to the priorities determined by the order of court dated 20 April 2023, PetroChina applied on 12 July 2023 for payment out of court of the remaining sale proceeds of the *Ocean Jack* in ADM 94. Da Hui's application for an adjournment of PetroChina's application pending determination of OA 418 was granted on terms (see [36] above).

(i) As for ADM 92, priority to the sale proceeds of the *Ocean Goby* was determined on 16 October 2023.

65 In essence, the priorities for the payment out of the sale proceeds of the *Ocean Jack* and the *Ocean Goby* have already been determined, and sums were paid out to satisfy BOA's judgments. The residual sale proceeds would ordinarily go to PetroChina and SocGen in accordance with the admiralty principles of priority. It is against this context that Da Hui is seeking to lay its hands on the sale proceeds.

OA 418 is not an appropriate procedural response to challenge the priority orders made in ADM 92 and ADM 94

66 With the above characteristics of an admiralty action *in rem* in mind, and applying them to the undisputed facts, we make the following points.

67 Firstly, as stated, Da Hui did not invoke the admiralty jurisdiction of the High Court in OA 418. As a result, Da Hui's claim in OA 418 is not susceptible to the jurisdiction of the admiralty court. None of the processes which are peculiar to admiralty jurisdiction have been triggered.

68 Second, it is not possible to obtain payment out of the sale proceeds without a judgment *in rem*. In this sense, Da Hui has no effective priority to the sale proceeds of the vessels. Subject to the question of priority, only creditors with judgments *in rem* against the *Ocean Goby* and the *Ocean Jack* are entitled to share the sale proceeds. Indeed, O 33 r 22 of the Rules of Court 2021 ("ROC 2021") provides that a party who wishes to determine the order of priority of the claims against the sale proceeds of a ship *must obtain judgment against the ship or proceeds of sale of the ship*. However, Da Hui had merely intervened in ADM 92 and ADM 94 to state its interest in the sale proceeds. It did not sue *in rem* in any claim coming within the provisions of s 3(1)(*c*) of the HCAJA, and without a judgment *in rem*, Da Hui cannot obtain payment out of the sale proceeds (see *The "Euroexpress"* [1988] 2 SLR(R) 232 at [25]; *Admiralty Law and Practice* at p 266). It is only open to PetroChina (as intervener in ADM 92 and ADM 94) and SocGen (as intervener in ADM 92), both of whom had obtained judgments *in rem*, to seek the necessary relief to enable them to share in the balance sale proceeds *pari passu*.

69 Third, the sale proceeds of the *Ocean Goby* and the *Ocean Jack* are not affected by the liquidation of An Rong. An Rong had not appeared in any of the

actions *in rem* against the *Ocean Goby* and the *Ocean Jack* to stop the judicial sale of the vessels. Da Hui – who had filed a proof of debt – is seeking to improve its lot by invoking the remedy of subrogation in OA 418 and in this appeal.

70 Counsel for Da Hui said at the hearing of the appeal that Da Hui plans to enforce its security over the *res* – that arises by way of subrogation – by eventually going to the admiralty court that heard ADM 92 and ADM 94 to seek payment out of the remaining sale proceeds. However, this plan of action will not overcome or avoid the fundamental procedural objection raised in this judgment.

71 Plainly, Da Hui's case for subrogation should have been advanced in an action *in rem* against An Rong's vessels before a court seised of admiralty jurisdiction. CA 62 is not the appropriate forum for Da Hui to establish its entitlement to the sale proceeds in court. This conclusion is sufficient to dismiss this appeal.

72 For completeness, we now turn to several "misconceptions" held by Da Hui in relation to the procedural problem explained in this judgment. It appears from the "misconceptions" that Da Hui did not commence proceedings *in rem* because it had concerns that it could not bring its claim within s 3(1)(*c*) of the HCAJA. It resorted to claiming a right of subrogation against An Rong first and then planned to use the result of *in personam* proceedings against An Rong in OA 418 to access the sale proceeds of the *Ocean Goby* and the *Ocean Jack*.

73 At the hearing of HC/SUM 1939/2023 on 7 August 2023, which was an application by SocGen to add itself as the second defendant in OA 418, Da Hui's counsel, Shook Lin & Bok ("SLB"), objected to the application. SLB

informed the court that they had considered whether Da Hui's claim for subrogation could fall under s 3(1)(*c*) of the HCAJA, but "concluded that since the remedy we are seeking [*ie*, subrogation to extinguished security rights] is relying on the legal fiction of … the mortgage being kept alive, it would not be appropriate to invoke the admiralty jurisdiction". In other words, SLB took the view that the remedy of subrogation to BOA's extinguished rights could not be treated as "a mortgage or charge on a ship" under s 3(1)(*c*) of the HCAJA.

74 SLB said that the claim advanced in OA 418 was personal in nature:

> First, *OA 418 is a personal claim against An Rong*. It is not the appropriate avenue to determine the priorities and payment out. There is a separate procedure. [BOA] has been directed to file an application for priorities by 24 August 2023. That in fact is the appropriate avenue for the order of priorities and effect of subrogation remedy granted to our client. And for [SocGen] to hash it out in those proceedings.
>
> …
>
> [W]e will just highlight that the remedy of subrogation is between us and An Rong alone, not with [SocGen].
>
> [emphasis added]

75 Finally, at the same hearing, SLB also said that "[i]n the event we obtain the remedy of subrogation [in OA 418], whether we need to file a claim *in rem* to get the payment out, that will be separate proceedings".

76 From all that was said, it is discernible that SLB's intention was to first obtain the declaration of subrogation, and to then rely on that declaration to re-order the priorities in ADM 92 and ADM 94 so that the sale proceeds could be paid out to Da Hui. As explained, such an approach is impermissible. It was obviously adopted to work around the position held by SLB which was that Da Hui's claim for subrogation would not fall under s 3(1)(*c*) of the HCAJA.

77 We now come to SUM 2077, which was PetroChina's application for payment out of court of the sale proceeds of the *Ocean Jack* (see [34] above). Da Hui successfully argued that PetroChina's application should be stayed pending the determination of OA 418 (see [36] above). Particularly, PetroChina submitted that the effect of the declaratory relief of subrogation, if granted, would be to entitle Da Hui "to claim the balance sale proceeds from the *Ocean Jack* in priority to PetroChina (as a claimant *in rem*) and An Rong (as the former vessel owner)". Da Hui did acknowledge that the orders of court determining the priorities of the balance sale proceeds in ADM 92 and ADM 94 had to be varied.

78 The position Da Hui took – that it could use the result of *in personam* proceedings to vary para 1(e) of the orders of priorities made on 20 April 2023 (at [30(e)] above) and on 16 October 2023 (at [37(e)] above) – is incorrect. As stated above, it is necessary for Da Hui to first establish its admiralty rights *in rem* through *its own* admiralty action before it can have recourse to the *res*; such recourse cannot be substituted by *in personam* proceedings such as those in OA 418.

79 At the hearing of this appeal, Da Hui's counsel sought to persuade the court that it was procedurally appropriate for Da Hui's claim in subrogation to be adjudicated on in OA 418 (and in this appeal). This was despite acknowledging that Da Hui would have to return to the admiralty courts in ADM 92 and ADM 94 to assert its subrogated rights over An Rong's vessels. As we have concluded, it is improper for Da Hui to be seeking the remedy of subrogation in the present action.

80 We reiterate our earlier point that even if Da Hui obtained a favourable judgment through OA 418, Da Hui is not entitled to apply for a re-ordering of

priorities already determined simply by presenting and relying on that *in personam* judgment before the admiralty courts in ADM 92 and ADM 94. Instead, Da Hui must rely on rights *in rem*, which can only be recognised by a court seised of *in rem* admiralty jurisdiction. Only after doing so can Da Hui seek a re-ordering of priorities in ADM 92 and ADM 94. This, as stated above, is provided for in O 33 r 22 of the ROC 2021.

81 We have a final point which is on the re-ordering of priorities. Generally, a court has the power to reopen orders made in respect of the priority ranking of claims. The existence of this power is to avoid injustice upon parties who have claims against the funds in court. In the exercise of the court's discretion in this case, the court will have to be persuaded that there is justification for a re-ordering of para 1(e) of the order of priorities made on 16 October 2023 (at [37(e)] above) since the balance sale proceeds are still in court. Da Hui's attitude and the various steps it took since it intervened in ADM 92 are material. It allowed para 1(e) of the 16 October 2023 order to be made even though its counsel was present at the hearing (at [39] above). Again, we refer to O 33 r 22(1) of the ROC 2021 which provides that only a party who has obtained or who obtains a judgment against the ship or its proceeds may apply. But that is not the end of the matter. Where a ship is ordered to be sold, the court may further order that the order of priority of claims must not be determined until the expiration of 90 days, or another period as the court may specify, beginning with the day on which the proceeds of sale are paid into court: see O 33 r 22(2)(*a*) of the ROC 2021. A notice may be given under O 33 r 22(2)(*c*) of the ROC 2021, stating, amongst other things, that any person with a claim against the ship or the proceeds of sale of the ship should proceed to judgment before expiry of the relevant period (see O 33 r 22(3)(*d*) of the ROC 2021). If necessary, such person should seek an extension of this period under O 33 rr 22(2)(*b*) and (6) of the ROC 2021. It was open to Da Hui to ask the court to

defer making priority orders in respect of the balance sale proceeds by explaining that it would need time to proceed to judgment in an admiralty action *in rem* to seek a declaration that it was entitled to be subrogated to BOA's security interest. It did not safeguard its position at this vital moment by doing exactly that. A judge looking at the facts and circumstances of this case will have regard to Da Hui's conduct consistently maintained since it intervened in ADM 92 and ADM 94, balanced against the rights of PetroChina and SocGen as *in rem* judgment creditors, before he or she decides whether or not to re-order the priorities.

Conclusion

82 For the reasons above, we dismiss the appeal.

83 Although PetroChina's request to be heard on the costs of this appeal relates to the disposal of the appeal on the merits (which we have declined to hear), we are minded to hearing PetroChina should it seek costs incidental to the dismissal of the appeal on procedural grounds. If PetroChina is seeking costs, and if both PetroChina and Da Hui are unable to agree on costs, Da Hui

and PetroChina are to file and exchange written submissions on costs (limited to five pages) within 14 days from the date of this judgment.

Sundaresh Menon
Chief Justice

Belinda Ang Saw Ean
Justice of the Court of Appeal

Kannan Ramesh
Judge of the Appellate Division

Tan Zhengxian Jordan (Chen Zhengxian Jordan), Leong Hoi Seng Victor (Liang Kaisheng) and Lim Jun Heng (Audent Chambers LLC) (instructed counsel); Wong Thai Yong (Wong Thai Yong LLC) for the appellant;
The respondent absent and unrepresented;
Tan Poh Ling Wendy, Kelley Wong Kar Ee and Xu Hongli Terry (Morgan Lewis Stamford LLC) for the second non-party.