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

[2025] SGHCR 31

Admiralty in Rem No 56 of 2023 (Summons Nos 3473 of 2024)

Between

(1) C.U. Lines Limited.

… *Claimant*

And

(1) Owner of the vessel(s)
"HONG CHANG SHENG"

… *Defendant*

JUDGMENT

[Civil Procedure — Judgments and orders — Consent Orders — Whether contractual or uncontested — Whether residual discretion not to enforce consent order exists — Whether consent orders vitiated by common mistake or mutual mistake]
[Civil Procedure — Striking out — Whether applications to be struck out because of doctrine of res judicata — Whether applications duplicate proceedings in arbitration — Whether applications brought after prolonged and inexcusable delay]
[Admiralty and Shipping — Practice and procedure of action in rem — Warrant of arrest — Wrongful continuation of arrest and wrongful detention]

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22 September 2025 Judgment reserved.

AR Sim Junhui:

Introduction

1 This application is part of a dispute in relation to a time charter dated 4 March 2022 (the "Time Charter") entered into by the Charterer and the Owner in respect of the vessel "Hong Chang Sheng" (the "Vessel").

Facts and procedural history

2 The Time Charter had placed the Vessel at the Charterer's disposal for a period of between 42 and 44 months from the time of delivery, with the exact period of hire to be at the Charterer's option. Disputes however arose between the parties about one year after the Time Charter had been concluded. On 21 March 2023, the Charterer commenced action against the Vessel in HC/ADM 23/2023 ("ADM 23") and arrested the Vessel the next day. There were disputes in relation to the security to be provided for the release of the Vessel. On 8 May 2023, the Owner applied, by way of HC/SUM 1374/2023 ("SUM 1374"), for

an order to release the Vessel either on the provision of security to be fixed by the court, or without security. SUM 1374 came on for hearing before me and, on 7 June 2023, I fixed security and ordered the Vessel to be released upon provision of the same. The Owner provided security on 28 June 2023, and an Instrument of Release was issued on 29 June 2023. When deciding SUM 1374, I had not allowed security for part of the Charterer's claim on the authority of *The "Jeil Crystal"* [2022] 2 SLR 1385 because that part of its claim had not been verified in the affidavit leading the arrest. Thus, on 13 June 2023, the Charterer commenced action in HC/ADM 56/2023 ("ADM 56") in respect of that part of its claim and, on 29 June 2023, arrested the Vessel again. After security was provided, an Instrument of Release was issued on 5 July 2023. However, the Vessel was further detained until 12 July 2023 for reasons that, as it turns out, the Owner attributes to the Charterer.

3 In the meantime, the Charterer had, on 4 May 2023, informed the court at the Registrar's Case Conference ("RCC") for ADM 23 that the Vessel had been arrested in support of an arbitration in relation to its claims against the Vessel (the "Arbitration"), and that an application to stay proceedings would be filed. However, the filing of stay applications was repeatedly delayed. Finally, on 10 August 2023, the Charterer filed consented applications to stay proceedings by way of HC/SUM 2436/2023 in ADM 23 and HC/SUM 2435/2023 in ADM 56. The summonses were similar except for different case and warrant of arrest numbers. HC/SUM 2436/2023 provided, among others, as follows:

(a) Paragraph 1: "All further proceedings in this action, save as set out in paragraph 3 herein, be stayed in favour of arbitration in Singapore pursuant to Section 6 of the International Arbitration Act 1994."

(b) Paragraph 3: "Notwithstanding paragraph 1 above, the parties shall have liberty to file any application(s) in this action (including any appeal(s)) in relation to or in connection with the arrest of "HONG CHANG SHENG" (the "Vessel") pursuant to HC/WA 7/2023 and/or the security provided for the release of the Vessel."

(c) Grounds: "Pursuant to Section 6 of the International Arbitration Act. The dispute between [the Charterer and the Owner] arising out of or in connection with the Time Charterparty entered into by [the Charterer and the Owner] dated 4 March 2022 is subject to an arbitration agreement found in Clause 51 of Time Charterparty. Arbitration proceedings in the auspices of the Singapore Chamber of Maritime Arbitration (SCMA) (Ref No. SCMA 2023/001) are presently underway."

4 After supporting affidavits were filed as directed by the court, orders were made by consent in HC/ORC 5859/2024 and HC/ORC 5860/2024 (the "Consent Orders") on 22 August 2023. As with the summonses, the Consent Orders were similar except for different case and warrant of arrest numbers. HC/ORC 5859/2024 provided as follows:

(a) Paragraph 1: "All further proceedings in this action, save as set out in paragraph 3 herein, be stayed in favour of arbitration in Singapore pursuant to Section 6 of the International Arbitration Act 1994."

(b) Paragraph 3: "Notwithstanding paragraph 1 above, the parties shall have liberty to file any application(s) in this action (including any appeal(s)) in relation to or in connection with the

> arrest of "HONG CHANG SHENG" (the "Vessel") pursuant to HC/WA 7/2023 and/or the security provided for the release of the Vessel."

5 Thereafter, by way of HC/SUM 3113/2024 in ADM 23 and HC/SUM 3112/2024 in ADM 56 (the "Applications"), the Owner sought relief in this court for the wrongful continuance of the arrest of the Vessel in ADM 23 and her detention in ADM 56 (the "wrongful continuance of arrest and/or detention").

6 By way of this application, the Charterer seeks to strike out the Applications or stay them in favour of arbitration. To this end, the Charterer initially relied on Clause 51, which was the arbitration clause in the Time Charter, and proceeded primarily, if not wholly, on the basis that a mandatory stay ought to be granted under Section 6 of the International Arbitration Act 1994 ("IAA"). The Charterer made no reference to the Consent Orders in the application and did not address their effect on the proceedings or the application. However, ADM 23 and ADM 56 are not actions in which a stay of proceedings in favour of arbitration is being sought for the first time. Rather, they are actions that are already stayed pursuant to the Consent Orders. The determination of this application, as with any other, cannot be made *in vacuo*, but must take into account all existing facts and circumstances. The confluence of factors being a stay ordered by the court on consented terms forms part of the context to which the Charterer, by this application, is seeking to stay proceedings and/or strike out the Applications. Hence, in my view, the Consent Orders must be considered. As such, I invited parties to consider and address me further on issues in relation to the Consent Orders which I raised for their consideration. I reserved judgment after having heard the parties' further submissions.

7 Just as I was about to fix a hearing to render judgment, the Charterer informed me that settlement negotiations were afoot and requested that judgment be deferred. I thus convened a hearing to ascertain the status of negotiations, and was informed at the hearing that parties were on the cusp of concluding a global settlement of all their disputes, including in the Applications. Not wishing to jeopardise any attempt at settlement, I agreed to defer rendering judgment, but indicated that this application raised certain points of law on which a judgment may be of wider benefit. Hence, I directed the Charterer to update me on the status of negotiations, and the parties to take instructions on whether they had any objections to judgment being rendered after the settlement. The Charterer then informed me by letter that the parties had, on 4 September 2025, executed a settlement agreement resolving all disputes in, among others, ADM 23, ADM 56, the Applications and this application. At a further hearing, both parties stated that they had no objections to the release of the judgment, but the Charterer also made an oral application to redact references to the parties, the Vessel and case numbers in the judgment. I invited parties to make submissions on this issue, and reserved judgment.

8 Even if there has been a settlement, the court has a discretion to render judgment where the parties only settle after the hearing: see *Tan Ng Kuang Nicky (the duly appointed joint and several liquidator of Sembawang Engineers and Constructors Pte Ltd (in compulsory liquidation)) and others v Metax Eco Solutions Pte Ltd* [2021] 1 SLR 1135; *Bumi Armada Offshore Holdings Ltd and another v Tozzi Srl (formerly known as Tozzi Industries SpA)* [2019] 1 SLR 10; *Barclay Bank plc v Nylon Capital LLP* [2012] Bus LR 542.

9 Having heard the parties' submissions, I am of the view that the discretion should be exercised in this case. First, a judgment may be of some significance because of the novel question of whether the court has a residual

discretion not to enforce a consent order concerning where and how parties' disputes were to be determined. Further, the judgment is ready to be rendered. Indeed, it was ready to be rendered before the settlement and only deferred to encourage the amicable resolution of disputes. Lastly, the parties do not object to judgment being rendered. Indeed, the Charterer agreed that this ought to be done because of the novel point of law that was raised. Hence, the relevant factors point to the release of the judgment despite the parties' settlement.

10 However, I am not persuaded that the judgment ought to be redacted. In support of its oral application, the Charterer argued that this application was an application under section 6 of the IAA, and hence the judgment ought to be redacted pursuant to sections 22 and 23 of the IAA. I do not agree. As stated at paragraph 6 above, ADM 23 and ADM 56 are not actions in which a stay is being sought for the first time, but actions already stayed pursuant to the Consent Orders. This application is, in substance, not an application to stay proceedings, but to enforce or not enforce the Consent Orders. Hence, sections 22 and 23 of the IAA do not apply. In the alternative, the Charterer relied on the court's inherent powers, but this does not take it much further. It is true that the court has the inherent power to redact its judgment to serve the ends of justice: see *Re Tay Quan Li Leon* [2022] 5 SLR 896 at [23]. This has been done, for example, to protect the confidentiality of an arbitration: see *BBW v BBX and others* [2016] 5 SLR 755. I might have been inclined to agree with the Charterer on this because while this application is not a proceeding under the IAA, arguments were made concerning the positions taken in the arbitration between the parties. However, the Charterer only sought a redaction of the judgment and not, despite my repeated queries, a sealing of the case file as well. As I have informed the Charterer, the practical effect of such a course of action is that interested parties will still be able to inspect the case file, and thereby obtain all

the details that the Charterer allegedly seek to protect. I decline to exercise the court's inherent powers in such circumstances where the confidentiality of the arbitration is not seriously being sought to be preserved.

Issues to be determined

11 Turning to the application proper, I am of the view that it gives rise to three issues, around which I will structure my analysis and decision. The issues are as follows:

(a) whether the nature of the Consent Orders is that of contractual consent orders, or uncontested or "no objection" consent orders, and what the Consent Orders provide for;

(b) whether there is any basis for the court to interfere with the Consent Orders; and

(c) whether there is any basis for the court to strike out the Applications in spite of the Consent Orders.

Issue 1: Whether the nature of the Consent Orders is that of contractual consent orders, or uncontested or "no objection" consent orders, and what the Consent Orders provide for

12 The first issue to be determined is whether the Consent Orders represent an agreement between the parties, and if so, what that agreement is.

13 The starting point for the analysis is the distinction drawn by the courts between contractual, and uncontested or "no objection" consent orders. Whereas the former evidence a contract between the parties, the latter are granted because a party has failed to object to it: see *Blomberg, Johan Daniel v Khan Zhi Yan* [2024] 3 SLR 1079 ("*Blomberg v Khan*") at [38]. The effect of

the distinction is that the courts will generally only interfere with a contractual consent order if there are vitiating factors, but may alter or vary an uncontested consent order in the same circumstances as any order made without parties' consent: see *Siebe Gorman & Co Ltd v Pneupac Ltd* [1982] 1 WLR 185 ("*Siebe Gorman & Co Ltd v Pneupac Ltd*") at 189.

14 In order to determine whether a consent order is a contractual or uncontested consent order, the court looks at whether the parties entered into a "real contract" in the sense of there being a *consensus ad idem* between the parties: see *Siebe Gorman & Co Ltd v Pneupac Ltd* at 189; *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 117 ("*Wellmix Organics (International) Pte Ltd v Lau Yu Man*") at [34]. In embarking on the inquiry, the court should have regard to, among others, prior negotiations or clear written correspondence between the parties, or the existence of consideration: see *Blomberg v Khan* at [38], citing *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [30] and *Wiltopps (Asia) Ltd v Drew & Napier and another* [1999] 1 SLR(R) 252 ("*Wiltopps (Asia) Ltd v Drew & Napier*") at [19]. The court is to adopt an objective approach to ascertain the parties' intentions to determine "precisely what transpired between the parties", and pay close attention to the parties' own actions in the context of the relevant surrounding circumstances, and to the language and terms of the actual orders made: see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [9], [12] and [14].

15 The parties disagreed on the findings to be made on the evidence. The Owner argued that the parties had reached a *consensus ad idem* to be found in the Consent Orders, especially Paragraph 3. It added that the plain language of Paragraph 3 covered applications such as the Applications. The Charterer disagreed. Relying on the parties' negotiations and in particular deletions made to the drafts exchanged, the Charterer argued that there was no meeting of

minds, and the Consent Orders were merely uncontested consent orders. Alternatively, if an agreement had been reached, then it was for Paragraph 3 to be a "liberty to apply" clause, which was parasitic on the main order (i.e., Paragraph 1) and could not be used to vary or change the effect of the latter which stayed all proceedings.

16 Before I examine the evidence, I dispose quickly of the Owner's preliminary argument made in its first round of written submissions that the court should not have regard to the parties' negotiations because the negotiations may not relate to a clear and obvious context and hence not be admissible. I agree with the Charterer that this argument, based on *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd*") at [132(d)], mistakes contract formation for contract interpretation. The determination of whether the Consent Orders are contractual or uncontested consent orders is a question of contract formation. The parties' prior negotiations are, in turn, key evidence to determine whether a "real contract" has been formed: see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [14] and [30]. The court must thus consider such evidence. Of course, in a case such as this where contract formation and contract interpretation are intertwined, evidence in respect of one issue may affect the findings in respect of the other. The Owner appeared to acknowledge this given its silence on this issue in its second round of written submissions and the mere passing mention of the same in further oral argument. In any event, for reasons that I will explain later, I find that the parties' prior negotiations are part of a clear and obvious context to the Consent Orders that reinforces the plain language of the same, especially Paragraph 3. It is worth noting in that regard that the bulk of the Owner's submissions in relation to there

being a meeting of minds between the parties proceeded on this same basis. Therefore, in my view, it is entirely appropriate, indeed necessary, for me to have regard to the parties' negotiations.

17 With that in mind, I turn to the facts and circumstances leading up to the making of the Consent Orders on 22 August 2023.

18 I start with the Charterer's invitation on 19 June 2023 to the Owner to consent to a draft summons to be filed in ADM 23. There is no evidence as to why this invitation was only sent on 19 June 2023 despite earlier indications to the court at RCC that a stay would be applied for. In any event, the following is to be noted in this first draft summons:

(a) The summons sought a stay of all proceedings in favour of arbitration (the "Stay Prayer").

(b) The summons sought liberty to apply, including but not limited to the judicial sale of the Vessel *pendente lite*, her preservation and/or maintenance, her crew, and her machinery and equipment and/or determination of priorities and payment out (the "Exceptions Prayer").

(c) The summons cited, as grounds, Section 6 of the IAA and the fact that the disputes between the parties were subject to an arbitration agreement in Clause 51 of the Time Charter (the "Grounds").

19 The Owner did not respond to the draft. Reasons were given when the court asked the parties for an update at the RCC on 6 July 2023. As such, the court gave parties more time to agree on a stay of proceedings in favour of

arbitration. It was then that the Charterer proposed on 17 July 2023, a first draft of the summons to be filed in ADM 56, which mirrored that in ADM 23, save that the Exceptions Prayer was omitted. The Owner remained silent.

20 Thus, at the RCC on 27 July 2023, the court directed that any stay applications in ADM 23 and ADM 56 were to be filed by 10 August 2023, 5pm. It was then that the Owner responded to propose amendments to both draft summonses on 28 July 2023. These amendments aligned the wording of both summonses along the following lines:

(a) The Stay Prayer was to contain a reference to the amended Exceptions Prayer.

(b) The Exceptions Prayer was entirely redrafted, and provided for two types of "liberty". The first type of "liberty" was to apply or appeal in relation to or in connection with the arrest of the Vessel and/or security provided for the release of the Vessel. Various applications, such as applications to strike out or set aside originating claims, to set aside, return or moderate security, or to revise the terms or forms of security, were listed. The second type of "liberty" was to bring a claim for damages for wrongful arrest of the Vessel.

(c) The Grounds of the applications were amended such that the disputes subject to an arbitration agreement in Clause 51 of the Time Charter were no longer simply those between the parties, but those between the parties arising out of or in connection with the Time Charter. For good measure, the Owner also proposed that the Grounds expressly state that the disputes arising out of or in connection with the arrest of the Vessel and/or the security

provided for the release of the Vessel were not subject to Clause 51 of the Time Charter.

21 On 7 August 2023, the Charterer proposed amendments to the draft summonses. The effect on the main prayers in the summons for ADM 56 was as follows:

(a) The Charterer accepted the Stay Prayer as amended by the Owner.

(b) The Charterer accepted the first type of "liberty" in the Exceptions Prayer, except for the listed applications which were to be deleted. The second type of "liberty" was also to be deleted.

(c) The Charterer largely accepted the Grounds as amended by the Owner, save for the express statement that the disputes arising out of or in connection with the arrest of the Vessel and/or the security provided for the release of the Vessel were not subject to Clause 51 of the Time Charter, which was to be deleted.

22 The draft summons in ADM 23 was to be largely similar to that in ADM 56, save that the Exceptions Prayer was deleted entirely.

23 The Charterer reasoned that the arrest was closely connected with the Arbitration and the tribunal had jurisdiction to hear such disputes. To this end, the Charterer cited statements made by counsel at the RCC on 27 July 2023 where the Owner reserved rights to bring a claim in wrongful arrest in the Arbitration and said that the Owner would not file any application in ADM 23.

24 The Owner replied on 9 August 2023. It disagreed with the Charterer's latest changes, and disputed the Charterer's version of events at the RCC on 27 July 2023. The Owner set out its own account, which included the following points, and invited the Charterer to file the stay applications on a contested basis:

(a) In what the Charterer's solicitors later termed the "1st Bullet Point", the Owner clarified that, at the RCC on 27 July 2023, its solicitors had said that while they did not have instructions to file any application and the Owner did not in principle object to a stay in ADM 23, more time was required to review the terms of the Charterer's stay application. Further, the in-principle agreement to the stay was without prejudice to the Owner's right to bring a "separate claim" for wrongful arrest. The Owner highlighted that it did not restrict the claim to being brought in the Arbitration and that, if it had done so, there would not have been any need to reserve rights as was done.

(b) The Owner also drew attention to various observations made by the court at the RCC on 27 July 2023 concerning whether matters relating to ship arrests were within the jurisdiction of arbitral tribunals, or part of the court's own processes. The Owner said that this showed that the court was alive to the context of the Owner's reservation of rights, and pointed out that the Charterer's counsel had agreed with the court's observations.

25 The Charterer's solicitors replied a little over two hours later after close of business. The email marks a crucial turning point, and close examination is merited. I will return to it in greater detail, but for now, I will simply note what

they said. First, they highlighted that the deadline for the Charterer to file the stay applications was drawing near. It was the next day. Second, the Charterer's solicitors proposed, on a subject to instructions basis, revisions to the draft summons in ADM 23 in light of the 1st Bullet Point. The revisions aligned the draft summons in ADM 23 with that in ADM 56 proposed by the Charterer on 7 August 2023. The Charterer's solicitors did not propose any changes to the latter. Lastly, the Charterer's solicitors invited the Owner to consent to the stay applications on these terms to save time and costs given that the wording adequately protected both parties' interests.

26 Events moved fairly quickly thereafter. Instructions were confirmed and the proposals were agreed. Parties endorsed the consent summonses which were filed on 10 August 2023 in the terms found at paragraph 3 above. Following the court's directions, the Charterer also filed a supporting affidavit of Tan Zhi Rui (the "21 Aug TZR") on 21 August 2023. The 21 Aug TZR stated that a stay was sought because the parties' disputes arose out of or in connection with the Time Charter and were subject to the Arbitration under Clause 51. The endorsed consent summonses were exhibited. On this basis, the Consent Orders were made on 22 August 2023 in the terms found at paragraph 4 above.

27 I now examine precisely what transpired between the parties. In doing so, I am of the view that, while the entirety of the parties' negotiations is important, the focus of inquiry should be on the events immediately before and after the Charterer's solicitors' email on 9 August 2023. This, in my view, is the crucial turning point. The parties' negotiations show that the Owner was ready to walk away from any agreement before this email. This was thus a last-ditch effort to reach agreement, and, in leading to the Consent Orders, it did change the course of events. Thus, the email, and the parties' actions and words

immediately before and after it, are key to determining precisely what transpired when the parties filed the stay applications on a consent basis.

28 Close examination of what is said in the email reveals that the Charterer's solicitors made three key statements.

29 First, the Charterer's solicitors stated that they were making a proposal on a subject to instructions basis. The email was sent at 6.08 pm, after close of business on 9 August 2023, a public holiday. It was a little over two hours after the Owner had walked away from the negotiating table. The email emphasised that the stay applications must be filed by the next day. The Owner was invited to agree to save time and costs. In my view, all of these factors indicated that the Charterer's solicitors (and by extension, the Charterer) was keen to obtain a stay of the substantive proceedings on a consented basis, and to avoid having to fight a contested application.

30 Second, the Charterer's solicitors said that they were proposing revisions to the draft summons in ADM 23 in light of the 1st Bullet Point. In my view, this means that they were taking the 1st Bullet Point into account. The Owner had made two key points in the 1st Bullet Point. First, the Owner did not in principle object to a stay. Second, and this is crucial, the stay must however be on terms that allow the Owner to bring a claim for wrongful arrest in court or in arbitration. If this was not to be, the Owner would have rather had the application proceed on a contested basis. The Owner's position was thus clearly expressed. Notwithstanding any stay, it must be able to bring an action for wrongful arrest wherever it deemed fit. By their own admission, the Charterer's solicitors (and by extension, the Charterer) said that they took it into account. The Charterer's solicitors did not distinguish between the points made by the Owner in the 1st Bullet Point. By this point, if not before, the Charterer well

knew the Owner's position on its right to bring a claim for wrongful arrest in court.

31 Third, the Charterer's solicitors said that the proposed wording of the draft summonses adequately protected both parties' interests. As noted at paragraphs 29 and 30 above, the rest of their email shows that they understood that the Charterer's interest was in not having to fight a contested application to stay proceedings in favour of arbitration, and the Owner's interest was in being able to seek relief for wrongful arrest in court notwithstanding such a stay. This understanding of the parties' respective interests and the claim that the proposed summonses protected those interests are part of the clear and obvious context, available to both parties, of the circumstances surrounding the language and terms used in the summonses proposed by the Charterer.

32 As mentioned at paragraph 25 above, the summonses now tracked the wording proposed by the Charterer on 7 August 2023 for the summons in ADM 56. In other words, both summonses now provided for the following:

(a) First, proceedings were to be stayed in favour of arbitration. This became Paragraph 1 of the Consent Orders. Read with the Grounds which stated that the disputes between the parties *arising out of or in connection with the Time Charter* were subject to Clause 51 of the Time Charter, it is evident that this paragraph was meant to protect the Charterer's interest in obtaining a stay of the substantive proceedings, without having to do so on a contested basis.

(b) Second, the parties' rights to file applications in court in relation to or in connection with the arrest of the Vessel were preserved.

> This became Paragraph 3. On a plain reading, an application for damages for wrongful arrest, and by extension, for wrongful continuance of arrest and/or detention, is an application *in relation to or in connection with* the arrest of the Vessel. This reading is corroborated by the Grounds which limited the disputes subject to arbitration to the disputes between the parties *arising out of or in connection with the Time Charter*. This reading is also corroborated by the Charterer's solicitors' own statement that the wording of the summonses adequately protected the interests of both parties, i.e., including the Owner's interests: see paragraph 31 above.

33 The evidence therefore points towards the parties having reached a *consensus ad idem*, in particular, on whether applications for damages for wrongful arrest could be made in court proceedings, or had to be referred to arbitration.

34 In response, as stated at paragraph 15 above, the Charterer focussed on the differences between the wording of the Consent Orders (which tracked the Charterer's wording for the summons in ADM 56 proposed on 7 August 2023) and the wording of the last draft summonses proposed by the Owner, i.e., on 28 July 2023. In particular, the Charterer stressed the following changes to the Owner's proposals on the Exceptions Prayer and Grounds:

(a) Although the Charterer had accepted that the Exceptions Prayer would state that the parties could apply or appeal in relation to or in connection with the arrest of the Vessel and/or security provided for the release of the Vessel, the Owner's proposed reference to various applications and the bringing of a claim for

damages for wrongful arrest of the Vessel (the "Examples") was deleted.

(b) Although the Charterer had accepted that the Grounds would state that it was the disputes between the parties arising out of or in connection with the Time Charter (not those between them generally) that were subject to arbitration, the Owner's proposed statement that disputes arising out of or in connection with the arrest of the Vessel and/or the security provided for the release of the Vessel were not subject to Clause 51 (the "Express Statement") was deleted.

35 The Charterer argued that the deletions showed that it was insisting on claims to damages for wrongful arrest being referred to arbitration. Hence, the Charterer argued, the deletions were evidence that there was no meeting of minds on whether the Owner could seek relief for wrongful arrest in court.

36 I disagree with the Charterer.

37 At the outset, it is worth remembering that particular caution is required when considering deleted words in draft agreements: see Lewison, *The Interpretation of Contracts*, 8th ed. (London: Sweet & Maxwell, 2023). This is, in my view, a case in point. Seen in isolation, the deletions relied on by the Charterer may tend to support its argument that it was insisting on claims to damages for wrongful arrest being referred to arbitration. While this might have been the case on 7 August 2023, I am not persuaded that it could have been the offer that the Charterer's solicitors made on 9 August 2023. First, by their own admission, the Charterer's solicitors had claimed to have taken account of the Owner's interests which the proposed wording protected. Insisting on claims to

damages for wrongful arrest being referred to arbitration is at odds with the Owner's stated interests. Second, the offer was, as stated at paragraph 27 above, the Charterer's solicitors' last-ditch effort to bring the Owner back to the negotiating table. It beggars belief that the Charterer's solicitors would attempt to do so by asking the Owner to accept the same terms that were offered on 7 August 2023 and that the Owner had just walked away from a couple of hours earlier. Third, the Owner also agreed to the wording. It is inconceivable that the Owner, which had shown that it was willing to go to court to protect its interests, should have simply not objected to orders being made which would, if the Charterer is to be believed, have had the effect of depriving the Owner of its right to seek relief in court. The clear and obvious context to the proposal arising out of parties' prior negotiations renders it far more likely that the Charterer offered, and the Owner accepted, a stay of the substantive proceedings in favour of arbitration which nevertheless preserved the Owner's right to seek relief in court for wrongful arrest. The context thus points to a meeting of minds in line with the plain language of Paragraph 3: see paragraph 32(b) above

38 In my view, the reason for the changes relied on by the Charterer, which is consistent with the surrounding circumstances, is to delete superfluous elaboration in the summonses. The parties' interests were already provided for. For example, the Examples were already covered by the reference to applications *in relation to or in connection with* the arrest of a Vessel. There was no need to list them out individually. Further, the Express Statement was not necessary because the parties had agreed that only disputes arising out of or in connection with the Time Charter had been referred to arbitration. Disputes arising out of the arrest of the Vessel, like other types of disputes generally between the parties, were not the subject of arbitration. Thus, the deletions are

not evidence that the parties had failed to reach a meeting of minds on whether the Owner could seek relief for wrongful arrest in court.

39 The Charterer's alternative argument was that Paragraph 3 was only a "liberty to apply" clause that could not vary or change the effect of Paragraph 1, in particular, by enabling the Owner to bring applications for damages for wrongful arrest in court.

40 The surrounding circumstances make this unlikely. Such an interpretation limiting the Owner's right to seek relief for wrongful arrest in court is inconsistent with the clear and obvious context in which the Consent Orders were made: see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* at [128], citing *Sandar Aung v Parkway Hospitals Singapore Pte Ltd* [2007] 2 SLR(R) 891.

41 Further, the effect of Paragraph 1 to stay substantive proceedings is not varied or changed by Paragraph 3 enabling the Owner to bring applications for damages for wrongful arrest in court. A finding of wrongful arrest is the means by which the court expresses its opprobrium for an arresting party's use of the draconian remedy of ship arrest with "so little colour" or "so little foundation" as to imply malice on its part: see *The "Xin Chang Shu"* [2016] 1 SLR 1096 at [1] to [4]. It is the means by which the court controls the use of the arrest procedure found in Order 33 rule 4 of the Rules of Court 2021. It does not mean that the stay of the substantive dispute arising out of or in connection with the Time Charter in favour of arbitration will be affected. In this sense, it is no different from the other applications that the Charterer sought to exclude from the scope of the stay in its own first draft of the Exceptions Clause.

42 Indeed, it is also worth remembering that the Applications are for damages for wrongful continuance of arrest and/or detention of the Vessel. For reasons that I will explain later, the continuance of the arrest and detention of the Vessel in this case may be wrongful even if the tribunal finds in favour of the Charterer on the substantive dispute and the Charterer had valid grounds to arrest the Vessel in the first place.

43 Therefore, the conclusion I reach on the first issue based on the parties' negotiations and, in particular, the Charterer's solicitors' email on 9 August 2023 and the parties' actions and words before and after it, as well as the language and terms of the summonses proposed and agreed by the parties, is that there was a true meeting of minds between the parties and the Consent Orders are contractual consent orders. The evidence shows that the parties did not just have a vague notion of what was being proposed. Drafts were exchanged, and amendments tracked. The parties' actions and written correspondence show that they turned their minds to and understood each other's interests. In the end, after negotiations, the parties reached an agreement which was recorded by an order of court made "by consent". The agreement was that the substantive proceedings were to be stayed, but that parties could still seek relief in court in relation to and in connection with the arrest. In this way, to the extent inconsistent, the Consent Orders superseded Clause 51 of the Time Charter and provided that the parties agreed for matters falling within the scope of Paragraph 3 to be heard and determined in court. In my judgment, such matters included, in the case of the Owner, relief for wrongful arrest. The wrongful continuance of an arrest and/or detention is a species of wrongful arrest: see *The "Evmar"* [1989] 1 SLR(R) 433 ("*The Evmar*") at [29]. Given that the Applications concern the wrongful continuance of the arrest and/or

detention of the Vessel, I am of the view that it is not necessary to consider the scope and effect of Clause 51 of the Time Charter on the Applications.

Issue 2: Whether there is any basis for the court to interfere with the Consent Orders

44 With my finding concerning the nature of the Consent Orders in mind, I turn to the second issue of whether, and on what basis, the court may interfere with them. The determination of this issue depends on another conceptual distinction that the court ought to bear in mind.

45 The distinction is between orders that are purely concerned with the court's procedures, and orders that relate to the substantive issues or causes of action between the parties: see *Blomberg v Khan* at [39]; *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal and other matters* [2017] 2 SLR 12 ("*Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua*") at [164]. The court has a residual discretion not to enforce the former. The juridical basis for the residual discretion was found to be in "the inherent powers of the court to govern what is, in the final analysis, procedure that is peculiar to the governance of its own process": see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [80]. The inherent powers of the court were, in the time of *Wellmix Organics (International) Pte Ltd v Lau Yu Man* and *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua*, expressed in Order 92 rule 4 of the revoked Rules of Court (Cap. 322, R 5, 2004 Rev Ed) and Order 92 rule 4 of the revoked Rules of Court (Cap. 322, R 5, 2014 Rev Ed) ("ROC 2014") respectively, both of which provided as follows:

> **Inherent powers of Court (O. 92, r. 4)**
>
> **4.** For the avoidance of doubt, it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent

> powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

46 The parties did not raise substantive arguments on the juridical basis for the residual discretion under the Rules of Court 2021, and were content to proceed on the basis that it remained founded on the inherent powers of the court as now provided for in Order 3 rule 2(2). Such a view has been endorsed on a provisional basis: see *Blomberg v Khan* at [45].

47 Order 3 rule 2(2) of the Rules of Court 2021 provides as follows:

> **General powers of Court (O. 3, r. 2)**
>
> …
>
> (2) Where there is no express provision in these Rules or any other written law on any matter, the Court may do whatever the Court considers necessary on the facts of the case before it to ensure that justice is done or to prevent an abuse of the process of the Court, so long as it is not prohibited by law and is consistent with the Ideals.

48 Being based on the inherent powers of the court, which are to be exercised "to govern and regulate the process of litigation" (see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [85]), the residual discretion allows the court to have "the final say" as "an aspect of the court's power to retain ultimate control over its own procedure". Hence, the discretion applies to orders made "as part of the court's procedural armoury": see *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* at [162]; *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [91]. The discretion exists not only in relation to unless orders, but also extends to "other procedural orders that are reached by consent, insofar as such orders are concerned purely with the procedures of the court and

not with the substantive rights of the parties": see *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* at [164].

49 In contrast, the residual discretion does not extend to contractual consent orders that relate to the substantive issues in a case or the substantive rights of the parties: see *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* at [159], [163] and [164]. The Court of Appeal has explained the distinction as being due to: (a) the principle of finality; (b) the parties' intentions when recording consent orders being to facilitate enforcement without having to commence fresh proceedings, rather than to enable the court to exercise supervisory jurisdiction; (c) the conceptual neatness of rationalising factors undermining consent to a contractual consent order within the existing common law vitiating factors; and (d) the fairness of holding parties to their bargain when untainted by recognised vitiating factors: see *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* at [163]. These reasons remain relevant under the Rules of Court 2021: see *Blomberg v Khan* at [42]. Hence, the only basis on which a court may refuse to enforce or otherwise interfere with such a contractual consent order is if there are vitiating factors recognised in contract law: see *Wiltopps (Asia) Ltd v Drew & Napier* at [27]; *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* at [164]; *Blomberg v Khan* at [40].

50 The parties did not agree on whether the Consent Orders were procedural or substantive, and hence on whether I had the residual discretion not to enforce them. The Charterer urged me to find that the Consent Orders were procedural because they were not concerned with the substantive merits of the case or the parties' substantive rights or causes of action. Instead, they were interlocutory in nature and only dealt with the litigation process. The Charterer conceded that the Consent Orders may have an effect on the parties'

substantive rights, but submitted that they were nevertheless procedural in nature and the court had a residual discretion not to enforce them.

51 Conversely, the Owner argued that the Consent Orders were not orders to which the residual discretion applied. It pointed out that the Consent Orders were not unless orders. However, this alone is not determinative because, as stated at paragraph 48 above, the residual discretion also applies to other types of procedural orders. The Owner also emphasised that the Consent Orders, especially Paragraph 3, did not come about because of the invocation of the court's procedural armoury, but were in fact, a jurisdiction agreement. It argued that the reasons not to extend the discretion to contractual consent orders relating to substantive issues, which were enunciated by the Court of Appeal in *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* at [163], applied to the Consent Orders. Lastly, the Owner highlighted the policy of respecting parties' agreements to carve certain disputes out of their arbitration agreements.

52 The cases cited to me by the parties existed at either end of the spectrum. On the one hand, there were cases of clearly procedural consent orders, e.g., consent unless orders on the filing of affidavits of evidence-in-chief (see *Wellmix Organics (International) Pte Ltd v Lau Yu Man*; *Wiltopps (Asia) Ltd v Drew & Napier*); consent unless orders on the discovery of documents (see *Siebe Gorman & Co Ltd v Pneupac Ltd*); consent unless orders on the filing of answers to interrogatories (see *Purcell v F. C. Trigell Ltd and another* [1971] 1 QB 357 ("*Purcell v F. C. Trigell Ltd*")). On the other hand, cases were also cited of consent orders of a more clearly substantive nature, e.g., those recording the parties' agreement to settle or compromise their underlying claims or causes of action in a suit: see *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua*; *Chiang Shirley v Chiang Dong Pheng* [2017] 1 SLR 283; *Blomberg v Khan*; *Sumber Indah Pte Ltd v Kamala Jewellers Pte Ltd* [2018] SGHC 70; *Ng Kiam Bee v Ng*

Bee Eng [2013] 2 SLR 442; *CSR South East Asia Pte Ltd (formerly known as CSR Bradford Insulation (S) Pte Ltd) v Sunrise Insulation Pte Ltd* [2002] 1 SLR(R) 1079. None of the cases cited involved a similar situation to this case in which a consent order recorded the parties' agreement on the forum in which to determine certain of their disputes and which, in my view, did not fall clearly within one or the other categories of consent orders.

53 Ultimately, in my judgment, the Consent Orders were, on balance, not of the type of orders to which the residual discretion applied. The cases make it clear that the purpose of the residual discretion is to ensure that the courts retain ultimate control over how the parties deploy and use the weapons in the court's procedural armoury: see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [91]. This explains why the first cases to recognise the residual discretion concerned consent unless orders. As the Court of Appeal has observed, unless orders are "a potent tool for the efficient and prompt administration of justice": see *Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 ("*Mitora Pte Ltd v Agritrade International (Pte) Ltd*") at [42]. Indeed, where, as in *Wellmix Organics (International) Pte Ltd v Lau Yu Man*, *Wiltopps (Asia) Ltd v Drew & Napier*, *Siebe Gorman & Co Ltd v Pneupac Ltd* and *Purcell v F. C. Trigell Ltd*, the sanction imposed is the striking out of pleadings or the dismissal of a claim, the unless order has been described as "one of the most powerful weapons in the court's case management armoury": see *Mitora Pte Ltd v Agritrade International (Pte) Ltd* at [43], citing *Marcan Shipping (London) Ltd v Kefalas* [2007] 1 WLR 1864 at [36]. This was clearly in the mind of the court in *Wellmix Organics (International) Pte Ltd v Lau Yu Man* when it stated that "a consent unless order, whilst technically a contract between the parties, is one that allows one party to wholly deprive the other of its legal rights in the context of litigation": see *Wellmix Organics (International)*

Pte Ltd v Lau Yu Man at [90]. The residual discretion thus exists to control how parties use such a potent procedural weapon. After all, the inherent powers of the court are meant to govern procedure "with a view towards the attainment of both procedural and substantive justice": see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [80]. It has been said that the quest for justice entails a continuous need to balance and integrate the procedural and the substantive: see *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [8]. The courts must therefore intervene if the procedural tool of a consent order is used to undermine substantive justice, and, in my view, the means by which this is done is the court's residual discretion.

54 Naturally, these considerations do not apply to substantive consent orders for the reasons cited by the Court of Appeal in *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* at [163]. An agreement between the parties on the substantive issues in a case or on their substantive rights is, perhaps, as substantively just an outcome as any other, and, save where vitiating factors in contract law exist, there is little basis to say that such an agreement is being used to subvert procedural justice. In my view, this explains why the Court of Appeal limited the residual discretion to consent orders only "insofar as such orders are concerned *purely* with the procedures of the court and not with the substantive rights of the parties": see *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* at [164]. This does not mean that the courts cannot control substantive consent orders. It simply means that such control is, for the sake of conceptual neatness, to be rationalised within the common law vitiating factors: see *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* at [163(c)].

55 It is true that the Consent Orders did not resolve the parties' disputes in relation to their substantive rights and obligations under the Time Charter. These disputes remain to be determined in the manner and forum agreed. That

said, the issue of where and how the disputes were to be determined had been agreed and resolved. The principle of finality should therefore apply in equal measure to prevent the Charterer from re-opening the issue of the applicable forum through the bringing of fresh proceedings. There was also no use of the court's procedural armoury, save, perhaps, to the extent that a consent order is a procedural tool by which parties seek to ensure that their agreement may be enforced as an order of court. Indeed, nothing in this case suggests that the parties recorded the Consent Orders to enable the court to exercise supervisory jurisdiction over the same. Therefore, in my view, the Consent Orders were not concerned "purely with the procedures of the court", and the court did not need to rely on the residual discretion to police the Consent Orders. Rather, they tended more towards the type of orders to which the residual discretion did not apply and which the courts may control by way of the vitiating factors recognised in contract law. Accordingly, I did not find that the residual discretion existed in relation to the Consent Orders.

56 In such an event, the Charterer relied on the vitiating factor of mistake to argue that the Consent Orders should nevertheless not be enforced. The doctrine of mistake is indeed one of the grounds on which to vitiate a contractual consent order: see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [10]. As was observed by the court in *Chwee Kin Keong v Digilandmall.com Pte Ltd* [2005] 1 SLR(R) 502 (cited in *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [56]):

> Indeed, in law, there are three categories of mistake, namely, common, mutual and unilateral mistakes. In a common mistake, both parties make the same mistake. In a mutual mistake, both parties misunderstand each other and are at cross-purposes. In a unilateral mistake, only one of the parties makes a mistake and the other party knows of his mistake…

57 In written submissions, the Charterer relied on unilateral mistake only. It argued that the Charterer was labouring under the mistaken impression that Paragraph 3 did not create an exception to the stay of proceedings. This, the Charterer argued, must have been apparent to the Owner from the Charterer's conduct and proposals leading up to the agreement on the terms of the Consent Orders. I disagree with the Charterer. As I have found at paragraphs 27 to 43 above, the Charterer's solicitors knew what they were doing when, by way of their email on 9 August 2023, they made a last-ditch attempt to reach an agreement with the Owner to avoid having to fight a contested stay application. They said that they had taken the 1st Bullet Point into account. The 1st Bullet Point set out the Owner's position and interests, i.e., that while there was no objection in principle to a stay, such a stay must allow the Owner to bring a claim for wrongful arrest wherever it deemed fit, *viz.*, in court. Insofar as it is an exception to a stay of proceedings, the Charterer's solicitors said that they understood and accounted for it. The Charterer's solicitors even said that their proposals adequately protected both parties' interests. By its instructions, the Charterer confirmed its solicitors' actions. Its conduct and proposals leading to the agreement on the terms of the Consent Orders make it apparent that the Charterer was not labouring under any mistaken impression as to what was being offered. The Charterer well knew and understood what it was offering. Now that the offer has been accepted, it does not lie in the Charterer's mouth to claim that it was unilaterally mistaken. The doctrine does not apply to vitiate the Consent Orders.

58 The other doctrine relied on by the Charterer in oral argument, though not in written submissions, was mutual mistake. The Charterer argued that the parties mistakenly believed that they were *ad idem* on whether the Owner could seek relief for wrongful arrest and/or detention in court under Paragraph 3. As

the court in *Wellmix Organics (International) Pte Ltd v Lau Yu Man* (at [58]) observed, "this particular aspect of the law relating to mistake is simply the result of a lack of coincidence between offer and acceptance". There is thus a complete overlap with the latter issue. For the reasons at paragraphs 27 to 43 above, I find that the parties were not at cross-purposes, and an agreement unvitiated by mutual mistake was formed.

59 Therefore, I find that the doctrine of mistake, whether mutual or unilateral, does not operate to vitiate the parties' agreement found in the Consent Orders, which should be enforced in the manner agreed by the parties.

60 Although the above would suffice to deal with the second issue, I will also address the arguments made in case I am wrong on whether the court has a residual discretion not to enforce the Consent Orders.

61 The touchstone for determining if the discretion should be exercised in each case is ultimately justice: see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [91]. The court is to have regard to the conduct of the party in breach and ascertain whether it is not so egregious that the court should bring relief to the party in breach by exercising the discretion not to enforce the consent order: see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [100]. The court in *Wellmix Organics (International) Pte Ltd v Lau Yu Man* also stated (at [90]):

> It must be borne in mind that a consent unless order, whilst technically a contract between the parties, is one that allows one party to wholly deprive the other of its legal rights in the context of litigation. Even though such an order has been agreed upon between the parties, *there may*, in my view, *arise certain special circumstances where it would nevertheless be unjust for the party in whose favour the consent order operates to insist on its enforcement in the absence of a high degree of*

> *intentionally contumacious or contumelious conduct.* [emphasis added]

62 This passage was cited with approval by the Court of Appeal in *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* at [162], but, with respect, I found it a little difficult to understand largely because it was not clear what the word "nevertheless" referred to. On the one hand, it might refer to the "absence of a high degree of intentionally contumacious or contumelious conduct". In other words, even though the conduct of the party in breach was not highly egregious, there may be special circumstances making it unjust to enforce the order. However, such a reading did not accord with the rest of the decision. The court in *Wellmix Organics (International) Pte Ltd v Lau Yu Man* had stated elsewhere that there were grounds to exercise the discretion if the conduct of the party in breach was not so egregious that it should be deprived of its rights in the litigation: see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [91] and [100]. Hence, the less egregious the conduct was, the more basis there was for the court to exercise its discretion by not enforcing the order. The court had also expressed views on the limits to the discretion which derived from the fact that it was an exercise of the court's inherent powers to control the use of its procedural weapons: see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [80] to [85] and [91]. In such a scenario, it was not clear why special circumstances would still be required to exercise the residual discretion not to enforce the order. As such, I preferred the view that the word "nevertheless" referred to the fact that "[the] order ha[d] been agreed upon between the parties". In other words, even though the parties had agreed the order, there may be special circumstances not to enforce it, such as where it would be unjust for the party in whose favour the order operated to insist on enforcement because of an absence of highly egregious conduct. In my view, this reading of the passage better accorded with the other statements made by the court. In any event, it is

clear that the exercise of the discretion, being an exercise of the court's inherent powers, must be rare and thoroughly justified in the circumstances of the case: see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* at [93].

63 In that regard, the Charterer argued that the court should exercise the discretion because the Applications should be struck out as an abuse of process under Order 9 rule 16(4)(b) of the Rules of Court 2021, or in the interests of justice under Order 9 rule 16(4)(c). In both cases, the Charterer relied on the Applications being duplicative of proceedings in the Arbitration, being precluded by the doctrine of *res judicata*, and being brought after a period of prolonged and inexcusable delay.

64 In my view, the Charterer's argument is fundamentally misconceived. As I have stated at paragraphs 61 and 62 above, the court's residual discretion is to be exercised to bring relief to the *party in breach of a consent order* in the form of *non-enforcement of the order*, where that party's conduct is not highly egregious. However, the Charterer neither claims to be the party in breach of any order, nor allows for its conduct to be put in question. If anything, it points the finger at the Owner. Moreover, instead of asking the court not to enforce the Consent Orders, the Charterer is in fact insisting on their enforcement, albeit in terms different to what was agreed. In doing so, the Charterer is taking the position of the party in whose favour the Consent Orders are meant to operate. To be clear, I am not saying that a party may not ask the court to exercise the discretion to enforce a consent order in terms different to what was agreed. Indeed, the discretion may be exercised by varying or altering an order: see *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* at [161] and [163]. However, what the Charterer is seeking is, in truth, not the exercise of the court's residual discretion. Instead, the Charterer was seeking to strike out the Applications under the guise of relying on the court's residual discretion. Striking out is

indeed an alternative prayer in this application, and I will address the Charterer's arguments in this regard in the next section. However, conceptually, there is no basis to shoehorn such arguments into the court's residual discretion not to enforce consent orders. In my view, therefore, the Charterer has not put forward any basis to exercise the residual discretion in the manner urged on me by the Charterer.

65 For the foregoing reasons, I conclude on the second issue that I do not have a residual discretion not to enforce the Consent Orders, and that the Consent Orders are not vitiated by any mutual or unilateral mistake. Further, even if I am mistaken and do indeed have such a residual discretion not to enforce the Consent Orders, I would decline to exercise it. The Consent Orders should therefore be enforced in the manner agreed by the parties.

Issue 3: Whether there is any basis for the court to strike out the Applications in spite of the Consent Orders

66 The above analysis concludes my findings in relation to the part of this application that deals with a stay of the Applications. With that in mind, I turn to consider the last issue, which is whether, despite the Consent Orders, the Applications should be struck out as being an abuse of process or in the interests of justice under Order 9 rules 16(4)(b) and (c) of the Rules of Court 2021. In both cases, the Charterer argued, and the Owner disputed, that the Applications:

(a) attracted the doctrine of *res judicata*;

(b) duplicated proceedings in the Arbitration; and

(c) were brought after a prolonged and inexcusable delay.

67 The starting point is Order 9 rule 16, which provides as follows:

> **Striking out pleadings and other documents (O. 9, r. 16)**
>
> **16.**—(1) The Court may order any or part of any pleading to be struck out or amended, on the ground that —
>
> (a) it discloses no reasonable cause of action or defence;
>
> (b) it is an abuse of process of the Court; or
>
> (c) it is in the interests of justice to do so,
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly.
>
> (2) No evidence is admissible on an application under paragraph (1)(*a*).
>
> (3) This Rule applies to an originating application as if it were a pleading.
>
> (4) The Court may order any affidavit or other document filed in Court to be struck out or redacted on the ground that —
>
> (a) the party had no right to file the affidavit or document;
>
> (b) it is an abuse of process of the Court; or
>
> (c) it is in the interests of justice to do so.

68 The Table of Derivations in the Rules of Court 2021 states that Order 9 rule 16 was derived from Order 18 rule 19(1) to (3) and Order 41 rule 6 of the ROC 2014.

69 In that regard, Order 18 rule 19(1) to (3) of the ROC 2014 provided as follows:

> **Striking out pleadings and endorsements (O. 18, r. 19)**
>
> **19.**—(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —
>
> (a) it discloses no reasonable cause of action or defence, as the case may be;
>
> (b) it is scandalous, frivolous or vexatious;
>
> (c) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (d) it is otherwise an abuse of the process of the Court,
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
>
> (2) No evidence shall be admissible on an application under paragraph (1)(*a*).
>
> (3) This Rule shall, as far as applicable, apply to an originating summons as if it were a pleading.

70 Order 41 rule 6 of the ROC 2014 provided as follows:

> **Scandalous, etc., matter in affidavits (O. 41, r. 6)**
>
> **6.** The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

71 Reading these provisions, it is evident that Order 9 rule 16 of the Rules of Court 2021 extended the scope of Order 18 rule 19(1) to (3) and Order 41 rule 6 of the ROC 2014. Whereas the provisions on the striking out of pleadings

or affidavits were already present in the ROC 2014, the Rules of Court 2021 also provide for the striking out of other documents filed in court: see Order 9 rule 16(4). An example of such a document filed in court is a summons: see *Zanelle Lim Jinn Tonn v Royal Amulet Pte Ltd* [2024] SGHC 205 ("*Zanelle Lim Jinn Tonn v Royal Amulet Pte Ltd*") at [34]. Formerly, a decision of the Court of Appeal had found that a summons in a pending cause of matter could not be struck out under Order 18 rule 19 of the ROC 2014: see *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [32] to [33]. However, as the parties agree, the law has since changed. Order 9 rule 16(4) of the Rules of Court 2021 now provides that the court may strike out any document filed in court, including a summons: see *Zanelle Lim Jinn Tonn v Royal Amulet Pte Ltd* at [34].

72 In *Zanelle Lim Jinn Tonn v Royal Amulet Pte Ltd*, one of two directors of a company had applied to wind up the company on just and equitable grounds because her relationship of trust and confidence with the other director of the company had broken down. A firm of solicitors had filed a notice of appointment stating that they had been appointed to act for the company (the "NOA") and proceeded to file a summons to strike out parts of the claimant director's affidavit filed in support of her application on the grounds that it was scandalous, irrelevant or oppressive ("SUM 1351/2024"). Having found that the appointment of the solicitors was not valid, the court turned to consider whether the NOA and SUM 1351/2024 ought to be struck out. Pursuant to section 10(1) of the Insolvency, Restructuring and Dissolution Act 2018, the court had reference to the Rules of Court 2021 and struck out the NOA and SUM 1351/2024 under Order 9 rule 16(4)(a) because the solicitors had lacked the requisite *locus standi* to file either document. However, the court did not

elaborate on the law relating to the striking out of documents under Order 9 rule 16(4).

73 In my view, the case law on Order 9 rule 16(1)(b) and (c) should apply to applications to strike out summonses under Order 9 rule 16(4)(b) and (c) with necessary modifications: see *Singapore Civil Procedure 2025, Vol I* (Singapore: Sweet & Maxwell, 2025) ("*Singapore Civil Procedure 2025*") at [9/16/4]. Such a view finds support in a plain reading and comparison of Order 9 rule 16(4)(b) and (c) and Order 9 rule 16(1)(b) or (c) which does not disclose significant differences. Further, as a matter of principle, there is reason to treat an application to strike out a summons under Order 9 rule 16(4)(b) or (c) in largely the same way as an application to strike out pleadings under Order 9 rule 16(1)(b) or (c). After all, a summons, like a pleading such as a statement of claim or a counterclaim, sets out the relief sought by a party. The fact that the relief sought in a summons is interlocutory, not final as with a statement of claim or counterclaim, is, in my view, irrelevant. Ultimately, even though a summons, unlike a pleading, is supported by evidence in the form of a supporting affidavit, there is no determination on the merits of the application unless and until the summons comes on for hearing. Likewise, until a party's action comes on for hearing, there is no determination on the merits of the party's case as found in the pleadings. Striking out a party's summons before it is heard is thus as much a summary process as the striking out of a party's pleadings, and the applicable law should not differ unless modifications are necessary.

74 The law in relation to the striking out of pleadings in general is well established. The bar to strike out pleadings is high, and the power is to be exercised sparingly and only in very exceptional circumstances: see *Singapore Civil Procedure* 2025 at [9/16/1]. Indeed, it should not be exercised by a minute and protracted examination of the documents and facts, but only in plain and

obvious cases: see *Gabriel Peters & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18].

75 The ground of "abuse of process" found in Order 9 rules 16(1)(b) and 16(4)(b) of the Rules of Court 2021 has been described to mirror that found in Order 18 rule 19(1)(d) of the ROC 2014: see *Singapore Civil Procedure* 2025 at [9/16/1]. By contrast, the new ground of "interests of justice" in Order 9 rules 16(1)(c) and 16(4)(c) has been said to be "an adaptation and expansion" of Order 18 rule 19(1)(b) and (c) of the ROC 2014: see *Singapore Civil Procedure* 2025 at [9/16/1]. Whereas the ground of "abuse of process" empowers the court to prevent, by summary process, the improper use of its process to vex and oppress, the ground of "interests of justice" is an expression of the court's unfettered and wider power to do justice in each case: see *Singapore Civil Procedure 2025* at [9/16/1]. Accordingly, the latter ground includes what used to be "scandalous, frivolous and vexatious": see *Singapore Civil Procedure 2025* at [9/16/1]. Abusive proceedings may be frivolous and vexatious: see *Active Timber Agencies Ltd v Allen & Gledhill* [1995] 3 SLR(R) 334 at [55]. Given that the Charterer's arguments in respect of abuse of process and the interests of justice are based on the same allegations in respect of the Applications, both grounds thus come back to much the same thing. It is helpful to note in that regard that the courts have also cautioned against too wide an interpretation of "abuse of process" and "interests of justice" that may lead to a flood of striking out applications and appeals: see *Asian Eco Technology Pte Ltd v Deng Yiming* [2023] SGHC 260 at [18]. The Charterer, in its submissions, did not appear to suggest otherwise, or to rely on other aspects of the interests of justice. The categories of conduct that are abusive of process are not closed, and depend on all relevant circumstances.

76 With these principles in mind, I turn to consider the Charterer's arguments.

Whether the Applications Attracted the Doctrine of Res Judicata

77 First, I start with the contention that the Applications attract the doctrine of *res judicata*. It is not disputed that a re-litigation of matter is an abuse of process for which the latter proceedings may be struck out. The doctrine of *res judicata* precludes litigants from raising arguments which should have been raised but were not raised in earlier proceedings, or which were raised but rejected. The purpose of the doctrine is to promote finality in litigation and avoid litigants being vexed in the same matter twice: see *Goldbell Engineering Pte Ltd v Etiqa Insurance Pte Ltd (Range Construction Pte Ltd, third party) and another matter* [2024] 3 SLR 544 ("*Goldbell Engineering Pte Ltd v Etiqa Insurance Pte Ltd*") at [90].

78 In that regard, the Charterer argued that there was a substantive overlap between the factual matrix of the Applications and SUM 1374, which I considered in determining SUM 1374. This, the Charterer argued, gave rise to an issue estoppel that precluded the Owner from bringing the Applications. In the alternative, the Charterer argued that the Owner could and should have brought its claim for wrongful continuance of arrest and/or detention at the same time as SUM 1374, and hence was precluded from doing so by the extended doctrine of *res judicata* (the "extended doctrine").

79 In response, the Owner contended that neither issue estoppel nor the extended doctrine applied. It denied the identity of subject matter and issues in SUM 1374 and the Applications, and argued that there had been no final and conclusive decision on the issue of the wrongful continuance of arrest and/or

detention of the Vessel. The Owner added that an element of impropriety, dishonesty or unjust harassment was required to find that the extended doctrine applied to a particular case.

80 I will start with the arguments on issue estoppel.

81 The test for issue estoppel is well established. A litigant will be estopped from litigating a subject matter on which a court of competent jurisdiction has already given a final and conclusive judgment on the merits in proceedings between the same parties: see *Goldbell Engineering Pte Ltd v Etiqa Insurance Pte Ltd* at [91].

82 For the purposes of *res judicata*, the finality of a decision is dependent on whether the decision determines the party's liability and/or his or her rights or obligations with nothing else to be determined. In doing so, the court may consider the intentions of the judge as gathered from the documents, the order made and the notes of evidence: see *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 ("*Goh Nellie v Goh Lian Teck*") at [28].

83 As for the identity of subject matter, the court is to ascertain what was litigated and what was decided: see *Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No 301* [2005] 3 SLR(R) 157 ("*Lee Tat Development Pte Ltd v MCST 301*") at [15]. In doing so, there are several applicable principles which have been set out in *Goh Nellie v Goh Lian Teck*, as follows:

(a) First, the earlier decision must cover the same ground as the later proceedings and the facts and circumstances giving rise to the

former must not have changed or must be incapable of change: see *Goh Nellie v Goh Lian Teck* at [34].

(b) Second, as the Court of Appeal has observed, "the decision on the issue must have been a 'necessary step' to the decision or a 'matter which it was necessary to decide, and which was actually decided, as the groundwork of the decision': see *Lee Tat Development Pte Ltd v MCST 301* [2005] 3 SLR(R) 157 at [15], citing *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2)* [1967] 1 AC 853 at 965 *per* Lord Wilberforce quoting from *R v The Inhabitants of the Township of Hartington Middle Quarter* (1855) 4 El & Bl 780 at 794; 119 ER 288 at 293. Accordingly, the subject matter must not have been merely collateral such that the previous decision may stand without it: see *Goh Nellie v Goh Lian Teck* at [35]. A potential test to determine if an issue is fundamental is to examine if a decision on the issue may be appealed against: see *Goh Nellie v Goh Lian Teck* at [37], citing K R Handley, *Spencer Bower, Turner and Handley: The Doctrine of Res Judicata* (Butterworths, 3rd Ed, 1996) at para 202. However, this test is not always useful. Instead, the court should, in general, adopt a commonsensical approach that balances the public interest in the finality of litigation against the private interest of not preventing a litigant from arguing an issue which was not, in substance, fundamental to the earlier court's decision: see *Goh Nellie v Goh Lian Teck* at [37].

(c) Third, the issue must have been directly covered by the earlier decision. If the issue was not directly covered, it may amount to

an abuse of process under the extended doctrine, but will not give rise to an issue estoppel: see *Goh Nellie v Goh Lian Teck* at [41].

(d) Lastly, the fact that there is an identity of subject matter may not prevent a litigant from re-litigating the same issue if, for example, the principles in *Arnold v National Westminster Bank plc* [1991] 2 AC 93 apply: see *Goh Nellie v Goh Lian Teck* at [43].

84 In my view, it is not plain and obvious that issue estoppel applies in this case. I am not persuaded that my decision in SUM 1374 was a final and conclusive decision on the merits of the Charterer's liability for, or the Owner's entitlement to, damages for wrongful arrest and/or detention. This is because, while there is some overlap, the facts and issues before the court in SUM 1374 and in the Applications are not the same. It is true that factual allegations are made in both SUM 1374 and the Applications concerning the Charterer's conduct before and during the first arrest of the Vessel until 7 June 2023 when, in SUM 1374, I ordered the release of the same upon provision of security. However, in the Applications, there are further factual allegations about the Charterer's conduct in the period after SUM 1374, through the second arrest of the Vessel, until 12 July 2023 when the post-release detention of the Vessel was lifted. This distinction is key. Ultimately, SUM 1374 was an application to fix security and release the Vessel. Hence, the Charterer's conduct was mainly relevant to the issue of whether, for the purposes of *The "H156"* [1999] 2 SLR(R) 419 , it was so abusive of process that the court should order the release of the Vessel without security being provided. There was also a question of whether the conduct was so unreasonable that the Charterer ought to pay costs of the application despite security ultimately being ordered. However, the decision in SUM 1374 did not directly cover the issue, which is live in the

Applications, of whether there was *mala fides* or *crassa negligentia* in the Charterer's continuance of the arrest of the Vessel or her detention even after the Instrument of Release was issued on 5 July 2023. That issue was not before me. Therefore, I am not persuaded that there is plainly an identity of subject matter in SUM 1374 and the Applications.

85 I turn to the arguments on the extended doctrine.

86 The extended doctrine applies to arguments that litigants could and should have raised in earlier proceedings, but failed to do so: see *CIX v DGN* [2025] 1 SLR 272 ("*CIX v DGN*") at [68]. The inquiry is whether, having regard to the substance and reality of the earlier proceedings, the argument raised in the later proceedings ought reasonably to have been raised in the earlier proceedings: see *Vitol Asia Pte Ltd v Machlogic Singapore Pte Ltd* [2021] 4 SLR 464 at [185]; *Goh Nellie v Goh Lian Teck* at [53]. The court must identify the relevant prior decision that is the object of the collateral attack, and identify the nature of the claim and the essential issues in that decision: see *CIX v DGN* at [58] to [59]. The court should also consider the "finality" of a prior decision. The likelihood of the extended doctrine applying is proportionate to the finality of the decision. Thus, whereas the extended doctrine is more likely to apply where a final decision on the merits has been made after trial, it is less likely to apply to a decision on an interlocutory application because parties may not have set out their cases comprehensively and should be given more leeway to do so later: see *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2024] 2 SLR 654 at [28]. Ultimately, the inquiry is not a dogmatic one, but rather a "broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case": see *CIX v DGN* at [61], citing *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and*

others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal [2015] 5 SLR 1104 at [104].

87 In my view, it is not plain and obvious that the extended doctrine applies either. As mentioned at paragraph 84 above, there are differences in the issues and factual matrix in SUM 1374 and the Applications. Thus, as an application to fix security and release the Vessel, the essential issue in SUM 1374 was, in my view, the quantum of security that would cover the Charterer's reasonably best arguable case. As such, the evidence was primarily relevant to this issue. Evidence was also adduced on the Charterer's conduct before and during the first arrest of the Vessel, which was relevant to the issue of whether the Vessel should be released without security for abuse of process and to the question of costs. However, the Charterer's conduct was not the main issue in SUM 1374. I am therefore prepared to give the Owner greater leeway on the basis that it may not have comprehensively set out its case on the wrongful continuance of arrest and/or detention of the Vessel. It is attempting to do so now in the Applications. Thus, allegations on the Charterer's malicious or grossly negligent conduct feature prominently in the Applications. Indeed, in contrast to SUM 1374, the Applications also rely on factual allegations about the Charterer's conduct after 7 June 2023, through the second arrest of the Vessel, until 12 July 2023 when the post-release detention of the Vessel was lifted. These facts only occurred after the determination of SUM 1374. As such, the Owner could not have reasonably raised arguments based on these facts in SUM 1374, and my determination in that application could not have been a final decision on the merits of the Charterer's liability in respect of the same. Therefore, I am not persuaded that the extended doctrine applies to this case.

88 In light of the above, I do not find it plain and obvious that the Owner should be precluded from making the Applications by issue estoppel or the extended doctrine, and would not strike out the Applications on those bases.

Whether the Applications duplicated proceedings in the Arbitration

89 Second, I address the Charterer's argument in relation to the duplication of proceedings in court and arbitration. First, the Charterer pointed out that, in the Arbitration, the Owner was claiming damages for loss of use of the Vessel (in the form of hire) for the Charterer's alleged wrongful repudiation of the Time Charter. The damages to be ordered in the Applications would similarly be to compensate the Owner for the loss of use of the Vessel. Hence, the Charterer argued that the Owner was already pursuing remedies for the wrongful continuance of arrest and/or detention of the Vessel in the Arbitration. In any event, the Charterer argued that if proceedings were permitted to proceed in parallel, there would be a practical risk of inconsistent findings between the court and tribunal and/or double recovery of damages by the Owner. Citing the Ideals and the court's inherent powers, the Charterer argued that the Applications were abuses of process that ought to be struck out to ensure a fair and efficient resolution of the dispute between the parties.

90 In this regard, the Charterer relied on a statement in the Owner's Reply and Defence to Counterclaim (Amendment No. 2) in the Arbitration (the "Pleading") as evidence in support of its argument. After referring to the Vessel's release granted on 5 July 2023 and the further detention until 12 July 2023, the Pleading had asked that "damages be assessed in light of the above". In isolation, it lent some credence to the Charterer's argument that the Owner had submitted the issue of the wrongful continuance of arrest and/or detention to the tribunal.

91 However, the Owner's Statement of Case and the Charterer's Statement of Defence and Counterclaim in the Arbitration, which the Owner adduced in redacted form, reduced the force of the Charterer's argument. The evidence showed that the Pleading was in response to the Charterer's denial of the Owner's entitlement to the reliefs sought. The reliefs sought in the Statement of Case had been in respect of the Charterer's alleged wrongful repudiation of the Time Charter. I agree with the Owner that a claim in wrongful repudiation or termination of a contract is distinct from a claim in wrongful continuance of arrest and/or detention which is a tort: see *Admiralty Law and Practice* at 212. Although the Statement of Case had also referred to a claim for wrongful continuance and/or detention of the Vessel, this was in the context of the Owner's reservation of its right to make this claim "at the appropriate juncture and before the appropriate forum". Given that the parties had agreed that the Owner could seek relief in respect of such claims in court, the meaning of these words ought to have been clear to the Charterer: see paragraphs 27 to 43 above. In any event, the Reply and Defence to Counterclaim (Amendment No. 2) also pleaded that the matter of the parties' conduct in the arrest of the Vessel had been submitted to the Singapore court for determination. As such, I am inclined to agree with the Owner that the Pleading had only stated the dates of 5 and 12 July 2023 for the quantification of damages claimed for wrongful repudiation or termination of the Time Charter, and am not persuaded that the Owner had pursued remedies for wrongful continuance of arrest and/or detention in the Arbitration.

92 In addition, the Charterer relied on further steps allegedly taken by the Owner in the Arbitration to support its argument that the latter had sought relief in the Arbitration for wrongful continuance of arrest and/or detention. The only evidence adduced in this regard was an unsupported statement on affidavit that

issues were raised in the Arbitration that overlapped with matters in the Applications. No documents were exhibited, and no attempt was made to substantiate the statement, even by simply stating what the issues were or whether they were factual or legal. Likewise, although the Charterer had alleged the practical risk of inconsistent findings, there was no evidence as to what such findings may be and whether they were on factual or legal issues. The Charterer's reason for not substantiating its allegations was that the arbitration is confidential in nature.

93 However, in my view, such evidence would be required because the practical risks of inconsistent findings are not self-evident. I may not have the benefit of the full pleadings in the Arbitration, but there is evidence, from the affidavits filed in this application and the affidavit leading the arrest, that the Arbitration mainly concerns the Owner's claim that the Charterer wrongfully repudiated the Time Charter, and the Charterer's counterclaim that the Vessel underperformed because she was unseaworthy. The legal and factual issues before the tribunal are thus likely to relate to the Vessel's seaworthiness and performance, and hence, the Charterer's entitlement to terminate the Time Charter. By contrast, the Applications concern the wrongful continuance of arrest and/or detention of the Vessel until 12 July 2023. The factual inquiry is likely to relate to whether the Charterer had, by its acts and omissions, prolonged the arrest of the Vessel and/or detained her after the release. The legal issue is likely to be whether such conduct was *mala fides* or *crassa negligentia*: see *The "Evmar"* at [29]. These issues are distinct from those in the Arbitration. Thus, the continuance of an arrest may be wrongful even though there may have been valid grounds to arrest the Vessel in the first place: see *Admiralty Law and Practice* at 212. In light of this, the Charterer should have adduced but failed to

adduce further evidence to support its claim that parallel proceedings were afoot in the Arbitration and/or that there was a practical risk of inconsistent findings.

94 Lastly, I am not persuaded that there is a risk of double recovery of damages by the Owner that renders it plain and obvious that the Applications should be struck out. It bears mention at the outset that proof of actual damage is not necessary for a finding of liability in damages for wrongful arrest: see *The "Ohm Mariana" ex "Peony"* [1992] 1 SLR(R) 556 at [51]. The Applications are limited to such findings on liability, hence the prayer for damages to be assessed. I fail to see why provision cannot be made to prevent the Owner from recovering damages already recovered in the Arbitration if evidence to that effect emerges at that stage. In the meantime, it would be premature to strike the Applications out while matters were still at the current preliminary stage.

95 In any event, the Charterer has failed to point to anything that suggests a risk of double recovery. During oral argument, the Charterer submitted that the Owner's claim for damages for the wrongful continuance of arrest and/or detention was likely to be quantified by reference to the loss of earnings. This appeared to be the Owner's position too insofar as the Owner submitted that the damages ought to be quantified by reference to what the Owner would have earned if the Vessel was re-chartered in the market until 12 July 2023, the date on which she left port. However, this is not the same as what the Owner is claiming in the Arbitration. The evidence before me is that the Owner's claim for damages in respect of wrongful termination was the difference between what the Owner would have earned under the Time Charter and what it earned by re-chartering the Vessel in the market until 3 January 2026 being the end of the charter period. Whether this is correct is a question for the tribunal. It suffices to say that the damages sought in the Arbitration do not overlap with that which may be sought in court.

96 During oral argument, the Charterer also submitted that its counterclaim in respect of the Vessel's underperformance and unseaworthiness also involved a quantification of hire rates in the market. However, no evidence has been adduced in this application in relation to the damages claimed by the Charterer in the counterclaim in the Arbitration. Further, there appear to be inconsistencies between the submission and the evidence adduced in SUM 1374. According to the affidavits filed in that application, the Vessel was chartered to be employed in a container liner service on a specific service route, in particular, round trips between China and India. The Charterer calculated her earnings for each round trip by reference to the revenue for each twenty-foot equivalent unit ("TEU") multiplied by the Vessel's TEU capacity. One head of damages for the Vessel's underperformance was hence the loss of earnings in terms of the number of round trips that the Vessel ought to have but could not perform due to her slow speed. In addition, the Charterer claimed the loss of earnings to be derived from a joint service agreement with other liner service providers from which the Vessel was removed. The last head of damages for underperformance was the loss of earnings in respect of a cancelled slot swap agreement. I fail to see how the quantification of these heads of damages involves a consideration of the hire rate of the Vessel in the market as may be advanced by the Owner in the assessment of damages. Therefore, I am not persuaded that there will be double recovery by the Owner in court and in the Arbitration.

97 Hence, in my view, the evidence and the Charterer's arguments in relation to the proceedings in court and arbitration do not make it plain and obvious that the Applications should be struck out.

Whether the Applications were brought after a prolonged and inexcusable delay

98 Lastly, I turn to the Charterer's argument that the Applications should be struck out as an abuse of process because they were brought after a period of prolonged and inexcusable delay. In this, the Charterer seeks to rely on the fact that the Applications were brought about a year and a half after SUM 1374 had been determined.

99 In *QCD (M) Sdn Bhd (in liquidation) v Wah Nam Plastic Industry Pte Ltd* [1998] 3 SLR(R) 894 ("*QCD (M) Sdn Bhd v Wah Nam Plastic Industry Pte Ltd*"), the plaintiff was inactive for sixteen months after the defendant had been given unconditional leave to defend. It then filed a notice of intention to proceed, whereupon the defendant applied to strike out the action for want of prosecution. The Registrar struck out the plaintiff's action, and it appealed. In allowing the appeal, the court observed at [22] that:

> … mere delay is not an abuse of process. There must be something more. There must be wholesale disregard of the rules of court. The plaintiff, in short, must be contumacious. In this case the plaintiff did not disobey any order of court, peremptory or otherwise. It was simply inactive for some time. There was no evidence either that the plaintiff had started the action without any genuine intention of prosecuting it to its natural conclusion. In fact the plaintiff itself filed its notice of intention to proceed without any prompting from the court or the defendant and followed this up in due course with the issue of the summons for directions. This action is significant even though it was taken after the defendant's application to strike out was filed as it showed the plaintiff's sincerity in proceeding.

100 The above passage was quoted by the Court of Appeal in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [2001] 2 SLR(R) 831 ("*Jeyaretnam Joshua Benjamin v Lee Kuan Yew*") (at [28]), which went on to reiterate the principles applicable to the striking out of actions for want of prosecution (at [29]):

> On the basis of these authorities which we have considered, the principles laid down in *Birkett v James* ([18] *supra*) and adopted by our Court of Appeal in *Wee Siew Noi* ([20] *supra*) apply in dealing with an application to strike out an action for want of prosecution. At the risk of repetition (adopting the words of Lord Woolf MR in *Arbuthnot Latham Bank* ([1998] 2 All ER 181 at 187; [1998] 1 WLR 1426 at 1431), they may be stated as follows:
>
> (a) An action should only be struck out or dismissed for want of prosecution (i) where the plaintiff's default has been intentional and contumelious, such as disobedience to a peremptory order of court or conduct amounting to an abuse of the process of the court; or (ii) where there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyer giving rise to a substantial risk that a fair trial is not possible or giving rise to serious prejudice to the defendant.
>
> (b) Before the expiry of limitation period applicable to the action, an action will not normally be struck out for inordinate and inexcusable delay if fresh proceedings for the same cause of action could be initiated.
>
> In addition, an action would be struck out on the ground of abuse of court process, such as wholesale disregard of the rules of court or flagrant disregard of the court procedure, and in this connection the fact that the period of limitation applicable to the action has not expired is irrelevant. Nor, in such application, is there a need to show that the defendant will suffer prejudice or that a fair trial is no longer possible.

101 In this case, the Charterer has cited no rule or procedure of court requiring the Owner to have brought the Applications at an earlier stage of proceedings. As the Owner has argued, a claim for wrongful arrest, continuance of arrest or detention of the Vessel is a tort: see *The "King Darwin"* [2019] 5 SLR 800 at [20]. To that extent, and this is not a rule or procedure of court in the sense envisaged in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* or *QCD (M) Sdn Bhd v Wah Nam Plastic Industry Pte Ltd*, the Owner need only bring the claim before the limitation period has expired. There is no allegation that this has occurred. Nor is there any allegation of a breach of any order of court

in bringing the Applications when the Owner did. There is no evidence to suggest a substantial risk that a fair trial of the Owner's claim to damages for the wrongful continuance of arrest and/or detention of the Vessel is not possible, and no evidence of serious prejudice to the Charterer. The mere fact that the Applications were brought about a year and a half after SUM 1374 had been determined is not, in my view, sufficient basis to strike out the Applications.

Conclusion

102 For the foregoing reasons, I dismiss this application.

Sim Junhui
Assistant Registrar

Davis Tan Yong Chuan, Ma Ruiyuan (Incisive Law LLC) and Tan Zhi Rui (Rajah & Tan Singapore LLP) for the Claimant;
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