

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

**[2026] SGHCR 2**

In the matter of Originating Claim No 285 of 2025 (Summons No 2445 of 2025)

Between

Berard, Corey Mathew

*... Claimant*

And

Tidewater Offshore Operations  
Pte Ltd

*... Defendant*

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**JUDGMENT**

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[Civil Procedure — Striking Out]

[Limitation Of Actions — When Time Begins To Run]

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**Berard, Corey Mathew**  
v  
**Tidewater Offshore Operations Pte Ltd**

[2026] SGHCR 2

General Division of the High Court — Originating Claim No 285 of 2025  
(Summons No 2445 of 2025)  
Samuel Chan AR  
4, 29 December 2025

9 February 2026

Judgment reserved.

**Samuel Chan AR:**

1 This application, HC/SUM 2445/2025 (“**SUM 2445**”), is brought by the defendant in HC/OC 285/2025 (“**OC 285**”) to strike out the claimant’s claims and the action in OC 285 in their entirety, on the basis that these claims are time-barred under s 24A of the Limitation Act 1959 (2020 Rev Ed) (“**Limitation Act**”). Having heard the parties and considered their written submissions filed on 26 November and 29 December 2025, I allow the application for the reasons set out in this judgment.

**Facts**

*The parties*

2 The claimant in OC 285, Mr Corey Mathew Berard (“**Mr Berard**”), is a US citizen who was employed by one Delmar Systems Inc. (“**Delmar**”) as a

superintendent for offshore operations in April 2019.<sup>1</sup> At that time, Mr Berard was stationed on board the vessel M/V Pacific Dolphin (“**Vessel**”) as a supervisor / swing coordinator of the Vessel’s anchor handling operations.<sup>2</sup>

3 The defendant, Tidewater Offshore Operations Pte Ltd (formerly known as Swire Pacific Offshore Operations Pte Ltd) (“**Tidewater**”), is a Singapore-incorporated company who was at all material times the registered owner of the Vessel.<sup>3</sup>

***Background to the claim in OC 285***

4 In April 2019, the Vessel was on a time charter from Tidewater to an entity called Mobil Equatorial Guinea Inc (“**MEGI**”), which was part of the ExxonMobil group, to carry out anchor handling operations for the Developmental Driller III (the “**Rig**”).<sup>4</sup> The owner of the Rig was one Transocean Ltd (“**Transocean**”).

5 On or around 11 April 2019, an incident occurred on board the Vessel. A polyester sling connecting a wire to the Vessel’s tail rope failed under tension, causing the tail rope to recoil and strike Mr Berard across the back of his legs.<sup>5</sup> The impact caused Mr Berard to fall approximately 20 to 25 feet down an unguarded chain locker.<sup>6</sup> Mr Berard suffered several injuries as a result of the

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<sup>1</sup> Statement of Claim at paras 3–4.

<sup>2</sup> Statement of Claim at para 5.

<sup>3</sup> Statement of Claim at para 2.

<sup>4</sup> Jacob’s Affidavit at para 8.

<sup>5</sup> Statement of Claim at para 5; Jacob’s Affidavit at para 9.9; Berard’s Affidavit at para 9.

<sup>6</sup> Berard’s Affidavit at para 9.

incident, and he claims that his medical treatment for these injuries is still ongoing.<sup>7</sup>

6 On 9 March 2022, Mr Berard’s attorneys in the US commenced legal proceedings in the US District Court (the “**US Suit**”) in relation to the personal injuries he suffered from the incident.<sup>8</sup> The US Suit was commenced against the following parties:<sup>9</sup>

- (a) One “Swire Pacific Offshore”;
- (b) The Vessel *in rem*;
- (c) Exxon Mobil Corporation; and
- (d) Transocean, Transocean Offshore USA, Inc. and Transocean Offshore Deepwater Drilling USA, Inc. (collectively, the “**Transocean Entities**”).

7 On 29 March 2022, GSF Leasing Services, GmbH (“**GSF**”) was added as a defendant to the US Suit on the understanding that GSF may have been the owner and/or operator of the Rig or was otherwise responsible for the Crew and/or activities on the Rig.<sup>10</sup>

8 On 4 May 2022, Tidewater filed a Motion to Dismiss in the US Suit,<sup>11</sup> thereby identifying itself by its full legal name at that time – Swire Pacific

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<sup>7</sup> Berard’s Affidavit at para 12.

<sup>8</sup> Post’s Affidavit at para 9.

<sup>9</sup> Post’s Affidavit at para 11.

<sup>10</sup> Post’s Affidavit at para 28.

<sup>11</sup> Post’s Affidavit at p 90.

Offshore Operations (Pte) Ltd – and provided an unsworn declaration (“**Declaration**”) by the Managing Director of Tidewater that Tidewater was the registered owner of the Vessel.<sup>12</sup>

9 On 18 August 2022, GSF was removed as a defendant while four other entities were added as defendants to the US Suit:<sup>13</sup>

- (a) MEGI;
- (b) Transocean Inc.;
- (c) Triton Nautilus Asset Leasing GmbH (“**Triton**”); and
- (d) Sedco Forex International, Inc. (“**Sedco**”).

MEGI was allegedly added because it had contracted with Delmar for anchor handling services on board the Vessel, while Triton and Sedco were added as entities allegedly involved in the operations and/or ownership of the Rig.<sup>14</sup>

10 On 24 March 2023, in response to interrogatories and requests for production in the US Suit, MEGI produced a Master Time Charter Agreement for Support Vessel Services between MEGI and Tidewater dated 29 August 2016 (“**CP**”).<sup>15</sup> MEGI had chartered the Vessel from Tidewater pursuant to the CP.

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<sup>12</sup> Post’s Affidavit at p 94.

<sup>13</sup> Post’s Affidavit at para 29.

<sup>14</sup> Post’s Affidavit at para 30.

<sup>15</sup> Post’s Affidavit at para 31.

11 On 3 May 2023, the US District Court dismissed without prejudice Mr Berard’s claims against Tidewater in the US Suit on the basis that the US District Court lacked personal jurisdiction over Tidewater, “a Singapore corporation with no specifically alleged systematic ties to Louisiana”.<sup>16</sup>

12 The US Suit then proceeded on the merits against the other defendants. On 11 July 2023, Mr Berard’s lawyers filed an amended complaint stating that the US Suit would only proceed against MEGI, Transocean Inc., Triton and Sedco as defendants.<sup>17</sup>

13 On 17 September 2024, Transocean Inc., Triton and Sedco filed a Motion for Summary Judgment which sought to dismiss Mr Berard’s claims against them in the US Suit.<sup>18</sup> MEGI filed a separate Motion for Summary Judgment on 7 January 2025.<sup>19</sup> The two motions were granted on 8 July 2025, and Mr Berard’s claims in the US Suit were dismissed.<sup>20</sup>

14 On 11 April 2025, shortly before the decision of the US District Court to dismiss Mr Berard’s claims in the US Suit, Mr Berard commenced OC 285 in Singapore. The present application, SUM 2445, was brought by Tidewater on 28 August 2025 to strike out OC 285 on the basis that it was time barred.

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<sup>16</sup> Post’s Affidavit at p 128.

<sup>17</sup> Post’s Affidavit at para 38.

<sup>18</sup> Post’s Affidavit at para 40.

<sup>19</sup> Post’s Affidavit at para 41.

<sup>20</sup> Post’s Affidavit at para 43.

### **The parties' cases**

15 Tidewater's case in SUM 2445 is that Mr Berard's claims in OC 285 are time-barred under s 24A(2) of the Limitation Act, as Mr Berard possessed the requisite knowledge to bring a claim for damages on the date of the accident (*ie*, 11 April 2019) or, at the latest, before 9 March 2022, when Mr Berard commenced the US Suit. However, Mr Berard chose not to commence action in Singapore within the applicable time period.

16 Mr Berard's response is simply that he did not acquire the requisite knowledge to commence proceedings against Tidewater until 24 March 2023, when the CP was disclosed by MEGI in the course of the US Suit, or, in the alternative, until 4 May 2022, when Tidewater first identified itself by its full legal name. Mr Berard also argues that, even if s 24A(2) of the Limitation Act applies, his claim is not time-barred because proceedings were commenced in a competent court prior to the expiry of the limitation period.

### **Issues to be determined**

17 While counsel for Tidewater indicated at the hearing before me that Tidewater is relying on all three grounds under O 9 r 16(1) of the Rules of Court 2021 for the striking out of Mr Berard's claims, he clarified that his arguments on all three grounds stem from the fact that Mr Berard's claims are allegedly out of time under s 24A of the Limitation Act. Tidewater is not, for example, seeking to strike out Mr Berard's claims on the basis that certain matters in the US Suit are being re-litigated before the Singapore Courts.

18 The primary issue before me is therefore whether Mr Berard's claims are out of time, which will necessitate a determination on when Mr Berard first possessed the knowledge required for bringing his claim for his injuries. My

findings on the primary issue will then shape the analysis on whether these claims should be struck out under O 9 r 16(1) of the Rules of Court 2021.

### **The law on striking out**

19 I first set out the relevant legal principles which govern Tidewater’s application for striking out, on which there were no disputes between the parties.

20 Order 9 r 16(1) of the Rules of Court 2021 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.

As emphasised by counsel for Mr Berard in their written and oral submissions, the Court’s power to strike out should be “very sparingly exercised, and only [applied] in very exceptional cases”: see *Leong Quee Ching Karen v Lim Soon Huat* [2023] 4 SLR 1133 (“**Karen Leong**”) at [25]. It is therefore only in “plain and obvious cases” that the Court’s power of striking out will be invoked: *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin* [1997] 3 SLR(R) 649 at [18].

21 Accordingly, the burden is on the applicant in a striking out application to prove that the claim is “obviously unsustainable, the pleadings unarguably bad and it must be impossible, not just improbable, for the claim to succeed

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before the court will strike it out”: *Koh Kim Teck v Credit Suisse AG, Singapore Branch* [2015] SGHC 52 at [21].

22 In relation to the individual limbs under O 9 r 16(1) of the Rules of Court 2021:

(a) A “reasonable cause of action” is one that has some chance of success when only the allegations in the pleading are considered. The claim should be struck out only if upon examination of the allegations, it is found that the alleged cause of action is certain to fail: see *The “Osprey”* [1999] 3 SLR(R) 1099 at [7] citing *Drummond-Jackson v British Medical Association* [1970] 1 All ER 1094.<sup>21</sup>

(b) In determining whether the pleadings constitute an abuse of process, the Court will consider whether the process of the court has been used properly, the good faith of the parties, public policy and the interests of justice to prevent improper use of its machinery and the judicial process as a means of vexation and oppression: see *Selvaraj s/o Packirisamy v Yap Chee Mun and others* [2024] SGHCR 1 (“*Selvaraj*”) at [34(b)] citing *Iskandar bin Rahmat v Attorney-General* [2022] 2 SLR 1018 (“*Iskandar*”) at [18]. If a claimant knowingly pursues a case that is “doomed to fail”, this amounts to an abuse of process as the proceedings would serve no useful purpose: see *Karen Leong* at [27].

(c) The discretion of the Court to strike out pleadings on the grounds of the interests of justice gives effect to the Court’s inherent jurisdiction to prevent injustice, such as in cases where the claim is plainly or obviously unsustainable: *Iskandar* at [19]. This provision is residuary in

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<sup>21</sup> Defendant’s Written Submissions at para 16.1.

nature and is intended to empower the court to terminate an action or dismiss a defence or make any other appropriate order if this outcome is necessary to achieve the interests of justice: *Selvaraj* at [34(c)].

23 The parties do not dispute that a claim that is time-barred is legally unsustainable. Accordingly, such a claim would be liable to be struck out not only under O 9 r 16(1)(a) of the ROC 2021 for not disclosing any reasonable cause of action, but also under O 9 r 16(1)(b) for being frivolous and vexatious (see *Management Corporation Strata Title Plan No 4099 v TPS Construction Pte Ltd* [2024] SGHC 149 at [34]) and under O 9 r 16(1)(c) in the interests of justice (see *Selvaraj* at [50]).

**Whether Mr Berard’s claims in OC 285 are time-barred under s 24A(2) of the Limitation Act**

24 I now turn to the issue of the time bar. Having considered the parties’ submissions and the parties’ pleadings, I am satisfied that Mr Berard’s claims in OC 285 are time-barred under s 24A(2) of the Limitation Act.

25 I begin by setting out the relevant legal principles which govern the Court’s determination of the applicable limitation period under s 24A(2) of the Limitation Act, which provides as follows:

**Time limits for negligence, nuisance and breach of duty actions in respect of latent injuries and damage**

**24A.—...**

(2) An action to which this section applies, where the damages claimed consist of or include damages in respect of personal injuries to the claimant or any other person, shall not be brought after the expiration of —

- (a) 3 years from the date on which the cause of action accrued; or

(b) 3 years from the earliest date on which the claimant has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (a).

26 There is no dispute between the parties that the cause of action which Mr Berard possessed accrued at the time of the accident in 2019.<sup>22</sup> If the applicable limitation period is to run from this date, it is clear that Mr Berard's claims in OC 285 will be out of time. Mr Berard, instead, relies on s 24A(2)(b) of the Limitation Act.<sup>23</sup> The real contention between the parties is therefore *when* Mr Berard first had the requisite knowledge to bring the action for damages in respect of his injury. Section 24A(4) of the Limitation Act clarifies the scope of such knowledge:

(4) In subsections (2) and (3), the knowledge required for bringing an action for damages in respect of the relevant injury or damage (as the case may be) means knowledge —

(a) that the injury or damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;

(b) of the identity of the defendant;

(c) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant; and

(d) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury or damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

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<sup>22</sup> See, *eg*, Claimant's Written Submissions at paras 13 and 35.

<sup>23</sup> Reply at para 14.

27 The knowledge referred to in s 24A(4) of the Limitation Act is to be assessed objectively. This is evident from s 24A(6), which states that a person's knowledge includes knowledge which he might reasonably have been expected to acquire from facts observable or ascertainable by him or from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek. In other words, such knowledge of the relevant matters set out in s 24A(4) encompasses not only actual knowledge, but also constructive knowledge. This imposes a duty on the claimant to act reasonably in using the information he has or can ascertain to establish knowledge of, among other things, the identity of the defendant: see Andrew Roy & Nina Ross, *Personal Injury Limitation Law* (Bloomsbury Professional, 4th Ed, 2020) at para 4.107 (in relation to an equivalent provision in the English Limitation Act).

28 Counsel for Tidewater argues that Mr Berard would have possessed both actual and constructive knowledge of Tidewater's identity as well as the necessary facts which support the bringing of an action against Tidewater by the time the US Suit was brought on 9 March 2022.<sup>24</sup> Instead, Mr Berard knowingly chose not to commence an action in Singapore within time.<sup>25</sup>

29 Counsel for Mr Berard disagrees and raises two arguments to the contrary. I will consider them in turn. First, they argue that Mr Berard only knew that Tidewater was the party responsible for and therefore vicariously liable for the acts and/or omissions of the crew of the Vessel on 24 March 2023, when MEGI produced the CP in response to Mr Berard's discovery requests in the US Suit (see [10] above).<sup>26</sup> In particular, the clauses in the CP confirmed that

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<sup>24</sup> Defence at para 15(g).

<sup>25</sup> Defendant's Written Submissions at para 11.

<sup>26</sup> Claimant's Written Submissions at para 53.

Tidewater was responsible for providing the crew on the Vessel and that Tidewater assumed responsibility for providing a safe workplace for sub-contractors such as Mr Berard during the performance of services under the CP. According to counsel for Mr Berard, prior to the disclosure of the CP, Mr Berard did not know if the crew was employed by Tidewater, the owner of the Vessel, or by MEGI, the charterer of the Vessel (which would have been the case if the Vessel was bareboat chartered). Counsel for Mr Berard also pointed to the fact a vessel order form – which “memorial[ised] the [CP]”<sup>27</sup> between Tidewater and MEGI for the Vessel – listed the “Vessel Operator” as one “Donald Blake” from an address in Dubai. This added to the confusion on Mr Berard’s part as to whether the Vessel was bareboat chartered. As such, prior to the disclosure of the CP on 24 March 2023, Mr Berard and his US lawyers could not have known that Tidewater was responsible for the acts and/or omissions of the crew.

30 Putting aside the issue of when Mr Berard obtained the requisite knowledge regarding the legal identity of Tidewater for the moment (which I deal with at [37] below), I accept that Mr Berard may not have possessed actual knowledge of the facts which support the bringing of an action against Tidewater at the time the US Suit was commenced. This is because there is no evidence to show that Mr Berard knew of the nature of the charter arrangements between MEGI and Tidewater at the time and/or the responsibilities of either entity *vis-à-vis* the crew. The main point which counsel for Tidewater raised in this regard was that it was extremely unlikely for the Vessel to have been bareboat chartered and that Mr Berard must have therefore known that Tidewater was responsible for the acts or omissions of the crew. Even if this assertion by counsel for Tidewater regarding the rarity of bareboat charter

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<sup>27</sup> Post’s Affidavit at p 94.

arrangements (which in any event was not substantiated) is true, it nevertheless falls short in demonstrating that Mr Berard possessed *actual* knowledge of the facts which support the bringing of an action against Tidewater at the time the US Suit was commenced.

31 That being said, I find that Mr Berard would have possessed constructive knowledge of such facts, pursuant to s 24A(6) of the Limitation Act, by the time the US Suit was commenced on 9 March 2022. It is not disputed by counsel for Mr Berard that Mr Berard did not, at any material time, reach out to Delmar or Tidewater to ascertain whether Tidewater was the employer of the crew or otherwise responsible for the safety of sub-contractors such as Mr Berard on board the Vessel, or whether the Vessel was bareboat chartered. Mr Berard claims that he could not have asked Delmar about the entity which employed the crew as Delmar was not involved in the hiring or management of the crew and so would not have any information on the employer of the crew or the entity which was giving them instructions. Counsel for Mr Berard further explained at the hearing before me that Mr Berard was hired as a “supernumerary” and was not, technically, part of the crew employed by Tidewater. I accept that Delmar may not have known of the charter arrangement between MEGI and Tidewater. What Delmar *would* have been able to provide Mr Berard with, however, was further information on the entity which Delmar was contracting with for the provision of Mr Berard’s services on board the Vessel. That entity was MEGI, the charterer of the Vessel. Mr Berard could have then followed up with MEGI with his queries on the entity which (a) was responsible for the safety of sub-contractors like himself on board the Vessel or (b) was the employer of the crew and might therefore be vicariously liable for the crew’s acts or omissions. Instead, Mr Berard did not reach out to Delmar for any information at all, from

the date of the accident in April 2019 to the commencement of the US Suit in March 2022.

32 I also see no reason why Mr Berard or his US lawyers could not have obtained the relevant information on the employer of the crew or on the charter arrangement for the Vessel from Tidewater between the date of the accident to the commencement of the US Suit. There is nothing to suggest that Mr Berard attempted, at any time, to contact Tidewater or its related entities or took any legal steps to compel the production of information from these entities. This was despite the fact that, even on Mr Berard's case, he and his lawyers knew that the Vessel was owned by an entity named "Swire Pacific Offshore" and that they had obtained the contact details of its Singapore headquarters through the entity's website. Indeed, it was on the address of these headquarters that the originating process for the US Suit was served. Mr Berard and his US lawyers could have sought the relevant information from Tidewater at that address, or from any of the other related entities listed on the website. But they did not. Mr Berard was instead content for his lawyers to commence the US Suit only shortly before the limitation period expired and to only thereafter seek further information from MEGI through the US Suit on who the proper party to be sued is. In this regard, it was also an intentional decision for the initiation of proceedings in the US to be deferred, so that the full extent of Mr Berard's injuries could be properly ascertained.<sup>28</sup> In other words, Mr Berard was content for any gaps in his knowledge to be supplemented only in the course of the proceedings in the US Suit and, in any event, after the passage of three years from the date of the accident. This was so even though it was open to Mr Berard to have made the relevant enquiries to Tidewater or its related entities in the

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<sup>28</sup> Post's Affidavit at para 9.

intervening period of about three years before the commencement of the US Suit and after the accident.

33 Accordingly, I am of the view that the facts pertaining to the employer of the crew and the charter arrangement between Tidewater and MEGI were reasonably ascertainable by Mr Berard or his US lawyers before the commencement of the US Suit. Mr Berard should therefore be imputed with constructive knowledge of these facts. Queries could, and indeed should, have been directed to Delmar, Tidewater and (if Delmar had reverted with the relevant information) MEGI. This is not a situation where Mr Berard was unable to obtain the requisite knowledge to bring his claim despite the taking of reasonable steps.

34 Second, and in the alternative, counsel for Mr Berard argued that the applicable limitation period only started to run from 4 May 2022, when Tidewater filed its Motion to Dismiss in the US Suit, because this was when Mr Berard first obtained the knowledge of Tidewater’s legal identity and confirmed its status as the owner of the Vessel. According to counsel for Mr Berard, prior to the commencement of the US Suit, Mr Berard and his US lawyers understood that an entity named “Swire Pacific Offshore” was the owner of the Vessel. Tidewater’s legal name was, at the time, “Swire Pacific Offshore Operations (Pte) Ltd”.

35 Counsel for Mr Berard explained that Mr Berard and his US lawyers had reached this conclusion for three reasons:<sup>29</sup>

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<sup>29</sup> Claimant’s Written Submissions at para 69.

- (a) An article dated 10 March 2022 by Seatrade Maritime identified “Swire Pacific Offshore” as the owner of the Vessel.
- (b) A “PACER” database search revealed that there were numerous entities bearing the “Swire Pacific” name which were engaged in litigation in the US.
- (c) A Specification Sheet was issued under the name “Swire Pacific Offshore” and bore the logo and branding of “Swire Pacific Offshore” on each page.

36 Counsel for Mr Berard also took the position that it was reasonable for Mr Berard’s US lawyers not to conduct a search on the Accounting and Regulatory Authority (“**ACRA**”) Bizfile database, as they were not familiar with it and it was not clear that it was a relevant or accessible resource. Mr Berard’s counsel also contended that they were not subscribers to databases such as “Seaweb” and such databases were not determinative of registered ownership. They also point out that an ACRA search would have revealed at least two entities beginning with “Swire Pacific Offshore” sharing the same registered address and common directors, which would not have allowed for a conclusive determination of the correct vessel-owning entity.<sup>30</sup> Tidewater’s website, which Mr Berard’s US lawyers had perused before the US Suit,<sup>31</sup> did not specify the legal entity which owned each vessel and revealed that there were at least ten different entities with names beginning with “Swire Pacific Offshore” operating in 19 different countries. Finally, two documents disclosed during the course of the US Suit, a “Risk Assessment Form” and a “Toolbox

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<sup>30</sup> Claimant’s Written Submissions at para 71.

<sup>31</sup> Post’s Affidavit at para 23(b).

Talk Form” showed that Tidewater consistently employed the generic designation “Swire Pacific Offshore” instead of its full legal name.<sup>32</sup>

37 I find the arguments put forth by counsel for Mr Berard that Mr Berard only obtained actual knowledge of Tidewater’s identity on 4 May 2022 to be untenable.

38 Mr Berard’s position is that he did not know which “Swire Pacific Offshore” entity was the owner of the Vessel, and that his lawyers decided to serve the relevant papers on Tidewater’s registered address simply because it was listed as the head office on Tidewater’s website, with the legal name of the relevant entity omitted. At the hearing before me, however, counsel for Mr Berard exhibited a screenshot of Tidewater’s website which expressly stated that the head office was listed as “Swire Pacific Offshore Operations (Pte) Ltd”, along with its registered address. It follows, then, that if Mr Berard had intended to commence proceedings in the US against the entity listed as the head office of Tidewater, he must have intended to commence these proceedings against, and to seek relief from, “Swire Pacific Offshore Operations (Pte) Ltd”. In addition, while I accept that the information stated on the website did not conclusively show that the registered owner of the Vessel was Tidewater, this raises serious doubt as to Mr Berard’s assertion that he thought the Vessel was owned by an entity named “Swire Pacific Offshore”, especially since none of the entities stated on Tidewater’s website (see [36] above) were named as simply “Swire Pacific Offshore”. I therefore agree with counsel for Tidewater that the naming of “Swire Pacific Offshore” as a party to the US Suit when it was first commenced appears to simply have been a “misnomer” and that

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<sup>32</sup> Claimant’s Written Submissions at para 74.

Mr Berard had actual knowledge of Tidewater’s legal name, “Swire Pacific Offshore Operations (Pte) Ltd”, at that time.

39 More importantly, I am satisfied that Mr Berard possessed constructive knowledge of Tidewater’s legal identity under s 24A(4) of the Limitation Act. In other words, Mr Berard could have reasonably known of the identity of Tidewater, *ie*, its full legal name, as the owner of the Vessel by the time the US Suit was commenced. In this regard, I find that no reasonable steps had been taken to ascertain Tidewater’s identity. The sources which Mr Berard and his US lawyers had relied upon to satisfy themselves that the Vessel was owned by one “Swire Pacific Offshore” were as follows.

40 First, they relied on an article on a website called “Seatrade Maritime” dated 10 March 2022 (see [35(a)] above).<sup>33</sup> Seatrade Maritime appears to be a platform for general news pertaining to the maritime industry. The article, written by one Mr Marcus Hand, provided only a short summary of less than two pages on the acquisition of “Swire Pacific Offshore” by “Tidewater”. More importantly, the article inconsistently referred to Swire Pacific Offshore (Operations) Pte Ltd as both “Swire Pacific Offshore” and “Swire Pacific”.<sup>34</sup> It is unclear how this article could have been relied upon in any way as an authoritative or even persuasive source on the legal name of the registered owner of the Vessel.

41 Second, besides what appears to be a generic search on the Internet, the only other search which Mr Berard’s lawyers conducted prior to the

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<sup>33</sup> Post’s Affidavit at p 31.

<sup>34</sup> Post’s Affidavit at p 32.

commencement of the US Suit was the PACER search (see [35(b)] above).<sup>35</sup> All that this search revealed was whether there were entities with the words “Swire Pacific” in their name that were involved in litigation in the US. As counsel for Mr Berard conceded at the hearing, the PACER search had no direct bearing on the ownership of the Vessel. While counsel for Mr Berard contends that the fact that there were US proceedings involving companies with legal names such as “Swire Pacific” and “Swire Pacific Inc” reinforced Mr Berard’s US lawyers’ view that “Swire Pacific Offshore” was the legal name of the Vessel’s owner, this is neither here nor there. For one, the PACER search did not reveal any entity by the name of “Swire Pacific Offshore”. The fact that there were other entities with similar names is also besides the point and could not have led Mr Berard or his US lawyers to the conclusion that the entity “Swire Pacific Offshore” exists and that this entity is the registered owner of the Vessel. On the contrary, the very fact that the PACER search revealed multiple entities which had names involving the words “Swire Pacific” should have behoved Mr Berard’s US lawyers to have taken further steps to ensure that the correct entity was identified.

42 Third, counsel for Mr Berard pointed to two other documents which led Mr Berard’s US lawyers to believe that “Swire Pacific Offshore” was the owner of the Vessel (see [35(c)] above). The first document was the Specification Sheet, which Mr Berard’s US lawyers had sight of prior to the commencement of the US Suit.<sup>36</sup> According to counsel for Mr Berard, the fact that each page of the specification sheet bore Tidewater’s logo and branding, which I reproduce here, indicated that this was their full legal name:

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<sup>35</sup> Post’s Affidavit at para 17.

<sup>36</sup> Post’s Affidavit at para 17.



I do not accept this argument. The mark above is simply the mark which Tidewater uses in the course of trade to identify its business and the goods and services which it provides. It goes against commercial sense for one to conclude that the words used by a business in its trade mark or to identify itself in the course of trade necessarily reflects its full legal name: see, *eg, Mainfreight (S) Pte Ltd v Mainfreight International Logistics Pte Ltd* [2012] 4 SLR 1002 at [15]. In addition, and as pointed out by counsel for Mr Berard, the footer of each page of the Specification Sheet makes reference to Swire Pacific Offshore Operations (Pte) Ltd. This is not conclusive of the Vessel’s ownership by any means, but it should certainly have served as an additional indication to Mr Berard and his US lawyers that “Swire Pacific Offshore” was not Tidewater’s legal name at the time.

43 The same reasoning applies to the Risk Assessment Form and the Toolbox Talk Form adduced by counsel for Mr Berard (see [36] above). These forms bore the same mark as exhibited in the preceding paragraph and, for the same reasons, could not have been any support for the view that “Swire Pacific Offshore” was Tidewater’s legal name.

44 In my view, the reasonable course of action for Mr Berard and his US lawyers to have taken would have been, at minimum, to conduct a search on online databases to ascertain the registered owner of the Vessel by the time the US Suit was commenced. This is especially in the light of the fact that none of the sources relied on by Mr Berard and his US lawyers above indicated that an entity named “Swire Pacific Offshore” existed or that such an entity was the owner of the Vessel. Mr Berard’s counsel submits that Mr Berard’s US lawyers

could not have conducted any checks on online databases because their firm was not a subscriber to the “Seaweb” online database and, in any event, the information available on Seaweb would not be conclusive of the Vessel’s ownership. I am not persuaded that these reasons were sufficient to prevent Mr Berard’s US lawyers from carrying out the necessary searches. As counsel for Mr Berard accepted at the hearing, besides the Seaweb database, there are also several other online databases on which searches could have been performed, some of which do not require a subscription. Even if the results of such searches are not conclusive, it was not reasonable for Mr Berard and his US lawyers not to have done *any* searches at all. In addition, it is not disputed that Mr Berard and his US lawyers knew that the Vessel was registered in Singapore. This meant that, even if a search on the ACRA Bizfile database was too esoteric a step for Mr Berard or his US lawyers, determinative checks could have been conducted on the Singapore Registry of Ships. Yet, no such checks were done, on the basis that these were not a “free resource”.

45 I now turn to counsel for Mr Berard’s argument that Mr Berard’s US lawyers did not consider it necessary to conduct such searches because, in US proceedings, it is common for claimants to conduct only preliminary checks when proceedings are first commenced, with further amendments to the complaint to add or remove parties subsequently as necessary. This was what was done by Mr Berard’s US lawyers in the US Suit. Counsel for Mr Berard therefore contends that the level of checks conducted by Mr Berard’s US lawyers was reasonable in the circumstances and in the context of US proceedings. I accept that claims pertaining to complex operations may mean that the relevant entities liable for the incident cannot be definitively ascertained until after proceedings are commenced and discovery is undertaken. I am also prepared to accept – even though no evidence was provided on this front – that

it is not uncommon in US litigation for multiple entities to be named as defendants and for parties to be added and removed in the course of the proceedings. However, this does not mean that it was reasonable for Mr Berard's US lawyers not to have conducted basic checks – beyond what appears to be an Internet search and the usual litigation search – on the fundamental question of who the proper entity to be sued is. This is not a situation where Mr Berard and his US lawyers were unable to identify the owner of the Vessel even after undertaking the proper searches; it is one where no reasonable steps were taken at all.

46 In my view, the reasons above indicate that Mr Berard could have reasonably known of Tidewater's identity (*ie*, its full legal name) as the owner of the Vessel at the time the US Suit was commenced.

47 Accordingly, I find that at the time the US Suit was commenced (which was close to three years after the accident), Mr Berard clearly possessed (a) both actual and constructive knowledge of Tidewater's identity as the owner of the Vessel and (b) constructive knowledge that Tidewater was the entity who employed the crew and was therefore potentially vicariously liable for their acts or omissions. It cannot be said to be reasonable, by any measure, for Mr Berard to assert that he did not know (and could not have known) of the relevant facts allowing him to bring his claims against Tidewater when he and his US lawyers decided not to seek information from Delmar (his employer), Tidewater (the owner of the Vessel) or any of the entities related to Tidewater listed on Tidewater's website and failed to conduct basic checks to ascertain Tidewater's full legal name and its status as the owner of the Vessel.

**Whether the commencement of the US Suit stopped time from running under s 24A(2) of the Limitation Act**

48 Counsel for Mr Berard argues, in the alternative, that the commencement of the US Suit stopped time from running under s 24A(2) of the Limitation Act, which means that the present claim is not time-barred. Their argument proceeds as follows. It is trite that time ceases to run when a claimant commences legal proceedings in respect of the cause of action in question: see Andrew McGee, *Limitation Periods* (Sweet & Maxwell, 9th Ed, 2022) (“*McGee*”) at para 2.001. In this regard, a plain reading of s 24A(2) of the Limitation Act (see [25] above) suggests that the requirement to bring “an action” within the prescribed limitation period may be satisfied by the commencement of proceedings in *any* court of competent jurisdiction. They argue that an expansive interpretation which permits the commencement of foreign proceedings to prevent limitation from setting in should be adopted, without territorial restriction.<sup>37</sup>

49 I do not agree that the commencement of the US Suit within time stopped time from running in relation to the applicable limitation period in Singapore for OC 285.

50 As a starting point, I consider the definition of “action” in the context of s 24A(2) of the Limitation Act. Counsel for Tidewater submits that the word “action” should be defined as “includ[ing] a suit or any other proceedings” in a court of competent jurisdiction in Singapore only. This is because the Interpretation Act 1965 (2020 Rev Ed) (“**Interpretation Act**”) defines “court” as referring to “any court of competent jurisdiction in Singapore”. On the other hand, while counsel for Mr Berard also accepts that the Interpretation Act

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<sup>37</sup> Claimant’s Further Submissions at para 9.

defines “court” for the purposes of the definition of an “action” under s 2(1) of the Limitation Act, they argue that the word “action” should nevertheless be interpreted expansively given the use of the word “includes”. They also point to the fact that “action” has been construed by the Singapore courts expansively to encompass arbitral proceedings.<sup>38</sup>

51 I am not persuaded that the word “action” should be construed so broadly as to encompass foreign proceedings. I accept that the word “includes” indicates that the definition of “action” in s 2(1) of the Limitation Act is not intended to be exhaustive. That being said, there is nothing to suggest that Parliament had intended for “action” to cover foreign proceedings. The fact that “action” has been recognised as encompassing arbitral proceedings does not assist Mr Berard, given that there are express provisions in the Arbitration Act 2001 (2020 Rev Ed) (“**Arbitration Act**”) (at s 11) and the International Arbitration Act 1994 (2020 Rev Ed) (“**International Arbitration Act**”) (at s 8A) which provide that the Limitation Act will “apply to arbitral proceedings as they apply to proceedings before any court...”. On the contrary, these provisions support counsel for Tidewater’s position that the Limitation Act will generally apply to proceedings before the Singapore courts *only*. The word “court” is defined in the Arbitration Act as the General Division of the High Court, a District Court, a Magistrate’s Court or “any other court in which the proceedings mentioned in [s 11 of the Arbitration Act] are instituted or heard” and is undefined in the International Arbitration Act. When read together with the definition of “court” in s 2(1) of the Interpretation Act, the provisions in the Arbitration Act and the International Arbitration Act suggest that the general position is that the Limitation Act will apply to proceedings in a competent court

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<sup>38</sup> Claimant’s Further Submissions at paras 16–17.

in Singapore *only*, with the word “includes” added to cater for the exception of arbitral proceedings, which is statutorily provided for. I find that this is the more principled interpretation of “action” in s 24A of the Limitation Act, given the absence of any extraneous material which indicates that Parliament intended to extend the scope of the Limitation Act beyond the “narrow paradigm of domestic litigation”.<sup>39</sup> The mere fact that the plain meaning of “action” may *potentially* include foreign proceedings can only bring Mr Berard so far.

52 My interpretation of the word “action” in s 24A(2) of the Limitation Act as not extending to foreign proceedings is bolstered by the Court’s finding in *Phoa Eugene (personal representative of the estate of Evelyn Phoa (alias Lauw Evelyn Siew Chiang), deceased and personal representative of the estate of William Phoa, deceased) v Oey Liang Ho (alias Henry Kasenda) (sole executor of the estate of Wirio Kasenda (alias Oey Giok Tjeng), deceased)* [2024] 4 SLR 1493 (“**Eugene Phoa**”). In that case, the General Division of the High Court dismissed the claimant’s argument that the commencement of proceedings in Canada stopped time from running in relation to the relevant limitation period in Singapore. The Court referred to s 22(2) of the Limitation Act, and held that the combined effect of the definition of “action” in s 2(1) of the Limitation Act and the definition of “court” in s 2(1) of the Interpretation Act 1965 suggested that the Limitation Act contemplates only actions brought in Singapore and that it is not open to a claimant to circumvent this limitation period by adopting a course of action that is not provided for as an exception in the Limitation Act. As observed by the Court in *Eugene Phoa* at [111] (citing *McGee* at para 2.001), the bringing of an action stops the running of time for the purposes of that action *only*. In other words, the commencement of the US Suit would stop time only

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<sup>39</sup> Claimant’s Further Submissions at para 7.

for the calculation of the limitation period in the US, and would have no effect on the limitation period in Singapore, which would apply to any claims brought by Mr Berard in Singapore. I see no reason why the same reasoning should not apply in relation to s 24A(2) of the Interpretation Act.

53 I am also of the view that *The Nordglimt* [1988] QB 183 (“*The Nordglimt*”) does not assist Mr Berard. *The Nordglimt* was a case involving the damage and shortfall of cargo onboard a vessel, the *Nordkap*. The plaintiffs in that case commenced *in personam* proceedings in Belgium against the owners of the *Nordkap* within one year but commenced *in rem* proceedings in England on the same facts against the *Nordglimt*, a vessel also owned by the *Nordkap*’s owners, only after three years. The defendants contended that the cargo claim had been extinguished because of the time bar in Art III r 6 of the then Hague-Visby Rules, which was incorporated in the bill of lading for the delivery of cargo onboard the *Nordkap*. This rule provided as follows:

... the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. ...

The English High Court held that because the proceedings in Belgium were commenced within time, the plaintiffs’ claims were not time-barred. Pertinently, however, the English court did not need to consider the question of whether the Belgium court constituted a competent court, as it observed that neither party in *The Nordglimt* suggested that the Belgian court was not. Given that “[t]he proceedings in Belgium were competent and brought in time by a party with a title to sue”, the English court found that the carrier was not discharged from liability: *The Nordglimt* at 191–192.

54 I do not think that the reasoning of the English courts in *The Nordglimt* can be transposed directly to the present issue regarding whether the word “action” in s 24A(2) of the Limitation Act encompasses foreign proceedings. First, the issue regarding the definition of the word “suit” in the context of the Hague-Visby Rules did not arise squarely for the English court’s consideration in *The Nordglimt*. Second, the Hague-Visby Rules do not provide any definition for the word “suit”. This is unlike the definition of “action” in the Limitation Act, which, when read together with the relevant provisions in the Interpretation Act, the Arbitration Act and the International Arbitration Act, suggests that “action” is limited to proceedings before the Singapore courts (see [51] above). Third, given the nature of the Hague-Visby Rules as an international treaty, it was altogether sensible for the English court to have accorded an expansive interpretation of “suit” as a suit in any court of competent jurisdiction. The same justifications do not apply to the Limitation Act.

55 For completeness, I do not think that the case of *Stolt Kestrel BV v Sener Petrol Denizcilik Ticaret AS; CDE S.A. v Sure Wind Marine Ltd* [2015] EWCA Civ 1035 (“*The Stolt Kestrel*”) is directly relevant to the issue of whether “action” in s 24A(2) of the Limitation Act encompasses foreign proceedings. *The Stolt Kestrel* involved the issue of whether the two-year time limit for bringing collision claims under s 190(3) of the Merchant Shipping Act 1995 (c 21) (UK) (“MSA”) could be extended. The provision reads:

**190 Time limit for proceedings against owners or ship**

...

(3) Subject to subsections (5) and (6) below, no proceedings to which this section applies shall be brought after the period of two years from the date when—

- (a) the damage or loss was caused; or
- (b) the loss of life or injury was suffered.

...

56 In that case, there was a collision between the claimant's vessel, the *Stolt Kestrel*, and another vessel, the *Niyazi S*, while berthed at an English port on 10 October 2010. On 9 October 2012, the claimant issued an *in rem* claim form in respect of collision damage. The claimant had however encountered difficulties in arresting and serving the vessel within jurisdiction. On 10 December 2013, the claimant issued an *in personam* claim form against the former and current owner of the *Stolt Kestrel*. The claimant then applied for an extension of time for the commencement of the *in personam* proceedings on 13 December 2013. At first instance, the judge dismissed the submission that the bringing of the *in rem* proceedings in time had stopped the time bar from running for the bringing of the *in personam* proceedings: see *The Stolt Kestrel* at [35]. He also refused to grant a discretionary extension of time as he found that the mistake in failing to issue an *in personam* claim had been culpable and no good reason had been shown for the failure to issue the *in personam* claim within time: *The Stolt Kestrel* at [38].

57 On appeal, the English Court of Appeal held that the wording of the provisions in the MSA were clear and the time limit under s 190(3) of the MSA applied to *in personam* claims. As the claimant's *in rem* claim was distinct from its *in personam* claim, the claimant's later *in personam* claim was filed out of time: *The Stolt Kestrel* at [57]. The English Court of Appeal also distinguished *The Nordglimt* on the basis that it involved a substantive time bar which extinguishes the underlying claim, whereas the s 190(3) of the MSA imposed a procedural time bar which barred the remedy while leaving the claim in existence: at [51].

58 The English court’s distinguishing of *The Nordglimt* in *The Stolt Kestrel* appears, at first glance, to diminish the persuasiveness of *The Nordglimt* in suggesting that “action” in the Limitation Act should be read expansively. After all, just like the time bar under s 190(3) of the MSA, the time bars under the Limitation Act only bar the remedy, and not the underlying right: see *Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [66]. It is, however, not clear to me how exactly the distinction between substantive and procedural time bars affects the present analysis. In my opinion, the same question applies in both cases – which is whether a relevant suit has been commenced such that time is protected for the purposes of bringing a second suit. As such, I take the view that *The Stolt Kestrel* stands only for the proposition that the bringing of *in rem* proceedings will not protect time for the purpose of bringing proceedings *in personam*, pursuant to s 190(3) of the MSA, and is therefore of no direct relevance to the issue at hand.

59 For the reasons above, I reject the claimant’s argument that the commencement of the US Suit served to stop time from running in relation to the applicable limitation period for OC 285 under the Limitation Act.

### **Conclusion**

60 Mr Berard’s claims in OC 285 are, in my view, out of time under s 24A(2) of the Limitation Act given that he clearly possessed, at the very least, constructive knowledge of Tidewater’s identity and of the supporting facts required to bring his claim against it at the time the US Suit was commenced on 9 March 2022. As I have rejected counsel for Mr Berard’s arguments that the commencement of the US Suit stopped time from running under s 24A(2) of the Limitation Act, this means that OC 285, which was filed on 11 April 2025, was filed after the three-year limitation period had elapsed. I am therefore satisfied

that OC 285 does not disclose a reasonable cause of action and therefore strike out Mr Berard's claims and the action in OC 285 in its entirety under O 9 r 16(1)(a) of the ROC 2021. On this basis, it is not necessary for me to consider if OC 285 should be struck out pursuant to the other limbs in O 9 r 16(1) and I make no ruling in this regard.

61 I will hear parties on costs.

Samuel Chan  
Assistant Registrar

Bhandari Jainil, Aleksandar Anatoliev Georgiev and Shawn Tien Si  
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