

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

[2025] SGHC 153

Suit No 178 of 2012 (Summons No 970 of 2025)

Between

- (1) COMPANIA DE
NAVEGACION PALOMAR,
S.A.
- (2) COSMOPOLITAN FINANCE
CORPORATION [BVI]
- (3) DOMINION CORPORATION
S.A.
- (4) JOHN MANNERS AND CO
(MALAYA) PTE LTD
- (5) PENINSULA NAVIGATION
COMPANY (PRIVATE)
LIMITED [BVI]
- (6) STRAITS MARINE
COMPANY PRIVATE
LIMITED [BVI]

... Plaintiffs

And

ERNEST FERDINAND
PEREZ DE LA SALA

... Defendant

Originating Summons No 594 of 2018 (Summons No 971 of 2025)

Between

JOHN MANNERS AND
COMPANY LIMITED

... Plaintiff

And

- (1) COMPANIA DE
NAVEGACION PALOMAR,
S.A.
- (2) COSMOPOLITAN FINANCE
CORPORATION [BVI]
- (3) JOHN MANNERS AND CO
(MALAYA) PTE LTD
- (4) DOMINION CORPORATION
S.A.
- (5) PENINSULA NAVIGATION
COMPANY (PRIVATE)
LIMITED [BVI]
- (6) STRAITS MARINE
COMPANY PRIVATE
LIMITED [BVI]

... Defendants

Suit No 398 of 2018 (Summons No 975 of 2025)

Between

- (1) COMPAÑIA DE
NAVEGACIÓN PALOMAR,
S.A.
- (2) COSMOPOLITAN FINANCE
CORPORATION [BVI]
- (3) DOMINION CORPORATION
S.A.
- (4) JOHN MANNERS AND CO
(MALAYA) PTE LTD
- (5) PENINSULA NAVIGATION
COMPANY (PRIVATE)
LIMITED [BVI]
- (6) STRAITS MARINE
COMPANY PRIVATE
LIMITED [BVI]

... *Plaintiffs*

And

ISABEL BRENDA
KOUTSOS

... *Defendant*

GROUND OF DECISION

[Abuse of Process — *Riddick* principle]

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Compania De Navegacion Palomar SA and others
v
Ernest Ferdinand Perez De La Sala and another suit and
another matter

[2025] SGHC 153

General Division of the High Court — Suit No 178 of 2012 (Summons No 970 of 2025), Originating Summons No 594 of 2018 (Summons No 971 of 2025) and Suit No 398 of 2018 (Summons No 975 of 2025)

Chua Lee Ming J

4 July 2025

7 August 2025

Chua Lee Ming J:

Introduction

1 The applicants were six companies (collectively, the “Companies”) that were the plaintiffs in S 178/2012 (“S 178”) and HC/S 398/2018 (“S 398”) and the defendants in HC/OS 594/2018 (“OS 594”). HC/SUM 970/2025 (“SUM 970”), HC/SUM 975/2025 (“SUM 975”) and HC/SUM 971/2025 (“SUM 971”) were the Companies’ applications in each of the respective proceedings for permission to disclose and use documents from those proceedings in proceedings before the Ontario Superior Court of Justice in Court File No CV-22-00688105-00CL (the “Canadian Proceedings”).

2 The applications raised the question as to when affidavits filed, and documents disclosed, in the course of proceedings would be protected by the principle in *Riddick v Thames Board Mills Ltd* [1977] QB 881 (the “*Riddick* principle”). In these grounds of decision, S 178, S 398 and OS 594 shall be referred to collectively as the “Singapore Proceedings” and SUM 970, SUM 971 and SUM 975 shall be referred to collectively as the “Applications”.

Background facts

3 The respondent in SUM 970 was the defendant in S 178, Ernest Ferdinand Perez De La Sala (“Ernest”). As Ernest had passed away, he was represented by the executrix of his estate.

4 S 178 was a claim commenced by the Companies to recover substantial assets from Ernest, based on, among other things, breaches of director’s duties. Ernest was alleged to have transferred the assets in question out of the Companies’ bank accounts and into his personal bank accounts maintained with UBS Bank (Canada). The Court of Appeal found that the Companies were the legal owners of the assets and ordered that the assets be returned to the Companies: *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 at [5].

5 The respondent in SUM 971 was the plaintiff in OS 594, John Manners and Company Limited (“John Manners”).

6 OS 594 was an application by John Manners, arising from the Court of Appeal’s decision in S 178, to appoint a trust company to replace the Companies

as the trustees of various trust assets. It appears that OS 594 has been stayed and no further action has been taken.

7 The respondent in SUM 975 was the defendant in S 398, Isabel Brenda Koutsos (“Isabel”).

8 S 398 was a claim commenced by the Companies to recover substantial assets from Isabel, also arising out of S 178. The Companies alleged that Isabel had assisted Ernest in his wrongdoings that were the subject of the Companies’ claim in S 178. The High Court found that a sum of US\$2.75m that was transferred to Isabel came from monies Ernest had misappropriated from the Companies and that Isabel was liable for knowing receipt, breach of her fiduciary duties, and unjust enrichment: *Compañia De Navegación Palomar, SA and others v Koutsos, Isabel Brenda* [2020] SGHC 59 at [131] and [133]–[135]. Accordingly, the Court ordered Isabel to return that sum to the Companies (at [136]).

9 On 15 October 2021, the Companies commenced the Canadian Proceedings. The claim in the Canadian Proceedings was against UBS Bank (Canada), UBS AG and ABC Corporation (collectively, “UBS”) in relation to UBS’s alleged unlawful involvement in, among other things, assisting Ernest in misappropriating and concealing the assets from the Companies, and facilitating his continued dealings with them.

10 The Companies intended to disclose and use various affidavits, filed in the Singapore Proceedings, in the Canadian Proceedings. The Companies filed the Applications because of the *Riddick* principle. The Applications were

similar and sought permission to disclose and use various affidavits, filed in the Singapore Proceedings, in the Canadian Proceedings.

11 The Companies’ written submissions raised questions as to when the *Riddick* principle applies, in particular, when affidavits filed, and documents disclosed, in the course of proceedings might be said to have been filed or disclosed under compulsion, although not filed or disclosed pursuant to an order of court.

12 In any event, the Companies submitted that if the *Riddick* principle applied, the balance of interest lay in favour of the court releasing them from the *Riddick* undertaking.

The applicable principles

13 The *Riddick* principle states that a party that obtains discovery may only use the discovered documents, and the information obtained therefrom, for the purpose of pursuing the action in respect of which discovery is obtained. The implied undertaking not to use documents for other purposes is an obligation owed to the court, and one which only the court can modify (*BNX v BOE and another appeal* [2018] 2 SLR 215 (“*BNX v BOE*”) at [65]). The *Riddick* principle seeks to strike a balance between, on one hand, the public interest in full and complete disclosure in the interests of justice, and on the other hand, the privacy that discovery on compulsion intrudes upon (*Beckett Pte Ltd v Deutsche Bank AG* [2005] 3 SLR(R) 555 at [14]).

14 In *Ong Jane Rebecca v Lim Lie Hoa and other appeals and other matters* [2021] 2 SLR 584 (“*Ong Jane Rebecca*”) the Court of Appeal clarified (at [99])

that situations involving the *Riddick* principle may be broadly classified under three categories and that where issues on the *Riddick* principle arise, the approach to be taken is as follows:

- (a) First, one must determine whether, on the basis of the element of *compulsion*, a document disclosed in court proceedings is covered by the *Riddick* undertaking.
- (b) Next, if the *Riddick* undertaking applies (due to the element of compulsion), the question is whether, notwithstanding the undertaking, the protected documents may nonetheless be used *without* permission of the court, due to the nature of related *enforcement* proceedings for which the documents are being used.
- (c) If neither of the above is satisfied, the party relying on the protected documents to commence or sustain related proceedings must seek the court’s permission for the undertaking to be lifted. The test is based on a balancing of interests. Permission will only be granted if, in all the circumstances of the case, the interests advanced for the extraneous use of the disclosed documents outweigh the interests that are protected by the *Riddick* undertaking (*Lim Suk Ling Priscilla and another v Amber Compounding Pharmacy Pte Ltd and another and another appeal and another matter* [2020] 2 SLR 912 (“*Priscilla Lim*”) at [45]–[46]).

The element of compulsion

15 As can be seen from the above, a critical question is whether the disclosure was made voluntarily or under compulsion. The *Riddick* principle only applies where the disclosure was made under compulsion.

16 In determining whether the disclosure was voluntary or otherwise, the court must examine the context under which the disclosure was made: *Ong Jane Rebecca* at [101(d)].

17 It is clear that the *Riddick* principle applies where one party compels another, either by enforcement of a rule of court or a specific order of the court, to disclose documents or information: *ED&F Man Capital Markets Ltd v Straits (Singapore) Pte Ltd* [2020] 2 SLR 695 (“*ED&F*”) at [67], citing *Prudential Assurance Co Ltd v Fountain Page Ltd and another* [1991] 1 WLR 756 at 765.

18 What about affidavits filed or documents or information disclosed in the course of proceedings in court but not pursuant to any order of court? It is clear that the *Riddick* principle is not engaged simply because information has been disclosed in court proceedings; the critical factor is the *element of compulsion* that accompanies the discovery: *Ong Jane Rebecca* at [101(a)]. Conversely, the mere fact that disclosure was not made pursuant to a court order does not necessarily mean that the disclosure was voluntary: *ED&F* at [89]. The court must examine the context under which the disclosure was made: *Ong Jane Rebecca* at [101(d)].

19 Thus, where a party has, for his own purposes in defending a case, decided himself to use documents rather than maintain his privacy, *without any*

demand being made for documents of that class, the disclosure has been done voluntarily and the *Riddick* principle would not apply: *ED&F* at [84]–[85], citing *Derby & Co Ltd and others v Weldon and others (No 2)* The Times (20 October 1988).

20 Further, where documents have been disclosed by a party to resist a pre-action disclosure application, the mere fact that the application was for pre-action disclosure would not engage the *Riddick* principle: *ED&F* at [71].

21 By contrast, the *Riddick* principle applies to affidavits filed in examination of judgment debtor (“EJD”) proceedings because they would have been disclosed under compulsion; the entire EJD process involves the applicant demanding information and documents from the debtor: *Ong Jane Rebecca* at [118] and [120].

22 The *Riddick* principle also applies to documents exhibited in an affidavit filed to resist an application for those documents to be adduced as further evidence, where the affidavit expressly includes a reservation that those documents are (a) provided without prejudice to respondent’s position that they should not be admitted at all and (b) subject to the *Riddick* principle: *BNX v BOE* at [68]–[69].

23 Further, the *Riddick* principle applies to documents disclosed to resist an application for pre-action disclosure where the disclosure has been made expressly without prejudice to the respondent’s position that the application should be dismissed: *ED&F* at [89]–[93]. The Court of Appeal noted (at [93]) that “the disclosure was not made in response to an order for disclosure but the express reservation nonetheless demonstrated that the disclosure could not

possibly be regarded as voluntary since it was disclosed in order to defeat the [pre-action disclosure] application.”

24 In *Priscilla Lim*, the Court of Appeal said (at [1]):

One of the core principles which regulates the conduct of civil proceedings is that documents ordered to be disclosed are to be used only for the purposes of the civil proceedings from which the disclosure was made. In fact, this court in its recent decision in *ED&F Man Capital Markets Limited v Straits (Singapore) Pte Ltd* [2020] SGCA 64 held that this core principle applies equally to documents which were disclosed to resist interlocutory applications even if such disclosure was, strictly speaking, not made under compulsion of a court order.

25 In their written submissions, the Companies referred to *Sang Cheol Woo v Spackman, Charles Choi and others* [2024] SGHC 299 (“*Sang Cheol Woo*”) where the plaintiff argued, relying on the above passage in *Priscilla Lim*, that his 6th affidavit was protected by the *Riddick* principle because it was filed to resist any formal orders for specific discovery. The High Court referred to *ED&F* and *Priscilla Lim* and said (at [57]):

... I do not find that the Court of Appeal in *Priscilla Lim* was advancing a position different from what it had explicitly stated in *ED&F*, namely that the *Riddick* principle is not engaged where the subject documents were not disclosed under compulsion of a court order, but were instead disclosed by a party to resist a pre-action disclosure application.

26 I respectfully agree with the above view expressed in *Sang Cheol Woo*, which was referring to the Court of Appeal’s statement of general principle in *ED&F*, ie, that where documents have been disclosed by a party to resist a pre-

action disclosure application, the mere fact that it involved a pre-action disclosure application would not engage the *Riddick* principle (see [20] above).

27 However, the Court of Appeal in *ED&F* also decided that the *Riddick* principle applied to the disclosure in that case because the disclosure had been made subject to the express reservation which demonstrated that the disclosure could not be regarded as voluntary (see [23] above). It is clear that the passage in *Priscilla Lim* (see [24] above) was referring to the Court of Appeal's decision in *ED&F* with respect to the disclosure in that case which had been made subject to the express reservation.

28 The present proceedings also raised the scenario where an affidavit that has been made under compulsion (Affidavit A) is subsequently referred to in another affidavit (Affidavit B) made on behalf of the same party as Affidavit A. In my view, the approach remains the same. The court has to examine the context in which Affidavit B (and the reference to Affidavit A) was made and determine whether Affidavit A may now be said to have been disclosed voluntarily. Where Affidavit B was *not* made on behalf of the same party as Affidavit A, the party on whose behalf Affidavit A was made would remain entitled to the protection afforded by the *Riddick* principle in respect of Affidavit A.

Whether the Applications should be granted

29 As stated earlier, the Applications sought permission to disclose and use certain affidavits, filed in the Singapore Proceedings, in the Canadian Proceedings. However, in their submissions (both oral and written), the Companies sought the following orders instead:

- (a) With respect to documents that the Companies took the view that the *Riddick* principle “potentially” applied, or did not apply:
 - (i) a declaration that the *Riddick* principle did not apply; or
 - (ii) alternatively, an order lifting the *Riddick* undertaking.
- (b) With respect to documents that the Companies took the view that the *Riddick* principle applied, an order lifting the *Riddick* undertaking.
- (c) With respect to documents to that the Companies took the view that the *Riddick* principle did not apply:
 - (i) a declaration that the *Riddick* principle did not apply; or
 - (ii) alternatively, an order lifting the *Riddick* undertaking.

30 The above approach may have been a convenient approach for the Companies to take. However, in my view, it was not the correct approach. The court has to examine the context in which each affidavit was made and determine whether it was made under compulsion. If the court determines that it was made under compulsion, the *Riddick* principle would apply and the court proceeds to consider the interests involved and decide whether to lift the *Riddick* undertaking. If the court determines that the affidavit was not made under compulsion, the *Riddick* principle would not apply and the court may make a declaratory order to that effect.

31 In the present proceedings, I did not have to decide whether each of the 46 affidavits (that the Applications proceeded on) was made under compulsion

as I was satisfied that even if the *Riddick* principle was applicable, I ought to lift the *Riddick* undertaking applicable to these affidavits for the following reasons:

(a) The respondent in SUM 971 consented to the application, while the respondents in SUM 970 and SUM 975 took no position on the applications and left the matter to the court.

(b) The Canadian Proceedings were related to the Singapore Proceedings. The Companies were plaintiffs in S 178, S 398 and the Canadian Proceedings. The Canadian Proceedings were initiated against UBS for their alleged unlawful involvement in assisting Ernest in misappropriating assets from the Companies. Those proceedings were a logical continuation of the Companies' efforts to recover those assets. The underlying facts would be closely intertwined. In these circumstances, there was a strong countervailing public interest in ensuring that all relevant evidence which may be required was before the court (*Priscilla Lim* at [71(b)]).

(c) There were no collateral or improper purposes reflective of an abuse of process that would militate against lifting the *Riddick* undertaking. S 178 and S 398 had been commenced to recover assets misappropriated by Ernest, not to improperly obtain information for any collateral purpose. The Companies were now seeking to use the disclosed documents in support of further legal proceedings to recover those assets. These were purposes the legal process was designed to achieve, and there was no ulterior motive in the obtaining or the use of the protected documents (see *Rebecca Ong* at [142]).

32 Since I was prepared to grant permission in any event, I therefore granted the Applications to the extent that the documents were subject to the *Riddick* principle.

Conclusion

33 For the above reasons, I granted the Companies permission to disclose and use the specified affidavits in the Singapore Proceedings, in the Canadian Proceedings, to the extent that the documents were subject to the *Riddick* principle. I also granted the Companies liberty to apply for further orders.

34 I made no order as to costs since the respondents did not ask for costs.

Chua Lee Ming
Judge of the High Court

Lim Li Xuan Sherlyn and Lim Seok Koon Stacey (TSMP Law Corporation) for the plaintiffs in S 178/2012, the defendants in HC/OS 594/2018 and the plaintiffs in HC/S 398/2018;
Eva Teh Jing Hui (K&L Gates Straits Law LLC) for the defendant in S 178/2012;
The plaintiff in HC/OS 594/2018 absent and unrepresented;
Loo Yinglin Bestlyn (Providence Law Asia LLC) for the defendant in HC/S 398/2018.
