IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC(I) 8

Suit No 5 of 2021

Between

Mohamed Shiyam

… *Plaintiff*

And

Tuff Offshore Engineering Services Pte Ltd

… *Defendant*

JUDGMENT

[Civil Procedure] — [Pleadings] — [Amendment]
[Civil Procedure] — [Parties] — [Joinder]
[Civil Procedure] — [Parties] — [Non-joinder]
[Companies] — [Incorporation of companies] — [Lifting corporate veil]
[Tort] — [Conspiracy]

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v
Tuff Offshore Engineering Services Pte Ltd

[2021] SGHC(I) 8

Singapore International Commercial Court — Suit No 5 of 2021 (Summons No 24 of 2021)
Roger Giles IJ
24 June 2021

30 July 2021 Judgment reserved

Roger Giles IJ:

1 The plaintiff applied for leave to amend the Writ and Statement of Claim, principally by adding three defendants and pleading new claims against them. The application was opposed by the defendant, and by the proposed defendants to whom notice of the application was given. For the reasons which follow, save in a small respect, the application should be dismissed.

Introduction

The existing dispute

2 The defendant, Tuff Offshore Engineering Services Pte Ltd, is a Singapore incorporated company. At the time of the events of these proceedings, it was engaged in the design and construction of major infrastructure projects. The plaintiff, Mohamed Shiyam, is a United Kingdom

citizen who provides consultancy services on infrastructure projects around the world.

3 In March 2017, the Government of the Republic of Maldives awarded a contract to construct and develop five domestic airports on islands in the Maldives ("the Five Airport Project") to a company sufficiently identified as "Gryphon", for a price of approximately US$57.5m. The plaintiff assisted Gryphon in obtaining the contract. When Gryphon became unable to perform the contract, in July 2017 it introduced the Five Airport Project and the plaintiff to the defendant, with a view to the defendant taking over the project.

4 According to the plaintiff, the defendant considered that the contract value was too low for it to easily obtain funding from its bank. Consequently, the plaintiff suggested that the defendant instead propose the construction and development of *nine* domestic airports on islands in the Maldives ("the Nine Airports Project), for a price of US$103.5m. Still according to the plaintiff, it was agreed that he would assist the defendant with securing a contract for the Nine Airports Project "and/or other construction contracts on its behalf". While there was no agreement at the time on his fees, there was a mutual understanding that he would be paid fees for his work.

5 It may not have been irrelevant that the Director General of Regional Airports, the unit of the Ministry of Tourism of the Republic of the Maldives overseeing such projects, was the plaintiff's brother or half-brother, Mr Saamee Ageel ("Saamee"). It is not surprising that in the affidavit opposing the application it is said that the plaintiff made clear that he was in a position to exert influence, given Saamee's position. The defendant does not dispute that the plaintiff was asked to assist in obtaining funding for the Five Airports Project, on a promise of a commission if he were able to do so, and according

to the defendant the Five Airports Project "progressively turned into the 9 Airports Project". The plaintiff undertook various measures towards the Five Airports Project and the Nine Airports Project, including arranging a meeting with Saamee.

6 However, according to the plaintiff, it transpired that the defendant could not obtain sufficient funding and could not pursue the Nine Airports Project. In late August 2017, Regional Airports wrote to the defendant that neither the Five Airports Project nor the Nine Airports Project was available to it as there had been no progress on the defendant's part in complying with its requirements. The plaintiff says that this was the end of the Nine Airports Project; the defendant disputes that the project was no longer pursued and says that discussions towards the Nine Airports Project continued.

7 The plaintiff and the defendant continued to work together with a view to other projects in the Maldives. In September 2017 there arose a proposal by Regional Airports to construct and develop an international airport on the island of Maafaru ("the Maafaru Airport Project"), a project which was funded externally. The plaintiff and the defendant worked together in preparing an initial expression of interest and then, on invitation, a bid for the Maafaru Airport Project. According to the defendant, however, because it was to be fully funded and was to be awarded by a bidding system, the plaintiff's role in assisting the defendant with the bid was limited.

8 The bid was submitted on 17 December 2017. Three days prior to that date, from 14 to 16 December 2017, the plaintiff, Saamee, and M/s Ganesh Paulraj and Natarajan Paulraj ("Mr Ganesh" and "Mr Paul", so referred to in the hearing of this application) on behalf of the defendant met in Singapore to discuss and finalise the bid. In the course of the meeting, on 16 December 2017

the plaintiff, Mr Ganesh and Mr Paul came to an agreement concerning the plaintiff's remuneration, and a document was signed recording their agreement ("the Contract").

9 By the two page document said by the plaintiff to constitute the Contract, he would "guide, assist and work with" the defendant to achieve a contract for the Maafaru Airport Project, and be paid a lump sum of US$3m or US$5m in the event of a contract being awarded, depending on whether the contract was awarded for US$35m or US$38m. However, although it is agreed that a document was signed, there is marked dispute over the authenticity of the document said by the plaintiff to constitute the Contract, and so over the subject-matter of the agreement.

10 According to the defendant, discussions relating to the Nine Airports Project had continued until December 2017 and continued thereafter until it was finally abandoned only in March or April 2018. The defendant maintains that it and the plaintiff were working on *both* the Nine Airports and Maafaru Projects in December 2017 and the discussions from 14 to 16 December 2017 had included discussions of the Nine Airports Project. The defendant says that the Contract was an agreement upon the plaintiff's remuneration in relation to the awarding of a contract for the *Nine Airports Project*, not the Maafaru Airport Project. The defendants allege that the Contract was reached upon Saamee indicating that he was ready to issue a letter of intent to the defendant for the Nine Airports Project if the defendant agreed to pay the plaintiff a commission if he was able to provide funding for it. While it accepts that the signature on the second page of the document is that of Mr Ganesh, the defendant says that the document that was signed was a draft already prepared by the plaintiff which was not just two pages but had several attachments, and that the first page of the

document which the plaintiff said constituted the Contract, tying it to the Maafaru Airport Project, is a fabrication.

11 On 17 December 2017, there was a further discussion between the plaintiff and the defendant about the plaintiff's remuneration. According to the plaintiff, the defendant wanted the bid for the Maafaru Airport Project to be "at the highest price possible in order to increase its profile and the number of projects under its name". According to the defendant, the plaintiff asked for a higher commission if he was able to secure a higher funding for the Nine Airports Project. A hand-written note ("the Further Contract") recorded that the defendant would pay the plaintiff "any amount exceeding US$38m he can achieve as total value for" the contract stated in the Contract, in addition to the amount in the Contract. The authenticity of the document constituting the Further Contract is not disputed, but the dispute over whether the Contract related to the Nine Airports Project or the Maafaru Airport Project carries through into its subject-matter.

12 In December 2017, Regional Airports awarded the defendant a contract for a total price of US$52m, of which US$46m related to the Maafaru Airport Project and US$6m related to an associated hotel development. The Maafaru Airport Project was in due course completed. Also in December 2017, Regional Airports issued a letter of intent for the Nine Airports Project for a total price of US$103.5m conditional on, amongst other things, proof of funding. The plaintiff says this was a mistake and meant to be for the Maafaru Airport Project. The defendant says it was genuine, and that funding could not be obtained and thus the Nine Airports Project did not come to fruition.

13 The plaintiff contends that the defendant became obliged to pay him a total of US$13m, being US$5m under the Contract and US$8m (US$46m less

US$38m) under the Further Contract. The defendant responds that, since the Contract related to the Nine Airports Project as to which no contract was awarded, nothing became payable. However, the defendant did pay US$215,000 on an invoice for US$2m received in January 2018 as what it considered reasonable remuneration for the plaintiff's work in relation to the Maafaru Airport Project. The plaintiff says that the invoice was for further work done, but nonetheless treats the US$215,000 as a credit against his claim under the Contract and the Further Contract.

A brief procedural history

14 The plaintiff commenced the proceedings in the High Court on 13 December 2019. In the Statement of Claim he sued on the Contract and the Further Contract, as agreements in relation to the Maafaru Airport Project, claiming US$12,785,000.

15 The Defence was filed on 15 January 2020. In a rather narrative fashion, it explained the defendant's position as outlined above (including as to the US$215,000 payment). It denied that the document signed on 16 December 2017, and the note of 17 December 2017, related to the Maaafaru Airport Project, and challenged the authenticity of the two-page document said by the plaintiff to constitute the Contract. It also alleged *non est factum,* unilateral mistake, unenforceability for want of consideration, and failure in execution as a deed. It further asserted that the plaintiff was not entitled to payment because Regional Airports had not paid the defendant, and that the proceedings were brought in bad faith.

16 The Reply was filed on 30 January 2020. It responded to some of the narrative, including the defendant's explanation of the US$215,000 payment,

alleging that it was money paid pursuant to the Contract and the Further Contract, but otherwise need not be further described.

17 On 12 March 2020, the plaintiff applied for summary judgment and for a number of paragraphs of the Defence to be struck out. After a hearing on 27 July 2020, on 30 July 2020 Assistant Registrar Paul Chan ("AR Chan") dismissed the application for summary judgment and granted the defendant unconditional leave to defend, but ordered that parts of the Defence concerning *non est factum*, unilateral mistake, lack of consideration, non-payment by Regional Airports, and some particulars of bad faith, be struck out.

18 On 13 August 2020, the plaintiff appealed against the decision of the Assistant Registrar. The appeal was heard in the High Court on 9 October 2020, and on 26 October 2020 Hoo Sheau Peng J upheld the Assistant Registrar's decision to grant unconditional leave to defend, but ordered that some minor additional parts of the Defence be struck out.

19 The Amended Defence, amended in accordance with these decisions, was filed on 27 November 2020.

20 On 9 December 2020, the defendant applied for security for costs up to the first day of trial. On 28 January 2021, AR Chan ordered the plaintiff to furnish security for costs of S$70,000. The security was provided on 5 March 2021 by way of solicitor's undertaking.

21 On 11 March 2021, Deputy Registrar Phang Hsiao Chung ordered that the proceedings be transferred from the High Court to the Singapore International Commercial Court ("the SICC"), with ancillary orders not of present relevance.

22 A Case Management Conference was fixed for 23 April 2021. In the plaintiff's Proposed Case Management Plan ("the plaintiff's CMC plan"), part of the Case Management Bundle, it was said that the plaintiff intended to amend the Writ and the Statement of Claim to join the proposed defendants. Draft amended documents were not provided, and the proposed amendments could not be satisfactorily explained. Counsel for the plaintiff said that they would be provided in two weeks' time. Directions were given for filing the application for leave to amend and for sequential exchanges of affidavits and of submissions, and a hearing date was appointed for 24 June 2021.

Overview of the proposed amendments

23 The proposed defendants are Mr Ganesh, Mr Paul and Ms Mahalakshmi d/o Mahalingham ("Ms Maha", also as referred to in the hearing). Mr Ganesh and Mr Paul are brothers, and Ms Maha and Mr Ganesh are married. They each have had a directorial or shareholding connection, as later described, with the defendant. By arrangement, they were given notice of the application and appeared represented by counsel for the defendant. Evidence and submissions in opposition to the application were filed on behalf of the defendant and the proposed defendants jointly, and it is generally unnecessary to distinguish between their positions. I will refer to them together as the Respondents.

24 There were some minor drafting matters in the amendments, which need no further mention. One amendment was not dependent on the joinder of the proposed defendants, being an amendment in relation to the payment of the US$215,000 ("the payment amendment"). The remaining amendments were all concerned with joinder of the proposed defendants and the new claims against them ("the joinder amendments"). The claims in the joinder amendments were on three bases:

(a) The first was that the defendant's corporate veil should be lifted, making the proposed defendants jointly and severally liable with it for the US$12,785,000 claimed under the Contract and the Further Contract.

(b) The second, founded on the same matters as were pleaded for the first basis, was that the defendant and the proposed defendants, or any two or more together, had conspired to injure the plaintiff by unlawful means, by ensuring that he could not obtain his contractual entitlement.

(c) The third, again founded on the same matters as were pleaded for the first basis, was lawful means conspiracy: that the defendant and the proposed defendants, or any two or more together, had conspired wrongfully and with the sole or predominant intention of injuring the plaintiff in the same way.

For the two conspiracy bases, damages were claimed in the sum of US$12,785,000 or to be assessed.

The payment amendment

25 It is convenient to immediately dispose of the payment amendment. Paragraph 14 of the existing Statement of Claim alleges that the defendant has to date "only made partial payment to the plaintiff in the sums of (a) US$75,000 on or around 27 February 2018; and (b) US$140,000 on or around 13 September 2018", and that the outstanding sum of US$12,785,000 remains due and owing to the plaintiff. The amendment is to delete the quoted words and make consequential changes, so that the allegation becomes that the defendants (now made the defendants, because of the claimed joint and several liability) have, to date, "not paid the outstanding sum of US$12,785,000 which remains due and owing to the Plaintiff".

26 The plaintiff explained the amendment as making it clear that he did not claim the entire US$13m and was prepared to give credit for the US$215,000, removing any need to enquire into why the US$215,000 had been paid. As an aside, it is not easy to see why it would have that effect, but the plaintiff should be permitted to amend unless there is good reason against the amendment.

27 While the Respondents opposed the amendment, it was also not easy to understand why. Their written submissions were unhelpful, and in oral submissions the reason given for the opposition was that the amendment would invite further application, because deleting the reference to the two payments "leads to the question of how they were made" and raised the possibility of an application "as to how the part payments were made". It is correct that the amendment would leave the Statement of Claim without internal explanation of why only US$12,785,000 was claimed, but the fact of the US$215,000 payment is common ground and the plaintiff has made clear that he gives credit for that amount. If the Respondents meant that the amendment made it unclear why the two payments making up the US$215,000 are treated by the plaintiff as payments under the Contract and the Further Contract, it is no more clear in the existing paragraph.

28 I am unable to see any need for a request for particulars of the payments reducing the claimed amount, let alone an application, when the payments are already known and *undisputed*. If the Respondents nonetheless persist in requiring a formal explanation, that is not a reason for refusal of the amendment. If resolving whether the Contract and the Further Contract related to the Maafaru Airport Project or the Nine Airports Project requires investigation of why the US$215,000 was paid, of why the plaintiff treats it as paid under the Contract and the Further Contract, or (as the reasons on the summary judgment application suggest) of whether the plaintiff has taken inconsistent positions in

that respect, these are all matters for evidence and the trial. The amendment should be allowed.

The joinder amendments

Relevant legal principles

29 For the application, the plaintiff invoked both O 20 r 5 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") on amendment of a writ or pleading and O 15 rr 4 and 6 relating to joinder of parties. In the amendment of pleadings, the rules for both can be engaged, and if so the requirements of both must be fulfilled: *Management Corporation Strata Title Plan No 3322 v Mer Vue Developments Pte Ltd* [2016] 4 SLR 351 at [12]–[13].

Principles relating to amendment

30 By O 20 r 5(1), amendment may be allowed at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner (if any) as the Court may direct. The rule goes on to make provision for amendment after a limitation period has expired: no question of a limitation period was raised in this application. From *Review Publishing Co Ltd v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 at [113]–[114], the guiding principle is that amendments to pleadings ought to be allowed if they would enable the real questions and/or issues in controversy between the parties to be determined. However, it must be just to grant leave when considering all the circumstances of the case, and two key factors to be kept in mind are whether any prejudice would be caused to the other party which cannot be compensated for in costs and whether the applicant is "effectively asking for a second bite at the cherry". In relation to those factors, delay *per se* does not constitute

prejudice and will not necessarily prevent amendment but is a consideration in deciding whether prejudice is present.

Principles relating to joinder

31 Although parties did not draw attention to this provision, it is appropriate to note that under the ROC, there is a separate rule for joinder in proceedings before the SICC: O 110 r 9. This rule requires that the general requirements for joinder to be met, and also requires that the claim does not seek public law remedies, and are appropriate to be heard by the SICC. I reproduce the rule:

> 9.—(1) In an action where the Court has and assumes jurisdiction, or in a case transferred to the Court under Rule 12 or 58, a person may be joined as a party (including as an additional plaintiff or defendant, or as a third or subsequent party) to the action if —
>
> (a) the requirements in these Rules for joining the person are met; and
>
> (b) the claims by or against the person —
>
> (i) do not include a claim for any relief in the form of, or connected with, a prerogative order (including a Mandatory Order, a Prohibiting Order, a Quashing Order or an Order for Review of Detention); and
>
> (ii) are appropriate to be heard in the Court.
>
> (2) A State or the sovereign of a State may not be made a party to an action in the Court unless the State or the sovereign has submitted to the jurisdiction of the Court under a written jurisdiction agreement.
>
> (3) In exercising its discretion under paragraph (1), the Court must have regard to its international and commercial character.

32 It is convenient to dispose of the requirements under O 110 r 9(1)(*b*) at the outset. First, there is no question of public law remedies in this case. Secondly, the proposed defendants are directors and shareholders of the defendant and the claims against them share the international and commercial

character of the existing dispute, and are appropriate to be heard in the SICC. This leaves O 110 r 9(1)(*a*), which stipulates that the requirements in the ROC for joining persons are met. As already stated, these are O 15 rr 4 and 6.

33 Order 15 r 4(1) of the ROC provides:

> 4.–(1) Subject to Rule 5(1), 2 or more persons may be joined together in one action as plaintiffs or defendants with the leave of the Court or where –
>
> (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all of the actions; and
>
> (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

34 Order 15 r 6(2)(*b*) relevantly provides:

> (2) Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either of its own motion or on application –
>
> …
>
> (*b*) order any of the following persons to be added as a party, namely:
>
> (i) any person who ought have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter maybe effectually and completely determined and adjudicated upon;
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter

35 Order 15 r 6(2) has a wider operation than O 15 r 4(1). The latter provision requires that there must be some common question of law or fact that would arise if separate actions were brought against the defendants, and the rights and relief claimed against the defendants are in respect of or arise out of the same transaction or series of transactions. If those requirements are satisfied, the plaintiff is entitled to join the multiple defendants: *Oh Bernard v Six Capital Investments Ltd (in liquidation) and others* [2020] SGHC 42 at [11]. However, these requirements are not necessary under O 15 r 6(2).

36 Under O 15 r 6(2), as explained in *Ernest Ferdinand Perez De La Sala v Compania De Navigacion Palomar, SA and others and other appeals* [2018] 1 SLR 894 ("*Ernest Ferdinand*") there is first a non-discretionary element and then, if it is satisfied, a discretionary element. The non-discretionary element is an inquiry whether the "necessity" or the "just and convenient" limb is satisfied, as to which limbs the Court said (at [203]–[204]):

> 203 … If the necessity limb is relied upon, the court must consider whether it is *necessary*, and not merely desirable, to order joinder. The question is, in essence, whether "there [is anything] to prevent the action… as originally drawn, from being effectually and completely determined"… The fact that a plaintiff might *wish* to bring a related claim against the third party would not satisfied the test of necessity. Such situations are more appropriately addressed under the just and convenient limb, which permits joined right where, in brief, there is as between the third party and any existing party some question or issue having a sufficient relation to the main dispute, and the court thinks it would be just inconvenient to decide it.
>
> 204. Even under the latter limb, however, it is not sufficient for there to be some factual overlap between the main dispute and the question or issue involving the third party. Rather, that question or issue must "relate to *an* ***existing question or issue*** *between the* ***existing parties***"… The non-discretionary element here is the existence of a question or issue having the requisite relationship with the main dispute; the discretionary element is whether, "in the opinion of the Court", joinder for the purpose of deciding that question or issue would be just and convenient.

> If the court determines that the non-discretionary requirement is satisfied, it turns next to a discretionary assessment as to whether the joinder should be ordered.
>
> (citations omitted, italics and bold in original)

37 The Court continued, explaining at [205] that the discretionary stage concerned "countervailing concerns of fairness":

> 205. At the discretionary stage, the court's concerns are substantially similar whether the necessity limb or the just and convenient limb is relied upon. It should not be thought that where the necessity limb is successfully invoked, and the non-discretionary requirement is met, joinder will follow as a matter of course. Although the need to effectually and completely determine a dispute is in itself a strong reason for joinder, it is entirely possible for countervailing concerns of fairness (among other things) to override it. Either way, the court will consider all the factors which are relevant to the balance of justice in a particular case.

The extent to which merits of the case are considered

38 Whether to allow amendment does not involve an examination of the merits of the applicant's case, beyond whether it is bound to fail or (perhaps) bound to succeed: *Lim Yong Swan v Lim Jee Tee and another* [1992] 3 SLR 940 at [34]. The principles to be applied in the context of O 20 r 5 are similar to those for striking out pleadings under O 18 r 19 of the ROC: *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1990] 1 SLR(R) 337 at [4]; *Wright Norman and another v Oversea-Chinese Banking Corp Ltd* [1993] 3 SLR(R) 640 at [45]. In short, it is sufficient that the amendment discloses a "reasonable cause of action", which was described in *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 ("*Gabriel Peter*") at [21] as:

> *…a cause of action which has some chance of success when only the allegations in the pleading are considered.* As long as the statement of claim discloses some cause of action, or raises some question fit to be decided at the trial, the mere fact that the case is weak and is not likely to succeed is no ground for striking it out…

(emphasis added)

39 This standard similarly applies to O 15 rr 4 and 6(2) which serve a broadly similar purpose to O 20 r 5(1). In *Tan Yow Kon v Tan Swat Ping* [2006] 3 SLR(R) 881 ("*Tan Yow Kon*"), it was recognised that O 15 r 6 "stands in relation to parties as O 20 stands in relation to the amendment of pleadings": at [33]. Amendment provides a means of adjusting the pleading of a case so as to enable the dispute to be properly resolved, whilst joinder provides a means of adjusting the parties to a case so as to enable the dispute, or the dispute and a closely related dispute, to be properly resolved. Thus, there is like restraint from examining the merits on an applicant's case for joinder: see *Lee Bee Eng v Cheng William* [2021] 3 SLR 968 ("*Lee Bee Eng*") at [41], where the court declined to find that the case was "so hopeless that it [failed] to withstand basic scrutiny". As was said in *Tan Yow Kon* at [36], the rules in O 15 r 6 "are there to save rather than to destroy, to enable rather than to disable and to ensure that the right parties are before the court so as to minimise the delay, inconvenience and expense of multiple actions".

40 However, it remains that the Court will not allow joinder where the pleaded case is doomed or plainly unsustainable: *Lee Bee Eng* at [40] citing *Alliance Entertainment Singapore Pte Ltd v Sim Kay Teck and another* [2007] 2 SLR(R) 869 at [54]–[58]. That will be so if examination of the pleading does not disclose a reasonable cause of action, in the sense explained in *Gabriel Peter.* My use of the phrase hereafter is in that sense.

Lifting the corporate veil

41 The amendments begin with allegations of the directorial and shareholding connections of Mr Ganesh, Mr Paul and Ms Maha with the defendant. The defendant was incorporated in 2011. From the allegations, in the

period from July to December 2017, the directors of the defendant were or included Ms Maha, and from 23 October 2017, Mr Ganesh. The directors then were or included Ms Maha and Mr Ganesh until 1 November 2018. Mr Ganesh remains director to this day. Whether there were other directors is not alleged one way or the other.

42 In the same period of July to December 2017, the defendant's sole shareholder was Ms Maha, who remained the sole shareholder until 19 March 2018 when Mr Ganesh became sole shareholder. Then from 3 July 2018 until 31 October 2018, Ms Maha was again the sole shareholder. From 31 October 2018 the sole shareholder in the defendant has been Tuff Group AG, a German incorporated company listed on the Frankfurt Stock Exchange. Mr Ganesh and Mr Paul are 34% and 54% shareholders respectively in Tuff Group AG.

43 The claim resting on lifting the corporate veil is then pleaded in paragraphs 17 to 27 of the proposed Amended Statement of Claim. The key allegation is paragraphs 17, with the subsequent paragraphs being intended as particulars. As will be seen, it reproduces expressions of grounds in law for lifting the corporate veil, reading:

> 17. Mr G Paulraj, Mr N Paulraj and/or Ms Mahalingam are (and were, at all material times) the controlling mind and will of the 1st Defendant, which is (and was, at all material times) Mr G Paulraj's, Mr N Paulraj's and/or Ms Mahalingam's *alter ego*. Further and/or in the alternative, the 1st Defendant was a mere sham or facade and/or used by Mr G Paulraj, Mr N Paulraj and/or Ms Mahalingam to further their improper purposes including to defraud creditors.

44 The following paragraphs are a rather unstructured collection of allegations, many conclusory and so dependent on obtaining content from the pleaded facts.

(a) Paragraph 18 sets out in a different form the details of directorships and shareholdings stated above, with the addition that Mr Ganesh and Mr Paul are the Vice Chairman and Executive Chairman respectively of Tuff Group AG.

(b) Paragraph 19 gives details of a group of companies of which the defendant is said to be part. In oral submissions, it was said that this was for completeness, to draw a complete picture of the defendant. One of the companies is Tuff Infra Pvt Ltd ("Tuff Infra"), said to be a Maldivian company 95% owned by Mr Ganesh who is also a director. Another company is Tuff Offshore Pte Ltd ("Tuff Offshore"), said to be a Singapore company 92.5% owned by Mr Ganesh and Mr Paul collectively, and of which Mr Paul is a director. These will be mentioned later.

(c) In paragraph 20 it is alleged that at the material time, Mr Ganesh, Mr Paul and/or Ms Maha did not treat the defendant as a separate entity, and that the defendant was carrying on their business, including the Maafaru Airport Project. It is alleged that the discussions, negotiations, decisions and conclusion of the Contract and the Further Contract were conducted by Mr Ganesh and/or Mr Paul, and the ensuing breaches of the contracts were "perpetrated" by Mr Ganesh and/or Mr Paul.

(d) In paragraph 21 it is further alleged that at the material time, Mr Ganesh, Mr Paul and/or Ms Maha "dealt with [the defendant's] assets as if they were their own", and "authorised, directed, procured, caused and/or used [the defendant] to carry on business with the intent to defraud creditors, and/or were aware that [the defendant] was carrying

on business with the intent to defraud creditors". Extensive particulars of paragraph 21 are given, to which I will return.

(e) In paragraph 22 it is then alleged that as a result of the matters set out in paragraphs 20 and 21, the defendant's assets have been depleted at the expense of its creditors including the plaintiff. Particulars are given of current assets in 2017, revenue thereafter received, and "cash reserves" in 2018 and 2019, said to be from the defendant's accounts and intended to support the depletion.

(f) In paragraph 23 it is alleged that in July 2020 "the Defendants" (from the use of the term in the proposed Amended Statement of Claim meaning the defendant and the proposed defendants) caused Tuff Offshore to be incorporated in Singapore "and to undertake substantially the same business with [the defendant]", and that Tuff Offshore is 92.5% "owned" by Mr Ganesh and Mr Paul. There is a further allegation about investment in a project in China by "a domestic subsidiary", Tuff China. Tuff China is not one of the companies in paragraph 19.

(g) In paragraph 24 it is then alleged that by reason of the matters in paragraphs 22 and 23, Mr Ganesh, Mr Paul and/or Ms Maha were in breach of duties under common law, equity, the Companies Act (Cap 50, Rev Ed 2006) ("CA") and the Insolvency, Restructuring and Dissolution Act 2018 (No. 40 of 2018) ("IRDA"). Particulars are given which assert breach of fiduciary duties, breach of duties under s 157 of the CA which require a director to exercise reasonable care and skill and to act honestly, and carrying on the defendant's business with intent to defraud creditors which amounts to fraudulent trading under s 340 of the CA or s 238 of the IRDA.

(h) In paragraph 25 it is alleged that Mr Ganesh, Mr Paul and/or Ms Maha "intended and/or were aware that diverting and/or depriving [the defendant] of business opportunities or funds required for their business would reduce the recoverability of creditors' claims", and that "but for the diversion/deprivation of business opportunities or funds [the defendant] would have had substantially more funds available to meet creditors' claims".

(i) The culmination is in paragraphs 26 and 27, alleging that Mr Ganesh, Mr Paul and/or Ms Maha "have thereby abused [the defendant's] corporate form", and that for the reasons set out in paragraphs 17 to 26, the proposed defendants are jointly and severally liable with the defendant for the US$12,785,000.

45 I return to the particulars of paragraph 21. They allege five instances of what are at one point called payments "diverted to the Defendants". The details differ, but all take a similar form. In general, they expressly or impliedly allege that there were payments of money to an entity purportedly for work in relation to the Maafaru Airport Project. The money was then repaid to "the Defendants" in Maldivian rufiyaa in cash. The payments are said to have been made in one instance by the defendant, in the others by Tuff Infra, apparently established in compliance with Maldivian requirements as the entity to carry out the Maafaru Airport Project (as earlier noted, said to be 95% owned by Mr Ganesh). I give an example:

> e. In August 2018, Tuff Infra issued a cheque for the sum of US$273,122 in favour of Bronzegate Pvt Ltd ("Bronzegate"), a company incorporated in the Republic of Maldives. To the best of the Plaintiff's knowledge, Bronzegate was not engaged to perform any works in relation to the Maafaru Project at the relevant time (and in fact does not and did not operate in the construction industry). As set out in the receipt dated 7 August 2018 issued on Tuff Infra letterhead and signed by Mr G

> Paulraj, payment was for the purposes of 'Money Exchange – MVR received for Site Expenses'. The rufiyaa equivalent of the sum paid to Bronzegate was paid to the Defendants in cash.

46 The "diverted funds" are said to have included money "relating to the Maafaru Project"; in particular an amount paid to the defendant by the funder of the Maafaru Airport Project. The instances are dated in the months of February, May and August 2018. The total of the diverted funds is a little under US$3m.

47 The conclusory allegations in the body of paragraph 21, that at the material time, the proposed defendants dealt with the defendant's assets as if they were their own, that they authorised the defendant to carry on business with the intent to defraud creditors, and that they were aware that it was carrying on business with that intent, must be confined by and to the particulars. Similarly, there were conclusory allegations in other paragraphs of the proposed Amended Statement of Claim. For example, those in paragraph 20, that the proposed defendants did not treat the defendant as a separate entity, and in paragraph 26 that they abused the defendant's corporate form, which as will be seen are again expressions of grounds for lifting the corporate veil must depend on the factual allegations. It is not enough simply to allege that the defendant is a sham or façade; facts sufficient to support this ground must be pleaded.

48 Factual allegations key to the conclusory allegations are those said to be diversion of funds and of business opportunities. The diversion of funds is found in the five instances in the particulars to paragraph 21, in the total amount of a little less than US$3m. Diversion of business opportunities is referred to in paragraph 25. It appears that the references to Tuff Offshore, from July 2020, and contracting by Tuff China, are intended to underpin it, as there are no other pleadings of any diversion of business opportunities.

49 The application was supported by an affidavit of the plaintiff, which also incorporated materials from a number of his prior affidavits. A great deal of the affidavit was in narrative form, or in the nature of submissions, but it purported to provide factual support for the allegations in the paragraphs summarised above. The application was opposed by an affidavit of Mr Ganesh, which contained even more in the nature of submissions, including argument of the defendant's response to the plaintiff's claim, but also factual material of two kinds. First, it included the Respondent's version of, and rebuttal of, some of the factual allegations in the proposed Amended Statement of Claim and the plaintiff's affidavit. It also provided their justification for Tuff Offshore, and asserted that the plaintiff had presented half-truths and forged documents. Secondly, it suggested discreditable reasons for the plaintiff's application and alleged an abuse of process.

50 The Respondents submitted that the amendments did not disclose a reasonable cause of action against the proposed defendants, and also that the application was an abuse of process. A considerable focus of the submissions was that the particulars to paragraph 21 were false. It was said in oral submissions that what transpired in relation to the payees of the money was critical, and that the plaintiff had misled the court by procuring false documents and making false statements under oath, for which purpose reliance was placed on Mr Ganesh's affidavit.

51 One aspect of that reliance should be mentioned and disposed of. After the affidavit of Mr Ganesh was filed, the plaintiff requested, by letter, leave to file an affidavit in reply, identifying principally Mr Ganesh's evidence concerning the particulars to paragraph 21. The Respondents by letter opposed the request, submitting that the plaintiff could "easily doctor more evidence if necessary to suit his own ends". I refused leave. The Respondents submitted

that, because the plaintiff had not filed a formal application for leave to file an affidavit in reply, he should be taken to have admitted that the truth of what Mr Ganesh said. The reasoning seemed to be that the plaintiff had not taken sufficient efforts to reply. I do not accept the submission. Whatever the position may have been, if it were simply that there was no affidavit in reply (and I do not suggest that such a failure to reply would have entailed admission of the truth of what Mr Ganesh said) an application for leave was made and was refused, whereby the plaintiff was not able to file an affidavit in reply. As such, nothing adverse can be found in the absence of an affidavit.

52 As to the factual contest, again as an example I take the particular of Bronzegate set out above at [45]. The thrust of Mr Ganesh's evidence was twofold: first, that Bronzegate operated and was known by the plaintiff to operate in the construction industry and to have been engaged in relation to the Maafaru Airport Project; and secondly, that the receipt (which was annexed to the plaintiff's affidavit) was a forgery. The evidence did not, however, directly deal with the matter of return of the money in cash. It should be said that Mr Ganesh's evidence of the plaintiff misleading the court went beyond this. Again as an example, the plaintiff had said in his affidavit that in addition to the instances of diversion of funds, in March 2021, Tuff Infra had consented to a judgment in the Civil Court of Maldives in favour of the owner of Bronzegate. Although not included in the particulars to paragraph 21, this was a supplementary allegation of diversion. Mr Ganesh said at length that he knew nothing of a claim by Bronzegate or its owner and that Tuff Infra had not consented to any judgment, concluding that the judgment had been fraudulently obtained.

53 Much more could be described of the factual contest over the particulars to paragraph 21, but no more than illustration is appropriate. As explained

earlier in these reasons, this application does not include an in-depth consideration of the merits of the plaintiff's case. All that is required is a reasonable cause of action to be disclosed. Entry into contest on the correctness or otherwise of the factual allegations in the particulars to paragraph 21 is not appropriate, particularly when those matters would be in contest at trial if the joinder were allowed. It is even less appropriate to go into matters in the respective affidavits which form no part of the pleaded case.

54 I add two observations. The first is that on the limited materials in the application, and without proper investigation including cross-examination, it would not be possible to responsibly come to a factual finding on, for example, whether the Bronzegate receipt was a forgery or whether the consent judgment had been fraudulently obtained. The second is that in any event the Respondents' factual contest over the diversion of funds does not necessarily go to the gravamen of the allegations, being that they caused the defendant's funds to be dispersed inappropriately. For example, it does not really matter to that allegation whether Bronzegate was known to the plaintiff to have been in the construction industry. The Respondent's endeavours in this respect in the application were misguided.

55 Three grounds for lifting the corporate veil are asserted in paragraph 17 of the proposed Amended Statement of Claim: (a) that the proposed defendants were and are the controlling mind and will of the defendant and it was their *alter ego*; (b) that the defendant was "a mere sham or façade"; and (c) that the defendant was used by the proposed defendants "to further their improper purposes including to defraud creditors". Each ground is ambulatory amongst the proposed defendants: the allegation should be understood to mean that *all* of the proposed defendants (or if not, two of them) constitute the controlling mind, and so on.

56 These are three of a collection of expressions of grounds for lifting (or piercing) the corporate veil, taken from *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, Rev 3rd Ed, 2009) ("*Woon*") at para 2.58. Whilst it was unstated common ground that Singapore law applied, the English case of *Prest v Petrodel Resources Ltd and others* [2013] 2 AC 415 ("*Prest")* arose during the hearing of the application. In *Prest*, the United Kingdom Supreme Court reconsidered piercing the corporate veil in a more unified manner. *Prest* has been referred to in *Simgood Pte Ltd v MLC Shipbuilding Sdn Bhd and others* [2016] 1 SLR 1129 and *Sun Electric Pte Ltd v Menrva Solutions Pte Ltd* [2018] SGHC 264. The Court of Appeal in *Sun Electric Pte Ltd and another v Menrva Solutions Pte Ltd and another* [2019] SGCA 51 found that it was not necessary to decide its application in Singapore. Similarly, it is not necessary or appropriate to do so in this application. The plaintiff's submissions were founded on the three grounds and did not address *Prest*; the Respondent's submissions did refer to *Prest*, but as a development in the United Kingdom.

57 It is recognised in *Woon* that "[d]ifferent judges and commentators will analyse the cases in different ways", and the grounds are far from rigidly distinct: at para 2.59. As did the parties, I will address each ground as a separate matter. There has, however, been regard to the underlying justification for lifting the corporate veil. In *Tjong Very Sumito and others v Chan Sing En and others*[2012] SGHC 125 ("*Tjong Very Sumito")* it was said that there were generally two justifications, first, where the evidence showed that the company was in fact not a separate entity, and secondly, where the corporate form had been abused to further an improper purpose: at [67]. In *Goh Chan Peng and others v Beyonics Technology Ltd and another and another appeal* [2017] 2 SLR 592 it was said in the Court of Appeal that "[g]enerally, piercing

the corporate veil is justified by abuse of the corporate form or if it is necessary for the veil to be lifted to give effect to a legislative provision": at [75].

58 In considering abuse of the corporate form as the justification for imposing liability on the company's controllers, two things should be borne in mind. The first is that the abuse of the corporate form must be in relation to the incurring of the liability sought to be imposed on the controllers; if the liability is genuinely incurred, without abuse, subsequent abuse of the corporate form on other occasions or in other respects is insufficient. The second is related: as Lord Sumption said in *Prest,* the separate legal personality of a company is fundamental to corporate and commercial life, and "[i]t is not an abuse to cause a legal liability to be incurred by the company in the first place. It is not an abuse to rely on the fact (if it is a fact) that a liability is not the controller's because it is the company's. On the contrary, that is what incorporation is all about": at [34].

Sham or façade

59 I go first to ground (b), that of "sham or façade". The parties referred to the recognition of the ground in Singapore in *Win Line (UK) Ltd v Masterpart (Singapore) Pte Ltd and another* [1999] 2 SLR(R) 24 ("*Win Line"*) at [38], *Singapore Tourism Board v Children's Media Ltd and others* [2008] 3 SLR(R) 981 ("*Singapore Tourism"*) at [98(c)], and *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 ("*Alwie"*) at [96]. While referring to the recognition of the ground in *Singapore Tourism* and *Alwie*, the plaintiff did not descend into detail of how the matters alleged in the amendments made out the ground.

60 In *Win Line*, the court at [38] reproduced the reasoning of Toulson J in *The Rialto; Yukong Line Ltd of Korea v Rendsburg Investments Corporation (No 2)* [1998] 1 Lloyd's Rep 322, which in turn adopted the meaning given to sham in *Snook v London & West Riding Investments Ltd* [1967] 2 QB 786 ("*Snook")*. In that case, documents had been created intended to present a transaction as a hire purchase when it was in fact a refinancing, so that both parties to the transaction intended that they not create the legal rights or obligations which they purported to create. This definition is not readily transferrable to the context of lifting the corporate veil, as the controllers' intentions in using a company represent only one side of the transaction. But in *Win Line* it was transposed: the question was whether it was so between Masterpart, the corporate charterer liable for breach of a charterparty, and D & M, another company on the charterer's side of the transaction, and it was held that it was not.

61 The amendments do not call up a sham as so explained. On the *Win Line* reasoning, the ultimate question can be stated as whether in the contracting between the plaintiff and the defendant, the defendant and the proposed defendants had the common intention that the contractual rights and obligations in the Contract and the Further Contract were not to be between the plaintiff and the defendant, but between the plaintiff and the proposed defendants. In answering this question, regard must be had to the overall contracting landscape. The defendant was a company with a track record of infrastructure projects. It was attempting to obtain projects in the Maldives, and it cannot reasonably be thought that the proposed defendants were putting it up as the contractor with Regional Airports but intending that the "real" contractor was themselves and the corporate entity was not to have true existence or not to incur contractual obligations. It cannot reasonably be contemplated that, had a contract been

obtained, the proposed defendants would have intended for the performance of the Maafaru Airport or Nine Airports Projects, and the engaging with suppliers and subcontractors, to not be by the defendant or Tuff Infra, but in truth by themselves.

62 The Contract and the Further Contract are not in a different position. The fact, if it be the fact, that after the formation of the Contract and the Further Contract some funds were diverted from the defendant in 2018, and business opportunities were diverted from it from mid-2020, is insufficient to put a different complexion on the contracting. Even on the low threshold in an amendment application, nothing in the amendments gives a reasonable cause of action for sham or façade in the defendant contracting with the plaintiff. To revert to Lord Sumption, it was not an abuse to cause the defendant to incur the legal liability, and it is not an abuse to rely on that fact.

63 In *Singapore Tourism* the Court referred to where the company is a sham or façade as a ground for piercing the corporate veil, and clarified what had been said in *Win Line,* defining a sham as "acts done or executed by parties to the sham that were intended by them to give to third parties or to the Court, an appearance of creating between the parties legal rights and obligations different from the actual rights and obligations which the parties intended to create": at [99]. It was held, adopting that test, that the first and second defendant companies were a sham or façade and used by the third defendant to avoid his legal obligations. The facts recounted were concerned with what occurred in and at the time of the dealings with the plaintiff, and were stark: in substance, the third defendant did whatever he wanted with the companies' funds, without any corporate governance, and had milked the companies dry of the funds received from the plaintiff: at [155]. The first defendant in particular was described as a mere conduit for him to receive the sums: at [110]. The court then

noted at [154] that the third defendant: "had deliberately set out on a course of conduct to ensure that while he had the benefit of and unimpeded access to the funds of the first defendant, in having it as a separate corporate entity, he was able to use the first defendant to distance himself and the second defendant from the first defendant's liability."

64 The result was upheld on appeal in *Children's Media Ltd and others v Singapore Tourism Board* [2009] 1 SLR(R) 524. In brief reasons the Court of Appeal observed that the companies "were no more than corporate puppets compliantly dancing to the tune of [the third defendant]", and that he treated their assets as his own: at [9]. It was also observed that there were doubts as to the third defendant's *bona fides* when entering the contract with the plaintiff, as other documents showed that the third defendant had made no reasonable efforts to perform the contract: at [5]. As such, the sham in *Singapore Tourism* included that the third defendant had represented that he and his companies would perform the contract, while the true state of affairs was that he had no intention of even trying to perform his side of the bargain, and his only intention was to siphon money from his companies, paid by the plaintiff.

65 As before, nothing in the amendments can reasonably make out a case of the proposed defendants intending to give the appearance that the defendant was the contractor with Regional Airports, or contractor with the plaintiff, when they were the real contractor. The facts are wholly different from those in *Singapore Tourism.* There are no allegations in the proposed Amended Statement of Claim that there was no intention to perform the contract, and that the true state of affairs was for the proposed defendants to siphon funds from the defendant. In fact, the nature of the Contract and the Further Contract does not lend itself to such an allegation. To repeat, the fact (if it be the fact) that at

a later time, funds or business opportunities were diverted from the defendant is insufficient.

66 Dealing with the final case of *Alwie,* the mention of sham or façade was only to say that it was a ground distinct from the ground of *alter ego*; the Court went on to consider the latter ground. It does not advance the plaintiff's position based on sham or façade.

67 In oral submissions, the plaintiff proposed a variation of the *Win Line* explanation. He said that the proposed defendants had set up the defendant as a sham in the sense that they had interposed it to incur liabilities, yet intended to divert funds to themselves such that it would not be able to repay creditors.

68 On one view, as it is stated this does not involve sham or façade. If a company is to incur liabilities, it is the real contractor, even if thereafter its funds were diverted away and even if the controllers intended that they would be diverted away. An intention not to pay and instead to divert the money, while sharp practice, does not make the company a sham or no more than a façade for the controllers. Something more is needed, perhaps from "interposed", but again if a company is interposed it is genuine and not a sham unless there is some reason other than the interposition itself to make it a sham.

69 In any event, the variation requires a conclusion of sham or façade as at 2017, and one that goes beyond the Contract and the Further Contract. It must extend to the contract for the Maafaru Airport Project and all engagements of contractors to perform the contract awarded for the Maafaru Airport Project, or for the Nine Airports Project (had it come to fruition). The defendant's pursuit of the projects, the plaintiff's work for it towards them, and their performance if awarded, were integral and the defendant's "interposition" could not have

been only *vis-vis* the plaintiff. It cannot reasonably be found that the defendant was interposed, whatever that may mean, with the intention that it incur liabilities in all those engagements but creditors would not be paid and instead money from all the engagements would be diverted. The Contract and the Further Contract cannot be isolated.

70 I do not think the variation is in any better position than the *Win Line* explanation. The allegations in the proposed Amended Statement of Claim, the central ones being of diversion of funds after 2017, do not give a reasonable basis for lifting the corporate veil on the ground that the defendant was a sham or façade in the sense suggested.

Alter ego

71 I go then to ground (a), the allegation that the proposed defendants were the controlling mind and will of the first defendant, and that it was their *alter ego.* At first, the plaintiff seemed to submit that if persons were the controlling mind and will of a company, that sufficed for lifting the corporate veil and making them liable for the company's obligations. That would be a bold proposition, as a moment's consideration of a one-man company shows. In the case of "one-man" companies, the sole shareholder would almost always be the controlling mind and will of the company. Yet, it cannot be the case that every one-man company would have its corporate veil lifted as it would defeat the point of incorporation for many small, closely held companies. This has been recognised in the case law. In *NEC Asia Pte Ltd (now known as NEC Asia Pacific Pte Ltd) v Picket & Rail Asia Pacific Pte Ltd and others* [2011] 2 SLR 565 the *alter ego* ground was recognised at [31], but at [36] it was said succinctly that evidence of sole shareholding and control of the company without more would not move the court to intervene, and in *Tjong Very Sumito*

at [76] it was said equally succinctly that mere evidence of sole shareholding and control did not justify piercing the corporate veil so as to bring personal liability for the claims against the company.

72 The question then is: what more is required to lift the corporate veil? When pressed, the plaintiff submitted that the added factor was that the controllers did not treat themselves distinctly from the company but treated its assets as their own. He referred for that to *New Line Productions, Inc and another v Aglow Video Pte Ltd and others and other suits* [2005] 3 SLR(R) 660 ("*New Line"*), *Singapore Tourism* and *Alwie.*

73 In *New Line*, the directing minds of the "TS Group" were found liable for the breaches of copyright by the companies. The Court referred to the exception to a company's separate existence and liability for wrongs, being "[w]here directors order an act by the company which amounts to a tort by the company, they may be liable as joint tortfeasors on the basis that they have 'procured or directed' the wrong to be done": at [104], citing *TV Media Pte Ltd v De Cruz Andrea Heidi* [2004] 3 SLR 543. It appears that procuring or directing was equated with whether the directors were the "controlling mind and spirit" of the companies: at [107]. It is, with respect, not clear that the decision in *New Line* is to do with lifting the corporate veil, particularly because as earlier noted, sole shareholding and control is insufficient, rather than with liability as joint tortfeasor. The controlling mind and spirit directed the commission of the infringing conduct, and the acts of the directors were in relation to the copyright piracy. For example, it was said that "[t]heir titles implied duties closely related to the ordering, importation and distribution of the infringing VCDs": at [107]. Any identification with the company was in the specific commission of the copyright piracy. I do not think this decision supports the plaintiff's submission.

74 *Singapore Tourism* recognised the ground "where a company is employed as the agent or *alter ego* of its controllers". The plaintiff had submitted that the third defendant had treated the companies as his *alter ego* (at [98], [100]), but the Court's conclusion was on the distinct ground, adopting the test in *Win Line,* of sham or façade: at [155]. The reasons do not explain the ground any further and the facts were so different as not to provide guidance in the present case.

75 In *Alwie*, what was described as the *alter ego* ground was upheld. It was said that the key question is "whether the company is carrying on the business of its controller": at [96]. *Alwie* was the appeal from *Tjong Very Sumito.* In that case, Alwie had absolute control of OAFL, the party to the agreement with the plaintiff. He asserted that "he" was entitled to the money payable under the agreement, had money payable to OAFL paid to himself, and treated OAFL's bank account, into which other money was paid by the plaintiff, as his personal account, and spoke entirely for OAFL in the proceedings. The trial judge considered that he had used OAFL as an extension of himself. The Court of Appeal upheld the result, saying that Alwie "made no distinction between himself and OAFL" in relation to the agreement with the plaintiff: at [99]–[100].

76 When the corporate veil is to be lifted so as to impose liability on the company's controllers on the ground that the company is their *alter ego* or (as it was put in *Alwie*), that it is carrying on their business or that they made no distinction between themselves and the company, the company must be the *alter ego* at the time of, and in relation to, the incurring by it of the liability sought to be imposed on the controllers. No doubt the controllers' subsequent conduct or conduct in other respects could contribute to making out or even make out the ground. However, here, it must be asked whether, in the entry into the Contract and the Further Contract, the defendant was in truth carrying on the proposed

defendants' business, or whether the proposed defendants made no distinction between themselves and it, or as the plaintiff put it, whether they did not treat themselves distinctly from the defendant but treated its assets as their own. As previously discussed, this must be asked in the entire contracting landscape, asking also whether the same answer can be given for contracting with Regional Airports and with suppliers and subcontractors. Again, despite the low threshold there is insufficient basis in the amendments for regarding the defendant as anything other than the real corporate contractor, separate from the proposed defendants. I do not think that, any more than that it was a sham or a façade, the matters pleaded in the proposed Amended Particulars of Claim provide a reasonable cause of action on the basis that in the defendant's entry into the Contract and the Further Contract, the proposed defendants made no distinction between it and themselves or treated it simply as carrying on their own business as their *alter ego.*

Improper purposes

77 I go finally to ground (c), where the plaintiff has alleged that the proposed defendants were using the defendant to further their improper purposes, including the defrauding of creditors. The ground is expressed in embarrassingly wide terms, with no indication, beyond defrauding creditors, of what improper purposes the defendant was used for, if any. In submissions, the ground was expressed as where a company is employed to allow a person to evade his legal obligations or commit fraud. That is the expression of the ground in *Woon,* and the plaintiff referred again to *Singapore Tourism* at [98], where the Court included in the circumstances for piercing the corporate veil "where a company is employed to allow a person to evade his legal obligations or to commit fraud".

78 However, the reference in *Singapore Tourism* was part of the recitation of a number of grounds taken from *Woon*, and it is not evident that the ground was adopted and applied in coming to the decision either at first instance or on appeal. The discussion in *Woon* considers instances of a company used as a device to evade an *existing* contractual or statutory duty, as a cloak for fraud or crime, to evade a court order, or to shield assets from being taken in satisfaction of a judgment or potential judgment, none of which are in play in the present case. Importantly, *Woon* did not make reference to *Singapore Tourism*. The plaintiff's submissions did not explain how the ground applied: how might it?

79 To take the ground as expressed, it is necessary that the defendant was used for one of the purposes. To return to the justification for lifting the corporate veil, there should be abuse of the corporate form. There is no question of the defendant being used to allow the proposed defendants to evade legal obligations under the Contract and the Further Contract. There were no pre-existing obligations to the plaintiff which the defendant was interposed to evade. It is the same for any other obligation which might be suggested, such as to Regional Airports. Turning to the defendant being used to commit fraud, and assuming the asserted fraud is defrauding creditors being that the diversion or deprivation of funds or business opportunities alleged in paragraph 25 reduced the recoverability of creditors' claims, from that alone there is no use of the defendant or abuse of its corporate form. There is no abuse of the corporate form in a company being the debtor rather than the controllers, or in the fact (if it be so) that the company does not have assets to meet all its debts. If the controllers of a company wrongly extract funds whereby the company's assets are reduced to the detriment of creditors, they may incur liability for doing so. But that does not constitute an abuse of the corporate form as a reason for lifting the corporate veil to impose liability on the controllers for the company's debts.

80 In this case, the ground comes down to the plaintiff's variation of the *Win Line* explanation, the fraud being that the proposed defendants interposed the defendant to incur liabilities yet with the intention that it would not be able to repay creditors, and instead the funds would be diverted to themselves. For the reasons given in relation to that variation (see [67]–[70] above), I do not think that a reasonable cause of action for lifting the corporate veil on the ground of use of the defendant to commit fraud is disclosed.

Conclusion on the amendments to lift the corporate veil

81 Joinder of the proposed defendants in order to claim against them through lifting the corporate veil should be refused, for want of reasonable grounds for doing so. Fulfilment of the requirements for joinder do not arise, but it should be said that if there were a reasonable cause of action, joint and several liability with the defendant would give the proposed defendants an interest in the existing dispute as a basis for fulfilment.

Conspiracy

82 I now turn to the plaintiff's proposed causes of action for unlawful and lawful means conspiracy.

83 The unlawful means conspiracy claim took up the matters pleaded for lifting the corporate veil:

> 28. By reason of the matters pleaded at [17] to [26] above, the Defendants (or any two or more together) conspired and combined together wrongfully and with intent to injure and/or cause loss to the Plaintiff by unlawful means by ensuring that he cannot obtain and/or enforce any right to payment or compensation to which he would be or is entitled, contractually or as damages or otherwise.
>
> 29. Pursuant to and in furtherance of the conspiracy pleaded at [28] above, the Defendants carried out the unlawful

> acts and means set out at [17] to [26] above, by which the Plaintiff was injured.

84 The elements of the cause of action are well established, see for example *Beyonics Technology Ltd and another v Goh Chan Peng and others* [2016] SGHC 120 at [161]. In summary, it requires a combination of two or more persons and agreement to do certain acts; performance of acts pursuant to the agreement; the use of unlawful means, which includes criminal and intentionally tortious acts and breach of fiduciary duty; intent to injure the plaintiff; and loss suffered by the plaintiff.

85 Although the pleading is by reference to the prior paragraphs, the cause of action is distinct from lifting the corporate veil. Lifting the corporate veil looks to the incurring by the defendant of the liability sought to be imposed on the proposed defendants and the events at the time the liability is incurred. The plaintiff's cause of action for conspiracy is for a quite separate wrong, looking to acts of the proposed defendants thereafter with intent to hinder or negate enforcement of the defendant's liability. The factual bases are distinct, and if the liability is the defendant's liability alone, without any question of the proposed defendants being liable upon lifting the corporate veil, the proposed defendants can nonetheless be liable in damages for their separate wrong. If successful, the cause of action for conspiracy brings liability in damages, not liability for the defendant's contractual debt; and the damages are not necessarily in the same amount as that debt (for example, if the defendant is shown to be able to pay the amount of any judgment or if the judgment debt is in part recovered from the defendant).

86 The lawful means conspiracy claim again took up the matters pleaded for lifting the corporate veil:

> 30. Further and/or in the alternative, by reason of the matters pleaded at [17] to [26] above, the Defendants (or any two or more together) conspired and combined together wrongfully and with the sole or predominant intention of injuring the plaintiff and/or causing loss to the Plaintiff by ensuring that he cannot obtain and/or enforce any right to payment or compensation to which he would be or is entitled, contractually or as damages or otherwise.

87 The elements of the cause of action are similarly well established. Whilst broadly similar to the elements of unlawful means conspiracy, the difference is, somewhat unsurprisingly, that the use of unlawful means is not necessary. Additionally, it is necessary to prove that the *sole or predominant intention* of the defendant was to cause injury or damage to the plaintiff: see *Beckkett Pte Ltd v Deutsche Bank AG and another and another appeal* [2009] 3 SLR(R) 452 at [120]. The cause of action is similarly distinct in its factual basis from lifting the corporate veil.

88 Because of the distinct factual bases, there can be a reasonable cause of action for conspiracy although not for lifting the corporate veil. However, for reasons next given, I do not think that there should be joinder of the proposed defendants in order to bring the conspiracy claims against them. Because it is open to the plaintiff to bring the claims in separate proceedings, I do not think I should express a view on whether or not reasonable causes of action for conspiracy are disclosed in the proposed Amended Statement of Claim; that may be a matter later arising, and perhaps on different allegations.

89 Turning then to fulfilment of the rules for amendment and joinder, so far as the conspiracy claims involve amendment, there is no reason against allowing the amendments if the proposed defendants should be joined: the amendments are either integral with the joinder or consequential on it.

90 As to joinder itself, O 15 r 4(1) does not apply. There is no common question of law or fact in the existing dispute and the conspiracy claims. The conspiracy claims require that the Plaintiff succeed in the existing dispute in order that he can suffer loss, but the questions in the existing dispute are not questions in the conspiracy claims. Nor would all rights to relief – the claim to judgment in debt against the Defendant and the claim to judgment in damages against the proposed defendants – be in respect of or arise out of the same transaction or series of transactions. One transaction is the Contract and the Further Contract. The other, seen as a series of transactions, is the combination to limit or negate recovery of any amount payable as a result of the first transaction and acts done in furtherance of that aim.

91 The joinder application is in substance under O 15 r 6(2). The "necessity" limb is not in play: the proposed defendants are not persons who ought to have been joined in the existing dispute, and the existing dispute can be determined perfectly well without them. The "just and convenient" limb must be satisfied.

92 For the non-discretionary requirement of that limb, there must be a question or issue between the proposed defendants and the plaintiff "arising out of or related to or connected with any relief or remedy claimed in the cause or matter". The "cause or matter" is the claim in the existing dispute to judgment in debt against the defendant. The "question or issue" is the conspiracy claims, with their elements of essentially combination, diversion of funds or business opportunities and reduction of the defendant's assets (in the one case being unlawful means), intentions to injure the plaintiff, and finally loss to the plaintiff. Neither the claim nor those questions or issues arise out of or relates to or is connected with the claim to the judgment in debt against the defendant. Referring back to *Ernest Ferdinand,* some factual overlap between the existing

dispute and the conspiracy claims is not enough: the question or issue involved in the claims by the plaintiff against the proposed defendants must relate to an existing question or issue between the plaintiff and the defendant: at [204]. At most, the fact of liability under the Contract and Further Contact in the existing dispute is a fact in the conspiracy claims, and that is not enough.

93 It follows that joinder of the proposed defendants in order to bring the conspiracy claims against them should not be allowed. I should add, however, that if it had been open to join them upon satisfaction of the non-discretionary requirement, in the exercise of the discretion I would not have granted the application in that respect; and for the same reasons, if O 15 r 4(1) had been satisfied, I would not have granted leave

94 That is not because of delay in making the application, although in *Ernest Ferdinand* at [208] delay is said to be an important factor in the joinder discretion, and there was delay in this case. From the plaintiff's affidavit, he was moved to make the application when he became concerned, as a result of materials emerging in the course of the summary judgment application, that the defendant would not have assets to satisfy a judgment if he succeeded in the existing dispute. That was in mid-2020. The plaintiff says that making an application was put off because he had to respond to the security for costs application, but that was brought in December 2020. Further, it should have caused the plaintiff to, at the least, make known that he proposed to apply to join additional parties – if they were joined, they would have an interest in obtaining security for costs and the amount of costs in question would be enlarged. Notwithstanding the lack of satisfactory explanation for the delay, however, I do not think, and it was not suggested, that there has been material prejudice so far to the Respondents which cannot be compensated for in costs.

95 The discretion arises at two points, first in whether the joinder would be just and convenient (referred to in *Ernest Ferdinand* at [204] as a discretionary element), and secondly, through the "may" in O 15 r 5(2). It is sufficient to address the former, although the same considerations would also be material to the latter. In my view, it would not be just and convenient to determine the conspiracy claims between the proposed defendants and the plaintiff by joinder in the proceedings involving the existing dispute, or appropriate otherwise to give leave whereby that could be done. If there were a relationship sufficient to satisfy the non-discretionary requirement, it would be tangential to the substantive issues in the existing dispute and the conspiracy claims respectively. The existing dispute may be resolved in the defendant's favour, upon which the conspiracy claims will fall away, or it may turn out that the defendant has sufficient funds to meet any judgment obtained by the plaintiff. The justice and convenience favours, and the better course is to separate proceedings against the proposed defendants, to be decided after the outcome of the present proceedings if he is successful and if there is need for their decision.

Abuse of process

96 Although it will not affect the result, I should deal with the Respondents' submission of abuse of process. The intended vehicle for the submission appeared to be O 18 r 19(1)(*d*) of the ROC, on the basis that the rule provides for striking out on the ground of abuse of process of the court and similar principles apply to amendment and joinder. I doubt that it was necessary to go to the rule, as the submissions rather invoked the court's inherent jurisdiction to prevent abuse of its process. I would not have refused the application on the ground of abuse of process.

97 There were three elements to the submission. One was that the application was manifestly groundless, allied with which was a submission concerning proof at trial. The second was that, as already noted, it was said that the particulars to paragraph 21 were false, and that the plaintiff had mislead the Court by procuring false evidence and making false statements under oath (including as to the Tuff Infra consent judgment, which were not part of the particulars). In the written submissions it was said bluntly that the plaintiff had relied on forged documents to support his case and that the "fraudulent consent judgment" was "the Plaintiff's most audacious attempt to mislead the Court". The third was that the application had been brought for ulterior and improper purposes, being variously identified as seeking to ruin the Respondents financially, attempting to derail arbitration proceedings involving the defendant and the Government of the Maldives, and seeking to avoid legal obligations in the United Kingdom. This last was extensively addressed in Mr Ganesh's affidavit, to the effect that the plaintiff had mislead his English lawyers by instructing them that the application had been granted so that he (Mr Ganesh) was a defendant in a counterclaim, in order to improve the plaintiff's resistance to enforcement of an order for costs against him in English proceedings. In his affidavit, Mr Ganesh called this the "real reason" for the application.

98 The application has failed, but I do not regard it as manifestly groundless to the extent of abusing the court's process. The submission concerning proof at trial was put in two ways:

(a) One was that there was abuse because the plaintiff sought to bring the claims against the proposed defendants without knowing any facts to support them and with a view to using the court's processes to find something, citing *Steamship Mutual Underwriting Association Ltd*

v Trollope & Colls (City) Ltd [1986] 33 BLR 77. Again, although the application has failed, I do not regard it as an application of that kind.

(b) The other was unusual. The plaintiff's CMC plan had said that he would only be calling two witnesses at trial, the plaintiff and Saamee. The submission was that the application was an abuse of process because the plaintiff made allegations which required that the payees in the particulars to paragraph 21 give evidence, and yet he was "content to make allegations which cannot be substantiated" because he did not plan to call the payees. The basis for this submission is absent: the plaintiff's CMC plan was for the proceedings *prior* to the joinder of the proposed defendants. In any event, proof by evidence is a matter for trial and not a matter for this application.

99 As to the second argument, the application is not the occasion for entry into serious issues of false evidence and forgery which are already part of the existing dispute and would also be part of the dispute if the proposed defendants were joined. Findings could not responsibly be made at this interlocutory stage and without cross-examination. Those also are matters for trial.

100 Abuse of process through ulterior or improper purpose requires that the proceedings are brought not for the purpose of prosecuting them to a conclusion, but predominantly in order to obtain some other advantage external to the proceedings. I have referred to why the plaintiff was moved to make the application. It is a rational and understandable purpose to seek to bring others into the proceedings as sources of satisfaction of a judgment, and there is no sufficient reason to conclude that the plaintiff did not intend to prosecute his claims against the proposed defendants (if the application were allowed) to their conclusion. That in consequence the Respondents may be placed under financial

strain or affected in the arbitration does not turn a proper purpose into an improper one. That if the plaintiff did mislead his English lawyers (and through them the court), as to which I make no finding, that would be a discreditable misuse of an otherwise justifiable application.

Conclusion

101 Leave is granted to amend paragraph 14 of the Statement of Claim by deleting the words "has…only made partial payment to the Plaintiff in the sums of (*a*) US$75,000 on or around 27 February 2018; and (*b*) US$140,000 on or around 13 September 2018" and making the consequential changes. The application is otherwise dismissed. If the parties are unable to agree on costs, written submissions on costs not exceeding five pages should be filed and exchanged within 14 days, and a time will be appointed for oral submissions or, with the parties' agreement, costs will be determined on the papers.

Roger Giles
International Judge

Goh Wei Wei, Ling Jia Yu and Charlotte Tang (WongPartnership LLP) for the plaintiff;
Vijai Parwani and Lim Shu Yi (Parwani Law LLC) for the defendant and the 1st, 2nd and 3rd Non-Parties;