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

[2021] SGHC 134

Originating Summons No 736 of 2020
(Summons No 310 of 2021)

In the matter of Section 313(5) of
the Companies Act (Cap 50)

And

In the matter of Ace Class Precision
Engineering Pte Ltd (In Members'
Voluntary Liquidation)

Between

Liquidators of Ace Class
Precision Engineering Pte Ltd
(In Members' Voluntary
Liquidation)

… *Applicant*

And

(1) Tan Boon Hwa
(2) Chin Suling
(3) Su Desheng Jacob
(4) Alan Ng & Partners

… *Respondents*

Originating Summons No 737 of 2020
(Summons No 303 of 2021)

In the matter of Section 313(5) of
the Companies Act (Cap 50)

And

In the matter of Qing Lian Precision Pte Ltd (In Members' Voluntary Liquidation)

Between

Liquidators of Qing Lian Precision Pte Ltd (In Members' Voluntary Liquidation)

… *Applicant*

And

(1) Sim Chee Wei
(2) Chin Suling
(3) Su Desheng Jacob

… *Respondents*

Originating Summons No 738 of 2020
(Summons No 330 of 2021)

In the matter of Section 313(5) of the Companies Act (Cap 50)

And

In the matter of Apex Precision Engineering Pte Ltd (In Members' Voluntary Liquidation)

Between

Liquidators of Apex Precision Engineering Pte Ltd (In Members' Voluntary Liquidation)

… *Applicant*

And

(1) Hay Chiak Buang
(2) Chin Suling
(3) Su Desheng Jacob

… *Respondents*

Originating Summons No 1061 of 2020

In the matter of Section 302 of the Companies Act (Cap 50)

And

In the matter of Ace Class Precision Engineering Pte Ltd (In Members' Voluntary Liquidation), Apex Precision Engineering Pte Ltd (In Members' Voluntary Liquidation) and Qing Lian Precision Pte Ltd (In Members' Voluntary Liquidation)

Between

(1) Yangbum Engineering Pte Ltd
(2) Loong Soo Min

… *Plaintiffs*

And

(1) Lau Chin Huat
(2) Yeo Boon Keong
(3) Ace Class Precision Engineering Pte Ltd (In Members' Voluntary Liquidation)
(4) Apex Precision Engineering Pte Ltd (In Members' Voluntary Liquidation)

(5) Qing Lian Precision Pte Ltd
(In Members' Voluntary
Liquidation)

… *Defendants*

GROUNDS OF DECISION

[Companies] — [Winding up] — [Delivery of property to liquidator]
[Companies] — [Winding up] — [Removal of liquidator] — [Standing]
[Companies] — [Winding up] — [Removal of liquidator] — [Cause]
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Tan Siong Thye J
5 April 2021

3 June 2021

Tan Siong Thye J:

Introduction

1 The applicants in Summons No 310 of 2021 ("SUM 310"), Summons No 303 of 2021 ("SUM 303") and Summons No 330 of 2021 ("SUM 330") were the liquidators of Ace Class Precision Engineering Pte Ltd ("Ace Class"), Qing Lian Precision Pte Ltd ("Qing Lian") and Apex Precision Engineering Pte Ltd ("Apex"). Mr Lau Chin Huat ("Mr Lau") and Mr Yeo Boon Keong of Technic Inter-Asia Pte Ltd were appointed as the joint and several liquidators of Ace Class, Qing Lian and Apex on 30 March 2020.[1] I shall refer to the

[1] Affidavit of Loong Soo Min dated 21 October 2020 ("LSM") at para 38; Affidavit of Lau Chin Huat dated 16 November 2020 ("LCH") at paras 2 and 5–6.

applicants collectively as the "Liquidators" and Ace Class, Qing Lian and Apex collectively as the "Companies". The first respondent in each summons was a director of one of the Companies: Mr Tan Boon Hwa (a director of Ace Class),[2] Mr Sim Chee Wei (a director of Qing Lian)[3] and Mr Hay Chiak Buang (a director of Apex).[4] The second respondent in each summons was Ms Chin Suling (or Ms Chin Shuling) ("Ms Chin"), an accounts executive employed by Yangbum Engineering Pte Ltd ("Yangbum") whose duties included book-keeping for the Companies.[5] The third respondent in each summons was Mr Su Desheng Jacob ("Mr Su"), a human resource and administrative manager employed by Yangbum.[6] The fourth respondent in SUM 310 was Alan Ng & Partners ("ANP"), an independent contractor that provided accounting and filing services to Ace Class.[7] The Liquidators and ANP had reached an amicable settlement before the hearing.[8] Thus, it was unnecessary for me to address the issues concerning ANP. I shall, therefore, refer to the first to third respondents in the summonses collectively as the "Respondents".

2 On 29 July 2020, the Liquidators filed Originating Summons No 736 of 2020 ("OS 736"), Originating Summons No 737 of 2020 ("OS 737") and Originating Summons No 738 of 2020 ("OS 738") to seek the orders of the court for the Respondents to deliver up and surrender all monies, property, books, papers and other documents belonging and/or relating to the Companies,

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2 Affidavit of Tan Boon Hwa dated 31 August 2020 at para 7.

3 Affidavit of Sim Chee Wei dated 31 August 2020 at para 7.

4 Affidavit of Hay Chiak Buang dated 31 August 2020 at para 7.

5 Affidavit of Chin Shuling dated 31 August 2020 at para 4.

6 Affidavit of Su Desheng Jacob dated 31 August 2020 at para 5.

7 Affidavit of Alan Ng Tian Luen dated 31 August 2020 ("ANTL") at para 4.

8 ANTL at paras 5–10.

which were in their possession, custody or power, to the Liquidators (the "s 313(5) Applications").[9] These applications were made under s 313(5) of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act") and not s 188(5) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) (the "IRDA") because the latter came into force on 30 July 2020, one day after the Liquidators' s 313(5) Applications were filed. Section 313(5) of the Companies Act was repealed and re-enacted as s 188(5) of the IRDA. On 2 October 2020, I made the orders under s 313(5) sought by the Liquidators (the "October 2020 Orders").[10] On 20 January 2021, the Liquidators filed SUM 310, SUM 303 and SUM 330, to apply for orders for the Respondents to comply with the October 2020 Orders within five days from the date of the orders sought.[11]

3 The plaintiffs in Originating Summons No 1061 of 2020 ("OS 1061") were Yangbum and Mr Loong Soo Min ("Mr Loong"). The first and second defendants were the Liquidators and the third to fifth defendants were the Companies. In OS 1061, Yangbum and Mr Loong applied for the removal of the Liquidators as the liquidators of the Companies. Yangbum and Mr Loong also applied for one Mr Lin Yueh Hung and one Mr Ng Kian Kiat of RSM Corporate Advisory Pte Ltd to replace the Liquidators.[12]

4 On 5 April 2021, I heard SUM 310, SUM 303 and SUM 330 together with OS 1061. After having considered the parties' written submissions and the

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9 HC/OS 736/2020 (Ace Class); HC/OS 737/2020 (Qing Lian); HC/OS 738/2020 (Apex).

10 HC/ORC 5541/2020 (Ace Class); HC/ORC 5527/2020 (Qing Lian); HC/ORC 5521/2020 (Apex).

11 HC/SUM 310/2021; HC/SUM 303/2021; HC/SUM 330/2021.

12 HC/OS 1061/2020.

oral submissions at the hearing, I granted the Liquidators' applications in SUM 310, SUM 303 and SUM 330, save that I allowed the Respondents four weeks (instead of five days) from the date of the orders to produce the documents as requested by the Liquidators.[13] I dismissed Yangbum and Mr Loong's application for the removal of the Liquidators in OS 1061.[14] At the conclusion of the hearing, I gave brief reasons for my decision.

5 The Respondents in SUM 310, SUM 303 and SUM 330,[15] and Yangbum and Mr Loong in OS 1061,[16] have appealed against my decision. I now set out my reasons in full.

Background to the dispute

Relationship between Mr Loong and Ms Liang

6 Mr Loong married Ms Liang Xihong ("Ms Liang") in 1994. In 1997, Yangbum was incorporated with Mr Loong and Ms Liang each holding 50% of its shares. Mr Loong was Yangbum's sole director.[17] Subsequently, Mr Loong and Ms Liang obtained a divorce in 2014 and Ms Liang married one Mr Zhang Shengqiang ("Mr Zhang") in 2015.[18]

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13 HC/ORC 2105/2021; HC/ORC 2103/2021; HC/ORC 2104/2021.

14 HC/ORC 2102/2021.

15 Notice of Appeal to the Court of Appeal in CA/CA 24/2021 (SUM 310); Notice of Appeal to the Court of Appeal in CA/CA 27/2021 (SUM 303); Notice of Appeal in CA/CA 25/2021 (SUM 330).

16 Notice of Appeal to the Court of Appeal in CA/CA 26/2021 (OS 1061).

17 LSM at paras 7–9.

18 LSM at para 8.

The Companies

7 Six companies were incorporated to undertake subcontract work exclusively for Yangbum. These included Ace Class and Apex (incorporated on 1 July 2008) and Qing Lian (incorporated on 8 October 2008).[19] The registered offices of the Companies were located in the same building as Yangbum's registered office.

8 Ms Liang was the sole registered shareholder of the Companies.[20] However, Mr Loong claimed to be the beneficial owner of the Companies. The issue of whether Mr Loong is the beneficial owner of the Companies is the subject of separate proceedings in Suit No 345 of 2020 ("S 345"), which are still ongoing.[21]

9 On 12 March 2020, Ms Liang and Mr Zhang were appointed as directors of the Companies. The other directors of the Companies were the first respondents in SUM 310, SUM 303 and SUM 330. These other directors had been appointed by Mr Loong and took instructions from him.[22]

Liquidation of the Companies

10 On 30 March 2020, extraordinary general meetings of the Companies were held and special resolutions were passed placing the Companies in members' voluntary liquidation.

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19 LSM at paras 10, 11(e), 12 and 14.

20 LSM at paras 11(a) and 11(c).

21 LSM at paras 11 and 15; Plaintiffs' Written Submissions ("PWS") at para 10; First and Second Defendants' Written Submissions dated 29 March 2021 ("DWS") at para 8.

22 LSM at para 32 and pp 82–90.

11 Yangbum was the most significant creditor of each of the Companies. On 23 October 2020,[23] Yangbum submitted proofs of debt of $4,144,448.40 for Ace Class, $3,257,258.71 for Qing Lian and $3,483,440.64 for Apex.[24] The provisional debt owed by the Companies to Yangbum, therefore, amounted to more than $10.8m. However, the Liquidators had yet to adjudicate these proofs of debt.[25]

12 Following their appointment, the Liquidators made repeated requests for the delivery up and surrender of all monies, property, books, papers and other documents belonging and relating to the Companies, and which were in the Respondents' possession, custody or power. However, these were not forthcoming.[26] On 29 July 2020, the Liquidators filed the s 313(5) Applications (OS 736, OS 737 and OS 738) seeking orders for the delivery up and surrender of these items.[27] Section 313(5) of the Companies Act, which was repealed and re-enacted as s 188(5) of the IRDA) with effect from 30 July 2020, provided as follows:

> **Delivery of property to liquidator**
>
> (5) The Court may require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator immediately or within such time as the Court directs any money, property, books and papers in his hands to which the company is prima facie entitled.

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23 LCH at para 8.

24 LSM at para 56.

25 LCH at para 8.

26 LCH at paras 25–30 and 42–56.

27 HC/OS 736/2020; HC/OS 737/2020; HC/OS 738/2020.

13 At the hearing of the s 313(5) Applications on 2 October 2020, I was satisfied that the Liquidators had satisfied the requirements of s 313(5) of the Companies Act. Accordingly, I made the October 2020 Orders. In particular, I ordered the Respondents to provide soft copies of most of the documents sought by the Liquidators in both Portable Document Format and Microsoft Excel form.

14 Subsequently, on 21 October 2020, Yangbum and Mr Loong applied for the removal of the Liquidators pursuant to s 302 of the Companies Act (now s 174 of the IRDA), on the ground that this would be in the real, substantial and honest interest of the liquidation of the Companies and would advance the purposes for which they were appointed.[28]

15 At the time of the hearing of the s 313(5) Applications, the Liquidators had not received a complete set of the Companies' books and assets.[29] Further, although some hard copy documents had been delivered to the Liquidators' office, these documents were incomplete and soft copies were not provided.[30] Consequently, on 20 January 2021, the Liquidators applied under O 45 r 6 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (the "ROC") for orders that the Respondents comply with the October 2020 Orders within five days from the date of the orders.

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28 HC/OS 1061/2020.

29 LCH at para 81.

30 LCH at paras 75–81.

The parties' cases

SUM 310, SUM 303 and SUM 330

The Liquidators' case

16 The Liquidators contended that, notwithstanding the clear terms of the October 2020 Orders, the Respondents had contumeliously failed, neglected and/or refused to comply with them. The Liquidators emphasised that six months had passed since the October 2020 Orders, yet they had not received a complete set of all the Companies' books and assets from the Respondents or Yangbum.[31]

17 In these circumstances, the Liquidators submitted that it would be in the interests of the liquidation process of the Companies for the court to impose a tight deadline for the Respondents to comply with the October 2020 Orders. The Respondents had already been given plenty of time to comply with the Liquidators' requests for the Companies' books and assets pursuant to the October 2020 Orders.[32]

The Respondents' case

18 The Respondents characterised the Liquidators' requests for the Companies' books and assets as a "witch-hunt" against Mr Loong and Yangbum's affiliates, serving "no purpose other than to vex and oppress, rather than to further the liquidation process".[33] According to the Respondents, there

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31 Applicants' Written Submissions dated 29 March 2021 ("AWS") at para 9.

32 AWS at paras 26–28.

33 Respondents' Written Submissions dated 29 March 2021 ("RWS") at paras 2, 4 and 6.

was no relevant contumelious conduct that would warrant granting the Liquidators' applications.[34]

19 The Respondents further submitted that if the court was, nevertheless, minded to grant the orders sought by the Liquidators, the timeframe for compliance with the October 2020 Orders should be four months. The Respondents argued that the timeframe of five days proposed by the Liquidators would be "unrealistic and oppressive" to the Respondents and Yangbum.[35]

OS 1061

Yangbum and Mr Loong's case

20 Yangbum and Mr Loong submitted that they had a legitimate interest in the removal of the Liquidators under s 302 of the Companies Act (now s 174 of the IRDA). As Yangbum was a major creditor of the Companies for $10.8m and Mr Loong claimed to be the beneficial owner of the Companies, they argued that they had the greatest interest in the liquidation of the Companies.[36]

21 Yangbum and Mr Loong further submitted that the Liquidators should be removed as they were clearly biased in favour of Ms Liang.[37] This submission was based on seven categories of allegations:[38]

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34 RWS at paras 6(b), 22(c), 25–33 and 40–52.

35 RWS at paras 7 and 53–61.

36 PWS at paras 41–43 and 58–62

37 PWS at para 49.

38 PWS at paras 15–31 and 52–53.

(a) that one of the Liquidators had trespassed into Yangbum's office together with Ms Liang (the "Trespass Allegation");

(b) that the Liquidators had a prior professional relationship with Ms Liang as her accountants (the "Prior Relationship Allegation");

(c) that the Liquidators irrationally targeted Mr Loong and his affiliates at Yangbum for documents while not filing any similar applications against Ms Liang (the "Irrational Targeting Allegation");

(d) that the Liquidators placed undue reliance on the declarations of solvency made by Ms Liang and Mr Zhang (the "Declarations of Solvency Allegation");

(e) that the Liquidators refused to withdraw their consent to act as the Companies' liquidators after being informed of Mr Loong's claim to be the beneficial owner of the Companies (the "Refusal to Withdraw Allegation");

(f) that the Liquidators threatened to terminate the employment of all of the Companies' employees (the "Termination of Employees Allegation"); and

(g) that the Liquidators made no effort to adjudicate Yangbum's proofs of debt (the "Proofs of Debt Allegation").

22 In addition, Yangbum and Mr Loong submitted that there were no significant practical obstacles to the removal of the Liquidators.[39]

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[39] PWS at paras 13, 50 and 54–57.

The Liquidators' case

23 The Liquidators submitted that Yangbum and Mr Loong did not have standing to apply for their removal under s 302 of the Companies Act (now s 174 of the IRDA). They argued that, in a solvent liquidation, the only parties with an interest in the ultimate distribution of the company's assets were the contributories of the company, *ie*, the shareholders. As the Companies were in solvent liquidation, Yangbum (as a purported creditor) had no standing to apply for the removal of the Liquidators.[40] Further, even if Mr Loong were to succeed in establishing that he had a beneficial interest in the Companies in S 345, a beneficial owner of a company's shares was neither a creditor nor a contributory of a company within the definition in s 4(1) of the Companies Act.[41] As Mr Loong was neither a registered shareholder of the Companies, nor reflected as a shareholder, director or beneficial owner in any of the Companies' financial statements, he had no real interest in the liquidation of the Companies.[42]

24 With regard to the grounds for their removal, the Liquidators denied each and every allegation of bias made by Yangbum and Mr Loong.[43] The Liquidators contended that they had acted to advance the interests and purpose of the liquidation of the Companies from the outset of their appointment.[44] The acts relied on by Yangbum and Mr Loong to allege bias on the part of the Liquidators did not demonstrate actual bias or create a reasonable perception of

40 DWS at paras 17, 22 and 24–26.

41 DWS at para 27.

42 DWS at paras 42–43.

43 DWS at para 10.

44 DWS at paras 11(d) and 66.

bias in the mind of a rational creditor or contributory.[45] On the contrary, the Liquidators argued that the application for their removal was merely another attempt by Yangbum, Mr Loong and the Respondents to frustrate the liquidation of the Companies.[46]

Issues to be determined

25 Two issues arose for my determination in respect of SUM 310, SUM 303 and SUM 330:

(a) Should the court exercise its discretion to make an order fixing time for compliance under O 45 r 6(2) of the ROC in the present case?

(b) If so, what was the appropriate timeframe for the Respondents to comply with the October 2020 Orders?

26 In respect of OS 1061, there were two issues for my determination:

(a) What was the applicable test to determine whether an applicant had standing to apply for the removal of a liquidator? In view of this, did Yangbum and Mr Loong have standing to apply for the removal of the Liquidators?

(b) Did Yangbum and Mr Loong show cause for the removal of the Liquidators?

27 I shall address each of these issues in turn.

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45 DWS at paras 11(d) and 75–76.

46 DWS at para 11(d).

My decision

SUM 310, SUM 303 and SUM 330

The applicable law

28 Order 45 r 6(2) of the ROC provides as follows:

> **Judgment, etc., requiring act to be done: Order fixing time for doing it (O. 45, r. 6)**
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> **6.**— … (2) Where, notwithstanding Order 42, Rule 6(1), or by reason of Order 42, Rule 6(2), a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, *the Court shall have power subsequently to make an order requiring the act to be done within* such time after service of that order, or *such other time, as may be specified therein.*
>
> [emphasis added]

29 The principles applicable to the exercise of the court's discretion to make an order under O 45 r 6(2) were set out by the Court of Appeal in *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 ("*Mok Kah Hong*"). The ultimate question was whether there was "sufficient material" before the court to warrant the exercise of its discretion under O 45 r 6(2). The exercise of this discretion would necessarily turn on the precise facts of each case. In most cases, evidence demonstrating "some form of contumelious conduct" would likely suffice, whereas a one-off failure to comply with an order for the payment of money was unlikely to suffice. If the person having to comply with the order had not manifested *any* intention to comply with the order, the court should be slow to accede to any request for an extended timeframe for compliance as this might have the unintended effect of further delaying or frustrating the applicant's attempt to enforce the order (*Mok Kah Hong* at [46]–[47]).

30 However, the court would also take into account any potential prejudice which might be occasioned to the person having to comply with the order. Where administrative or logistical difficulties were likely to arise in the course of effecting compliance with the order, the court should adopt a practical approach in balancing the interests of both parties (*Mok Kah Hong* at [47]).

31 In *Mok Kah Hong*, the parties were a husband and wife undergoing divorce proceedings. A court order had been made dividing the parties' matrimonial assets between them. The wife applied for an order specifying the timeframe within which the husband had to pay her a sum of money to which she was entitled. The Court of Appeal was satisfied that there was sufficient material to warrant the exercise of its discretion under O 45 r 6(2) because the husband had already breached various other court orders and had been "extremely uncooperative" in complying with those orders. Further, the husband had filed an application to stay the wife's enforcement proceedings and to vary the lump sum maintenance order that had been made, in spite of the fact that the Court of Appeal had already affirmed the maintenance order in the substantive appeal. In these circumstances, the Court of Appeal found that the husband's attempt to vary the lump sum maintenance order was "no more than a disingenuous attempt to frustrate the wife's enforcement proceedings by way of relitigating the issues already decided in the substantive appeal" (*Mok Kah Hong* at [52]).

32 The principles set out in *Mok Kah Hong* were subsequently applied in *Viking Engineering Pte Ltd v Feen, Bjornar and others* [2019] SGHC 158 ("*Viking Engineering*"). In *Viking Engineering*, the parties had agreed that the defendant would pay the costs of an independent valuation ordered as a result of the suit. However, the defendant failed to do so. Valerie Thean J exercised

her discretion to make an order under O 45 r 6(2) as the defendant had not demonstrated any intention to comply with the agreed order. Instead, he had demonstrated contumelious conduct by failing to cooperate, ignoring the independent valuer's requests and requirements, and attempting to put off his potential liability (*Viking Engineering* at [25]–[26]).

The parties' submissions

(1) The Liquidators' submissions

33 The Liquidators relied on the following facts to demonstrate the Respondents' contumelious conduct *vis-à-vis* the October 2020 Orders:

(a) The Liquidators wrote to the Respondents as early as 5 October 2020 and on four occasions since the making of the October 2020 Orders to remind the Respondents of their obligations to deliver up and surrender the Companies' books and assets. Yet, the Respondents failed, refused or neglected to deliver a complete set of all of the Companies' books and assets to the Liquidators.[47]

(b) The documents that were delivered by the Respondents to the Liquidators were incomplete and deliberately provided in a selective, haphazard and piecemeal manner to frustrate and delay the Liquidators' work. Instead of providing the Liquidators with the soft copies of the requested documents, the Respondents chose to generate and print hard copies of each and every document. This demonstrated the Respondents' lack of good faith in cooperating with the Liquidators towards the fulfilment of the October 2020 Orders, and pointed towards the

47 AWS at paras 14, 21(a) and 24(a).

Respondents' (and Yangbum's) ultimate objective of stifling the liquidation of the Companies.[48]

(c) Although three months had passed since the filing of these applications in January 2021 and six months had passed since the making of the October 2020 Orders, the Respondents simply sat on their hands and came up with further excuses to delay the delivery of the Companies' books and assets to the Liquidators.[49]

(d) Notwithstanding my findings in relation to s 313(5) of the Companies Act and the October 2020 Orders, the Respondents insisted on maintaining the position that the Companies' books and assets are not in their possession or power. Instead, the Respondents claimed that these books and assets were only in Yangbum's possession, control or power and that they could only act in accordance with Yangbum's instructions. This was a rehash of the arguments that the Respondents had raised, unsuccessfully, at the hearing of the s 313(5) Applications on 2 October 2020.[50]

34 In view of the above, the Liquidators emphasised that allowing the Respondents to continue their contumelious breach of the October 2020 Orders would be extremely detrimental to the liquidation process of the Companies.[51]

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48 AWS at paras 21 and 24(c).

49 AWS at para 24(d).

50 AWS at paras 16–19 and 24(b).

51 AWS at para 25.

35 The Liquidators further submitted that it would be in the interests of the liquidation process for the court to impose a tight deadline for the Respondents to comply with the October 2020 Orders. According to the Liquidators, no prejudice would be occasioned to the Respondents by the imposition of a tight deadline. The Liquidators' first request for the Companies' books and assets was made to the Respondents on 31 March 2020. By the time the present applications were heard on 5 April 2021, the Respondents had already had six months since the making of the October 2020 Orders and three months since the filing of the present applications to deliver up a complete set of the Companies' books and assets to the Liquidators.[52] On the other hand, severe prejudice had been caused and continued to be caused to the liquidation process by the Respondents' wilfully evasive and highly uncooperative behaviour, which had wasted significant time and costs.[53]

(2) The Respondents' submissions

36 On the other hand, the Respondents contended that there was no relevant contumelious conduct on their part that would warrant granting the Liquidators' applications.[54]

37 First, the Respondents submitted that the Liquidators took a targeted approach from the outset whereby they badgered Mr Loong and his affiliates for documents under the guise of attempting to administer the liquidation, while giving Ms Liang and her affiliates a "free pass".[55] The Respondents alleged that,

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52 AWS at para 13.

53 AWS at paras 26–28.

54 RWS at paras 6(b), 22(c), 25–33 and 40–52.

55 RWS at para 4.

despite being aware that Ms Liang had wrongfully carted away around 30 boxes of documents belonging to Yangbum in March 2019, the Liquidators were content to simply target the Respondents.[56] These allegations of bias on the part of the Liquidators formed the subject of OS 1061,[57] which I shall deal with later in these grounds of decision. The Respondents submitted that when the Liquidators' applications were viewed against this background, it was clear that these applications were brought for the extraneous purpose of vexing and oppressing the Respondents and Yangbum.[58]

38 Secondly, the Respondents submitted that the Companies' sole purpose was to undertake subcontract work for Yangbum. Yangbum had already filed proofs of debt amounting to $10.8m. The Liquidators' key tasks were to adjudicate Yangbum's proofs of debt and to value the fixed assets of the Companies for the purpose of liquidating them. It was unclear how the documents sought by the Liquidators related to these key tasks.[59]

39 Thirdly, the Respondents submitted that they acted reasonably and did their utmost to hand over all documents to the Liquidators. The Respondents did not have possession, custody or power over the Companies' records, which were instead in Yangbum's possession. This was because the administrative, human resource and book-keeping functions of the Companies were outsourced to Yangbum and entirely undertaken by Yangbum employees. In particular, although Ms Chin and Mr Su (the second and third respondents) were involved

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56 RWS at para 22(d).

57 RWS at para 23.

58 RWS at para 24.

59 RWS at paras 6(a) and 22(b).

in maintaining the Companies' financial and human resource records, this work was done purely in their capacities as employees of Yangbum. They were never employees of the Companies and they could access the Companies' books and assets only to the extent necessary to carry out Yangbum's instructions. Yangbum made clear that it would release these records directly to the Liquidators and designated Mr Su to act as its liaison in this respect. Further, notwithstanding that it was a non-party to the October 2020 Orders, Yangbum had consistently endeavoured to comply with the Liquidators' requests by preparing and delivering a large proportion of the documents specified in the October 2020 Orders to the Liquidators, at least in hard copy form, on multiple occasions. Yangbum also indicated that further documents were forthcoming and was prepared to continue to assist in the preparation and delivery of the Companies' records. As such, there was no relevant contumelious conduct that would warrant granting the Liquidators' applications.[60]

40 The Respondents submitted that if the court was nevertheless minded to grant the orders sought by the Liquidators, the timeframe imposed for compliance with the October 2020 Orders should be four months instead of the shorter timeframe of five days proposed by the Liquidators. According to the Respondents, a timeframe of five days would be "unrealistic and oppressive" to the Respondents and Yangbum. The Liquidators sought a large volume of documents, many of which had not yet been prepared by the Respondents or were otherwise not readily available. Further, Yangbum was operating with seriously diminished manpower due to business continuity measures arising from the COVID-19 pandemic. Therefore, the Respondents contended that a

[60] RWS at paras 6(b), 22(c), 25–33 and 40–52.

timeframe of five days would occasion significant prejudice to, and cause administrative and logistical difficulties for, the Respondents and Yangbum.[61]

(3) Developments at the hearing

41 During the hearing on 5 April 2021, in view of the stark difference between the timeframes proposed by the Liquidators and the Respondents, I encouraged counsel for both parties to discuss the possibility of a mutually agreed timeframe. I also suggested that the parties consider differentiated timeframes for different categories of documents and property.[62]

42 The parties were unable to reach a consensus. Nevertheless, counsel for the Liquidators was prepared to accept a timeframe of two weeks for the Respondents to hand over the Companies' fixed assets, Quickbook Pro 2015 accounting software, and server, storage and backup vault for the storage of the soft copy documents sought by the Liquidators, and a timeframe of one month for all other items.[63]

43 On the other hand, counsel for the Respondents submitted that a timeframe of two months for the Respondents to comply with the October 2020 Orders would be reasonable, instead of the timeline of four months which the Respondents originally sought. However, counsel for the Respondents requested the court to make a direction instead of an order, on the ground that

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61 RWS at paras 7 and 53–61.

62 Certified Transcript (5 April 2021), p 90 at lines 6–17.

63 Certified Transcript (5 April 2021), p 104 at lines 3–20.

the threshold of contumelious conduct set out in *Mok Kah Hong* had not been reached.[64]

My findings

(1) Whether the court should exercise its discretion to make orders under O 45 r 6(2) of the ROC

44 First, it bears emphasising that the Liquidators' applications in SUM 310, SUM 303 and SUM 330 were applications for orders under O 45 r 6(2) of the ROC. These were not applications for orders under s 313(5) of the Companies Act. I had made the October 2020 Orders sought by the Liquidators under s 313(5) at the hearing on 2 October 2020 as I was satisfied that the requirements of s 313(5) were satisfied.[65] No appeal was filed against the October 2020 Orders. The present proceedings were, therefore, not the appropriate forum to relitigate the issues raised in the s 313(5) Applications. Instead, the issue to be determined in the present proceedings was whether there was "sufficient material" before me to warrant the exercise of my discretion to make the orders sought by the Liquidators under O 45 r 6(2).

45 After having considered the submissions made by both parties, I was of the view that there was indeed sufficient material to warrant the making of orders under O 45 r 6(2) fixing a time for the Respondents to comply with the October 2020 Orders.

46 The clear terms of the October 2020 Orders required the Respondents to deliver up and surrender *all* monies, property, books, papers and/or other

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64 Certified Transcript (5 April 2021), p 107 at lines 7–21 and p 111 at lines 7–13.

65 Certified Transcript (2 October 2020), p 73 at lines 3–6.

documents belonging and/or relating to each of the Companies, which were in their possession, custody or power, to the Liquidators. It was not disputed that the Respondents had not yet done so, despite repeated requests by the Liquidators. While the Respondents could be said to have manifested some intention to comply with the October 2020 Orders by delivering many documents to the Liquidators, albeit in hard copy form, the Respondents' inexplicable refusal to provide soft copies of these documents (as I had ordered them to do in the October 2020 Orders) indicated their unwillingness to comply with the terms of the October 2020 Orders and disclosed their failure to cooperate with the Liquidators. The haphazard, piecemeal and incomplete manner in which the Respondents delivered these documents further supports this finding.

47 In addition, it appeared that the Respondents were attempting to relitigate points in these proceedings that had already been resolved in the Liquidators' favour when I made the October 2020 Orders. In particular, the Respondents argued that they did not have possession, custody or power over the Companies' books and assets as Ms Chin and Mr Su performed financial and human resource work for the Companies purely in their capacities as employees of Yangbum (see [39] above). However, this argument had already been raised, unsuccessfully, by counsel for the Respondents at the hearing on 2 October 2020.[66]

48 The Respondents also submitted that the Liquidators' applications were brought for an extraneous purpose and that it was unclear how the documents sought by the Liquidators related to their key tasks (see [37]–[38] above). I was

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66 See, *eg*, Certified Transcript (2 October 2020), p 19 at lines 8–11 and p 39 at lines 17–24.

unable to accept these submissions. Section 313(5) of the Companies Act provided a statutory mechanism for liquidators to obtain the books and assets of a company in liquidation. Such books and assets are necessary for liquidators to discharge their duties. As the requirements of s 313(5) had been satisfied, I made the October 2020 Orders to give effect to this statutory mechanism. The Respondents could not now argue that the books and assets sought were unrelated to the Liquidators' tasks or that the Liquidators' applications were made for an extraneous purpose.

49 Bearing in mind the guidance set out in *Mok Kah Hong* and *Viking Engineering*, I found that there was evidence of contumelious conduct on the part of the Respondents. I, therefore, exercised my discretion to make an order under O 45 r 6(2) of the ROC fixing a time for the Respondents to comply with the October 2020 Orders.

50 At this point, I note that the possibility of fixing a time for compliance with the October 2020 Orders was raised by counsel for the Liquidators at the hearing of the s 313(5) Applications on 2 October 2020. Counsel for the Respondents had justifiably resisted this on the ground that the Liquidators had not sought the imposition of a timeframe in the s 313(5) Applications. Counsel for the Respondents had further remarked that if the Respondents failed to comply with the October 2020 Orders, the Liquidators would "have their rights".[67] In my view, enforcing their "rights" was precisely what the Liquidators were seeking to do by filing SUM 310, SUM 303 and SUM 330.

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67 Certified Transcript (2 October 2020), p 80 at lines 14–25; Certified Transcript (5 April 2021), p 96 at lines 9–24 and p 97 at lines 1–18.

(2) The appropriate timeframe

51 The Court of Appeal stated in *Mok Kah Hong* (at [47]) that the court should adopt a practical approach in balancing the interests of both parties where administrative or logistical difficulties were likely to arise in the course of effecting compliance with the order.

52 In my view, the timeframe of five days originally proposed by the Liquidators was unrealistic in the circumstances. However, I agreed with the Liquidators' submission that acceding to the Respondents' request for an extended timeframe for compliance might have the unintended effect of further delaying their attempts to enforce the October 2020 Orders.[68] Given that more than a year had passed since the Liquidators' first request for the Companies' books and assets (on 31 March 2020)[69] and six months had passed since the making of the October 2020 Orders (on 2 October 2020), I was of the view that a timeframe of four weeks would be fair to both parties. As the Respondents had already had six months to comply with the terms of the October 2020 Orders, I was satisfied that a timeframe of four weeks would not be prejudicial to the Respondents.

53 I, therefore, ordered the Respondents to comply with the October 2020 Orders within four weeks from the date of the orders.

Conclusion on SUM 310, SUM 303 and SUM 330

54 For the foregoing reasons, I found that there was sufficient material to warrant the making of orders under O 45 r 6(2) as there was evidence of

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68 AWS at para 13.

69 LCH at para 25.

contumelious conduct on the part of the Respondents. I gave the Respondents four weeks to comply with the October 2020 Orders.

OS 1061

55 I turn now to Yangbum and Mr Loong's application for the removal of the Liquidators. In order to succeed in this application, Yangbum and Mr Loong had to cross two hurdles: first, they had to have standing to bring the application; and second, they had to show cause for the removal of the Liquidators.

Standing to apply for the removal of the Liquidators

(1) The applicable law

56 As a preliminary point, I wish to comment on the proper statutory provision under which OS 1061 should have been made. This preliminary issue required the determination of the operative date of the IRDA and the date OS 1061 was filed.

57 As explained at the Second Reading of the Insolvency, Restructuring and Dissolution Bill (Bill No 32/2018), the IRDA was enacted to consolidate all statutory provisions relating to corporate and personal insolvency and debt restructuring, which were previously found in the Companies Act and the Bankruptcy Act (Cap 20, 2009 Rev Ed), into a single Act. This was to enhance the clarity, certainty and accessibility of these areas of law (*Singapore Parliamentary Debates, Official Report* (1 October 2018) vol 94 (Edwin Tong Chun Fai, Senior Minister of State for Law, for the Minister for Law). Accordingly, the relevant provisions dealing with corporate insolvency and restructuring under the Companies Act, the Bankruptcy Act and other

consequential and related statutory provisions were repealed and re-enacted under the IRDA.

58 OS 1061 was filed on 21 October 2020, after the IRDA came into force on 30 July 2020. Thus, Yangbum and Mr Loong's application for the removal of the Liquidators should have been made under s 174 of the IRDA. In Yangbum and Mr Loong's submissions, they explained that s 302 of the Companies Act was applicable because the *liquidation* of the Companies was commenced before 30 July 2020.[70] I disagreed with this reasoning. The relevant time for determining whether the Companies Act or the IRDA applied was the date of the *application*, *ie*, 21 October 2020. By this date, s 302 of the Companies Act had already been repealed and s 174 of the IRDA had come into force. Hence, OS 1061 should have been made under s 174 of the IRDA, instead of s 302 of the Companies Act.

59 As s 174 of the IRDA is identical to s 302 of the Companies Act, the same principles regarding standing applied under both provisions. However, I shall refer to s 174 of the IRDA in explaining my findings and decision as the application should rightly have been made under this provision.

60 Section 174 of the IRDA (formerly s 302 of the Companies Act) provides as follows:

> **Removal of liquidator**
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> **174.** The Court may, on cause shown, remove a liquidator and appoint another liquidator.

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70 PWS at para 40.

61 The plain text of s 174 did not place any restrictions on who could apply for the removal of a liquidator. However, in my view, that did not mean that anyone and everyone who was able to show cause would have standing to bring an application under s 174. In the absence of any decisions by the Singapore courts expressly addressing this point, I found the Privy Council's decision in *Deloitte & Touche AG v Johnson and another* [1999] 1 WLR 1605 ("*Deloitte*") instructive. Lord Millett, delivering the judgment of the Privy Council, explained that the question of standing required the court to consider two distinct issues. Lord Millett's remarks (at 1611) are worth setting out in full:

> [T]wo different kinds of case must be distinguished when considering the question of a party's standing to make an application to the court. The first occurs when the court is asked to exercise a power conferred on it by statute. In such a case the court must examine the statute to see whether it identifies the category of person who may make the application. This goes to the jurisdiction of the court, for the court has no jurisdiction to exercise a statutory power except on the application of a person qualified by the statute to make it. The second is more general. *Where the court is asked to exercise a statutory power or its inherent jurisdiction, it will act only on the application of a party with a sufficient interest to make it. This is not a matter of jurisdiction. It is a matter of judicial restraint.* Orders made by the court are coercive. Every order of the court affects the freedom of action of the party against whom it is made and sometimes (as in the present case) of other parties as well. *It is, therefore, incumbent on the court to consider not only whether it has jurisdiction to make the order but whether the applicant is a proper person to invoke the jurisdiction.*
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> [emphasis added]

62 Hence, notwithstanding that s 174 did not specifically identify the category of persons who could apply for the removal of a liquidator, the court would nevertheless "act only on the application of a party with a sufficient interest" to make the application, as a matter of "judicial restraint".

63 *Deloitte* was decided based on s 106(1) of the Cayman Islands' Companies Law (1995 Revision), the wording of which was substantially similar to s 174 of the IRDA. The Privy Council held that s 106(1) did not limit the category of persons who could make the application, but that the plaintiff nevertheless had to have a "legitimate interest" in the relief sought (at 1611). On the facts of *Deloitte*, which concerned the liquidation of an insolvent company, the Privy Council found (at 1611) that:

> The only persons who could have any legitimate interest of their own in having the liquidators removed from office as liquidators are *the persons entitled to participate in the ultimate distribution of the company's assets*, that is to say the creditors.
>
> [emphasis added]

64 Therefore, in my view, the applicable test for determining whether an applicant had standing to apply for the removal of a liquidator under s 174 of the IRDA was whether the applicant had a *legitimate interest* in the removal of the liquidator. In ascertaining whether an applicant had such a legitimate interest, the court would consider whether he was entitled to participate in the ultimate distribution of the liquidated company's assets.

(2) The parties' submissions

(A) YANGBUM AND MR LOONG'S SUBMISSIONS

65 Yangbum and Mr Loong submitted that they both had standing to apply for the removal of the Liquidators under s 174 of the IRDA.[71] They accepted that although s 174 was broadly worded, it nevertheless required the applicant to have a legitimate interest in the removal of the liquidator.[72] According to

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71 PWS at para 58.

72 PWS at paras 41–43.

Yangbum and Mr Loong, they had the greatest interest in the liquidation of the Companies as the Companies' creditor and alleged beneficial owner respectively.[73]

(I) STANDING OF YANGBUM

66 First, Yangbum and Mr Loong submitted that creditors had standing under s 174 even where the liquidation was a voluntary one, relying on *Yap Jeffery Henry and another v Ho Mun-Tuke Don* [2006] 3 SLR(R) 427 ("*Yap Jeffery Henry*").[74] Yangbum was a creditor of the Companies for $10.8m (see [11] above) and was the only party with any credible claim to the Companies' assets. Hence, Yangbum had standing.

(II) STANDING OF MR LOONG

67 Further, Yangbum and Mr Loong submitted that Mr Loong had standing as an alleged beneficial owner of the Companies. As I have noted at [8] above, Ms Liang was the sole registered shareholder of the Companies and Mr Loong's claim to be the beneficial owner of the Companies was the subject of separate ongoing proceedings in S 345. Counsel for Yangbum and Mr Loong acknowledged that Mr Loong's beneficial interest in the Companies was merely a "contingent interest upon being proved in Court".[75] However, counsel for Yangbum and Mr Loong argued that Mr Loong nevertheless had a legitimate interest for the purpose of establishing standing as he fell within the definition of a "contributory" in s 2(1) of the IRDA (which cross-refers to the definition in s 4(1) of the Companies Act). This was because Mr Loong was making a

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73 PWS at paras 51, 53 and 58–61.

74 PWS at para 61.

75 Certified Transcript (5 April 2021), p 25 at lines 10–12 and 16–18.

bona fide claim, supported by "powerful evidence", to be the true owner of the Companies' shares.[76] Consequently, Mr Loong had a legitimate interest in the removal of the Liquidators as he was the only party with a credible claim to any residual assets realised from the liquidation of the Companies.[77]

68 More generally, Yangbum and Mr Loong submitted that a broad approach to standing under s 174 was sensible given the purpose of the provision, which was to give effect to the real, substantial and honest interest of the liquidation. An overly technical approach to standing would be contrary to the very purpose of s 174.[78]

(B) THE LIQUIDATORS' SUBMISSIONS

69 The Liquidators submitted that Yangbum and Mr Loong did not have standing to bring the application under s 174 of the IRDA.

(I) STANDING OF YANGBUM

70 The Liquidators submitted that a creditor did not have standing to apply to remove the liquidator of a solvent company. The Liquidators argued that, in the liquidation of a solvent company, the only parties with an interest in the ultimate distribution of the company's assets were the contributories of the company, *ie*, the shareholders. Hence, in a solvent liquidation, a creditor had no standing to apply for the removal of a liquidator. In support of this proposition,

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76 Certified Transcript (5 April 2021), p 29 at lines 6–11; p 30 at lines 9–18 and 23–24; p 31 at lines 1–2.

77 PWS at para 2; Certified Transcript (5 April 2021), p 12 at lines 6–9 and p 23 at lines 16–19.

78 PWS at paras 60–61.

the Liquidators relied on the following remarks made by the Privy Council in *Deloitte* (at 1610):[79]

> [The authorities cited by the plaintiff] show that the court has consistently regarded the creditors (in the case of an insolvent liquidation) and *the contributories (in the case of a solvent liquidation)* as the proper persons to make the application, being the only persons interested in the liquidation. Their Lordships have not been shown any case in which the court has removed a liquidator who is able and willing to act on the application of anyone who is not a creditor or contributory as the case may be.
>
> [emphasis added]

71 The Liquidators also relied on *Petroships Investment Pte Ltd v Wealthplus Pte Ltd (in members' voluntary liquidation) (Koh Brothers Building & Civil Engineering Contractor (Pte) Ltd and another, interveners) and another matter* [2018] 3 SLR 687 ("*Petroships*"). In *Petroships* (at [132]), Vinodh Coomaraswamy J held that a solvent company is "liquidated primarily in the members' interest". Coomaraswamy J observed that the creditors of a solvent company had "no real interest in the liquidation" because their debts would be paid before the final distribution of the surplus to the shareholders.[80]

72 The Liquidators further submitted that, if a creditor had standing to apply to remove the liquidator of a solvent company, this would provide an opportunity for parties with no real interest in the ultimate distribution of the company's assets to wrest control of the liquidation for their own ulterior motives, and to obtain coercive orders which were adverse to both the interests of those for whom the liquidation was conducted and the purpose of the

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79 DWS at para 17.

80 DWS at para 20.

liquidation itself. According to the Liquidators, this was precisely what Yangbum and Mr Loong were attempting to do in OS 1061.[81]

73 Applying these principles, the Liquidators submitted that Yangbum did not have standing to apply for the removal of the Liquidators. Although Yangbum was a purported creditor of the Companies, the Companies remained solvent. As such, the liquidation of the Companies was conducted in the interests of their shareholders and only the Companies' shareholders had an interest in the results of the liquidation.[82] During the hearing, counsel for the Liquidators also stressed that the Liquidators had yet to determine that Yangbum was indeed a creditor of the Companies as the Liquidators had not yet adjudicated Yangbum's proofs of debt.[83]

(II) STANDING OF MR LOONG

74 The Liquidators submitted that Mr Loong did not have standing to make the application under s 174 of the IRDA as he was neither a creditor nor a contributory of the Companies.[84] Mr Loong was not registered as a shareholder of the Companies in any of the Accounting and Corporate Regulatory Authority ("ACRA") Business Profile searches carried out by the Liquidators. Nor was he reflected as shareholder, director, or beneficial owner of the Companies in any of the Companies' financial statements.[85]

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81 DWS at para 21.

82 DWS at paras 11(a)–11(c), 22 and 24–26.

83 Certified Transcript (5 April 2021), p 80 at lines 10–24 and p 81 at lines 1–20.

84 DWS at paras 11(a)–11(c), 22 and 33.

85 DWS at para 42.

75 Even if Mr Loong were to succeed in establishing that he had a beneficial interest in the Companies in S 345, a beneficiary of a company's shares was not a "contributory" within the definition in either the Companies Act (and, therefore, the IRDA) or at common law.[86] In particular, the Liquidators submitted that the phrase "any person alleged to be a contributory" could not include a self-proclaimed contributory who alleged himself to be a contributory. If that were the case, any person could simply claim to be a "contributory" and become entitled to participate in the ultimate distribution of the company's assets. Instead, the Liquidators submitted that the phrase referred to persons who were placed on the provisional list of contributories by the liquidator or the court, but whose status was disputed.[87] As for the phrase "a person liable to contribute to the assets of the company in the event of its being wound up", the Liquidators argued that this referred to: persons who were expressly included by statute as being liable to contribute, *ie*, past and present members of the company (pursuant to s 250(1) of the Companies Act (now s 121(1) of the IRDA)); past and present directors whose liability was unlimited (pursuant to s 250(2) of the Companies Act (now s 121(2) of the IRDA)); the personal representative of a deceased contributory (pursuant to s 252(1) of the Companies Act (now s 123(1) of the IRDA)); and the trustee of a contributory who has become bankrupt (pursuant to s 252(2) of the Companies Act (now s 123(2) of the IRDA)). A beneficiary for whom the shares of a company are allegedly held on trust was not a "contributory" within this definition.[88]

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86 DWS at para 27.

87 DWS at para 29.

88 DWS at para 30.

76 Hence, the Liquidators submitted that unless and until a court determined that Mr Loong was indeed the beneficial and legal owner of the shares of the Companies, Mr Loong's claim remained a bare assertion and he had no real interest in the liquidation of the Companies.[89]

(3) My findings

(A) STANDING OF YANGBUM

77 Having considered the authorities cited and the submissions made by both parties, I concluded that there was no rule that *only* the shareholders of a company could have a legitimate interest in the removal of a liquidator in a solvent liquidation. Such a restrictive rule was not supported by the broad wording of s 174 of the IRDA. As noted in *Woon's Corporations Law* (Walter Woon SC gen ed) (LexisNexis Singapore, 2020) at paras 4005–4050, in general, creditors and contributories presumably had standing under s 302 of the Companies Act (now s 174 of the IRDA) as they "would be directly affected by the fact that the liquidator is unfit for the job".[90]

78 Further, the Privy Council's decision in *Deloitte* did not go so far as to support such a restrictive rule. The issue before the Privy Council in *Deloitte* was whether a debtor of a company in insolvent liquidation, who was neither a creditor nor a contributory of the company, could apply for the removal of a liquidator (at 1607). The Privy Council answered this question in the negative. Notwithstanding Lord Millett's observation that the English courts had "consistently regarded the creditors (in the case of an insolvent liquidation) and

89 DWS at paras 42–43.

90 PWS at para 44.

the contributories (in the case of a solvent liquidation) as the proper persons to make the application, being the only persons interested in the liquidation" (at 1610), Lord Millett then went on to state that the threshold for an applicant to be regarded as a proper person to invoke the jurisdiction of the court was whether the applicant had "a *legitimate interest* in the relief sought" [emphasis added] (at 1611). As the applicant in *Deloitte* was "not merely a stranger to the liquidation", but (as a debtor) had interests *adverse* to the liquidation and the interests of the creditors, the Privy Council held that the applicant lacked standing. In my view, the Privy Council's reasoning in *Deloitte* did not preclude a court from finding, in the appropriate circumstances, that a creditor of a company in solvent liquidation had a legitimate interest in the removal of a liquidator.

79 *Petroships* also did not support the restrictive approach to standing proposed by the Liquidators. In *Petroships*, Coomaraswamy J held that a solvent company was liquidated *primarily* in the members' interest, whereas an insolvent company was liquidated *primarily* in the creditors' interest. Hence, the court would give predominant weight to the members' wishes in ascertaining the real, honest and substantial interest of a solvent liquidation, while giving predominant weight to the creditors' interest in an insolvent liquidation (*Petroships* at [132]–[135]). However, Coomaraswamy J did not state that *only* the members of a solvent company could have an interest in its liquidation. Further, although Coomaraswamy J said that the creditors had "no real interest" in a solvent liquidation because it was obligatory to commence and conduct a solvent liquidation on the basis that the creditors would be paid in full and within one year (under s 293(1) of the Companies Act, now s 163(1) of the IRDA), it should be borne in mind that Coomaraswamy J was considering the meaning of the phrase "interest of the liquidation". I agreed entirely with

Coomaraswamy J's statement of the applicable principles in that context and applied them in considering whether Yangbum and Mr Loong had succeeded in showing cause for the removal of the Liquidators (see [101] below). However, in *Petroships*, Coomaraswamy J was not required to specifically consider what it meant for an applicant to have a "legitimate interest" for the purposes of *standing*. Therefore, in my view, *Petroships* was not authority for the proposition that the creditors of a solvent company could not have any legitimate interest in the removal of the liquidators, and thus could have no standing to bring an application under s 174 of the IRDA.

80 Having said this, I did not think that *Yap Jeffery Henry* supported Yangbum and Mr Loong's position. In *Yap Jeffery Henry*, Judith Prakash J (as she then was) recognised the possibility of a creditor applying for the removal of a liquidator in a voluntary liquidation. There, the creditors of a company in voluntary liquidation had applied for the removal of the liquidator. The liquidator then took out his own application for an order permitting him to resign from the office of liquidator, and this was granted. Prakash J held that if the liquidator had not resigned, a creditor could apply for his removal under s 302 of the Companies Act (now s 174 of the IRDA) (*Yap Jeffery Henry* at [20]). Indeed, on the facts, Prakash J would have acceded to the creditors' application for the removal of the liquidator if he had not resigned (*Yap Jeffery Henry* at [36]). However, it appeared that *Yap Jeffery Henry* concerned a *creditors'* voluntary liquidation (of an *insolvent* company), and not a members' voluntary liquidation (of a solvent company). Indeed, the liquidator found that the company had become insolvent several years before the liquidation (*Yap Jeffery Henry* at [9]). *Yap Jeffery Henry* was, therefore, not a case where a creditor was held to have standing to apply for the removal of a liquidator in a *solvent* liquidation.

81 Be that as it may, on the facts of the present case, I was satisfied that Yangbum had a legitimate interest in the removal of the Liquidators as a major creditor of the Companies.

82 Although Yangbum's proofs of debt had not yet been adjudicated by the Liquidators, Yangbum had provided detailed descriptions of its claims against each of the Companies as well as supporting documents.[91] I was, therefore, satisfied that Yangbum was a creditor of the Companies for the purposes of establishing standing under s 174 of the IRDA. In my view, it would be self-serving for a liquidator to be able to stymie an application for his own removal by refusing or delaying to adjudicate or accept the proofs of debt submitted by the very creditor seeking to remove him.

83 Further, although the Companies were in voluntary solvent liquidation, the close business relationship between the Companies and Yangbum showed that the latter had a legitimate interest in the conduct of the Liquidators. The reality of this case was that the Companies were incorporated to undertake subcontract work exclusively for Yangbum and that Yangbum was the most significant creditor of each of the Companies, being owed provisional debts amounting to more than $10.8m (see [7] and [11] above). I was unable to agree with the Liquidators' submission that allowing a creditor such as Yangbum to apply to remove the liquidator of a solvent company would allow parties with no real interest in the ultimate distribution of the company's assets to wrest control of the liquidation (see [72] above). In this case, Yangbum evidently had an interest in the distribution of the Companies' assets as it had an interest in its debts being paid in full. Therefore, Yangbum had a legitimate interest in

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91 LSM at pp 188–419.

ensuring that the Liquidators administered the liquidation of the Companies properly and fairly.

84 Hence, Yangbum had standing to apply for the removal of the Liquidators under s 174 of the IRDA. However, whether Yangbum could satisfy the court that there was cause for the removal and replacement of the Liquidators was a separate issue that will be discussed in greater detail below.

(B) STANDING OF MR LOONG

85 I turn now to Mr Loong. In my view, unlike Yangbum, Mr Loong did not have standing to apply for the removal of the Liquidators under s 174 of the IRDA.

86 Mr Loong's submission that he had a legitimate interest in the removal of the Liquidators was based on his status as the alleged beneficial owner of the Companies. However, whether Mr Loong indeed had a beneficial interest in the Companies was the subject matter of separate proceedings which the court in S 345 had to ultimately decide. It was not disputed that Mr Loong was not reflected as a beneficial owner of the Companies in any of the documents before me. Indeed, during the hearing, counsel for Yangbum and Mr Loong admitted that there were no documents evidencing Mr Loong's alleged interest before this court. He also admitted that there was no provision permitting the court to take cognisance of such contingent beneficial interests in these proceedings.[92] Therefore, on the facts as they stood at the time of the hearing, Mr Loong did not have a legitimate interest in the removal of the Liquidators for the purpose of establishing standing under s 174 of the IRDA.

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92 Certified Transcript (5 April 2021), p 26 at lines 9–10 and 19–24; p 27 at lines 1–4.

87 In this regard, I noted that Mr Loong's application in Summons No 1698 of 2020 ("SUM 1698") for an interlocutory injunction restraining Ms Liang and Mr Zhang from taking any further steps as director and/or shareholder of the Companies and from taking any further step in the liquidation of the Companies, which was made in S 345, had been dismissed by Mavis Chionh JC (as she then was).[93] In SUM 1698, Mr Loong had argued that Ms Liang held the Companies' shares on trust for him. Chionh JC stated that Mr Loong had not satisfied the court that there was a serious question to be tried and observed that there were "a number of deep-seated problems in [Mr Loong]'s case", primarily because it was "entirely unclear what the nature and the terms of the alleged trust [were]".[94] As SUM 1698 was only an injunction application, it did not conclusively decide the issue of whether Mr Loong indeed had a beneficial interest in the Companies. However, Chionh JC's findings undermined Yangbum and Mr Loong's submission that Mr Loong's assertion of beneficial ownership was supported by "powerful evidence" (see [67] above).

88 Further, I was unable to accept Yangbum and Mr Loong's submission that Mr Loong had a legitimate interest in the removal of the Liquidators because he fell within the definition of a "contributory" in s 2(1) of the IRDA (which adopts the definition in s 4(1) of the Companies Act). Section 4(1) of the Companies Act defines "contributory" as:

> … a person liable to contribute to the assets of the company in the event of its being wound up, and includes the holder of fully paid shares in the company and, prior to the final determination of the persons who are contributories, ["contributory"] includes any person alleged to be a contributory …

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93 DWS at paras 44–46.

94 LCH, Tab 13 (Notes of Evidence (19 June 2020)), p 357 at lines 19–29 and p 359 at lines 23–24.

89 Yangbum and Mr Loong sought to rely on the phrase "any person alleged to be a contributory" to argue that Mr Loong was a contributory because he had made a *bona fide* claim to be the beneficial owner of the Companies (see [67] above). During the hearing, counsel for Yangbum and Mr Loong relied on the comments made in *McPherson's Law of Company Liquidation* (A R Keay gen ed) (Sweet & Maxwell, 3rd Ed, 2013) ("*McPherson*") that "contributory" may include "one who, although his or her name does not appear on the register, is prepared to make a *bona fide* admission that he or she is a member of the company" (at para 10-003).[95] However, in my view, *McPherson* did not support the proposition that anyone who alleges himself to be a contributory would fall within the statutory definition. On the contrary, the comments relied on by counsel for Yangbum and Mr Loong were made as one of two qualifications of the general statement that (at para 10-003):

> … [I]n order to establish that a person is a contributory it must be shown either that with the contributory's own assent and own knowledge the person's name has been entered on the register of members, or it must be shown that a contract was entered into by the person with the company which ought to be specifically performed, so that the court would be justified without the assent of the alleged contributory in putting him or her on the register.

90 These requirements were not satisfied by Mr Loong in the present case. The ACRA records did not show that Mr Loong had any interest in the Companies. Neither the Companies' registers nor their records revealed that Mr Loong was a shareholder, director, or beneficial owner. Indeed, even after recognising the qualification set out above, the view taken in *McPherson* was that (at para 10-003, footnote 27):

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95 Certified Transcript (5 April 2021), p 27 at lines 10–24 and p 28 at lines 1–16.

> [I]n such cases [*ie*, cases where an applicant is prepared to make a *bona fide* admission that he is a member of the company] the applicant is bound to offer *some* evidence in support of the allegation that the applicant is a contributory; *quaere* whether the applicant ought not to be required also to give an undertaking to apply for rectification of the register.
>
> [emphasis in original]

91 Therefore, I agreed with the Liquidators that the phrase "any person alleged to be a contributory" could not include a self-proclaimed contributory who alleged himself to be a contributory, where no evidence was adduced in support of that allegation. Instead, I agreed with the Liquidators' submission that this phrase would refer to persons who are placed on the provisional list of contributories by the liquidator, or by the court (in the exercise of its function to settle a list of contributories under s 152 of the IRDA), but whose status is disputed.[96] In my view, this was a more logical reading of the statutory definition of a "contributory" in s 4(1).

92 In any event, however, Mr Loong was not alleging himself to be a contributory, in the sense of being "a person liable to contribute to the assets of the company in the event of its being wound up". He was merely making a bare assertion that he was the beneficial owner of the Companies. The Liquidators submitted that the trustee (and not the beneficial owner, *ie*, the *cestui que trust*) was the "contributory" within the definition in s 4(1). For this proposition, the Liquidators relied on the following passage from *McPherson* (at para 10-005),[97] which is worth setting out in full:

> … [W]here a person whose name has been put on the register with his or her assent holds the shares in respect of which he

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96 DWS at para 29.

97 DWS at para 32; Certified Transcript (5 April 2021), p 78 at lines 10–24 and p 79 at lines 1–22.

> or she is registered on trust for some other person, *it is the trustee and not the* cestui que trust *who is liable to contribute.* The *cestui que trust* will of course be liable to indemnify the trustee in respect of sums that he or she is obliged to pay, but even if the company takes notice of the trust this will not affect the liability of the trustee to contribute. *The reason is that there is privity between the trustee and the company, but not between the company and the* cestui que trust *who has never agreed to become a member.*
>
> [emphasis added]

93 This submission was also supported by the English case of *In re European Society Arbitration Acts, ex parte Liquidators of the British Nation Life Assurance Association* (1878) 8 Ch D 679. In that case, James LJ had remarked that a beneficial owner of shares was, "as between him and his own trustee, the person liable to contribute", but that this did not make him a contributory *vis-à-vis* the company as "the equitable liability is to the trustee only, and there is no privity or direct right of any kind as between the company and the *cestui que trust*" (at 708).[98]

94 Hence, even if Mr Loong had been able to establish that Ms Liang (as the sole registered shareholder of the Companies) held the shares in the Companies on trust for him, Ms Liang would be the "contributory" for the purposes of s 4(1) of the Companies Act (and, therefore, s 2(1) of the IRDA), and not Mr Loong.

95 In view of the above, Mr Loong did not have the requisite legitimate interest to apply for the removal of the Liquidators under s 174 of the IRDA. Mr Loong's claim to be the beneficial owner of the Companies had yet to be decided in S 345. There was no evidence that Mr Loong was "the holder of fully

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98 DWS at para 31.

paid shares in the company" within the definition of a "contributory" in s 4(1) of the Companies Act and s 2(1) of the IRDA. In addition, Mr Loong was neither a "person liable to contribute to the assets of the company in the event of its being wound up" nor a "person alleged to be a contributory" for the purposes of s 4(1) of the Companies Act and s 2(1) of the IRDA. Consequently, Mr Loong failed to establish that he had a legitimate interest in the removal of the Liquidators as a beneficial owner of the Companies or as a contributory.

(4) Conclusion on standing

96 For the foregoing reasons, I found that Yangbum had standing to make an application under s 174 of the IRDA as a major creditor of the Companies, which had a close working relationship with Yangbum. Based on the authorities, there was no rule that only the shareholders of a company in solvent liquidation could have a legitimate interest in the removal of a liquidator. On the facts of this case, I was satisfied that Yangbum had a clear legitimate interest in the distribution of the Companies' assets and in the removal of the Liquidators.

97 However, I found that Mr Loong did not have standing to make an application under s 174 of the IRDA as he had not established that he was the beneficial owner of the Companies or a contributory. Consequently, on the facts as they stood at the time I heard OS 1061, Mr Loong was unable to establish a legitimate interest in the removal of the Liquidators.

Cause for the removal of the Liquidators

98 Having found that Yangbum had standing to apply for the removal of the Liquidators under s 174 of the IRDA, the next major issue to be determined was whether cause had been shown for the removal of the Liquidators.

(1) The applicable law

99 As noted at [60] above, s 174 of the IRDA empowers the court to remove a liquidator "on cause shown". The leading case on applications for the removal of liquidators under s 302 of the Companies Act was *Petroships*. As s 174 of the IRDA is identical to s 302 of the Companies Act, the same principles regarding cause would have applied under both provisions (see [59] above). I summarise below the principles set out by Coomaraswamy J in *Petroships* in so far as they were pertinent to the present proceedings.

100 First, to show cause under s 174, the applicant had to establish that the removal of the liquidator was "in the real, substantial and honest interest of the liquidation" and would "advance the purposes for which the liquidator was appointed" (*Petroships* at [109(b)]).

101 The interest and purpose of a *solvent* liquidation (*ie*, a members' voluntary liquidation) was distinct and different from the interest and purpose of an *insolvent* liquidation (*ie*, a creditors' voluntary liquidation or a compulsory liquidation) in two main ways (*Petroships* at [126]–[138]).

(a) First, to determine the interest of a solvent liquidation, a court would ordinarily take into account the views of the members, and not the views of the creditors (whereas the converse was true in an insolvent liquidation). A solvent company was liquidated primarily in the members' interest. The creditors of a solvent company had no real interest in the liquidation because it was obligatory to commence and conduct a solvent liquidation on the basis that the creditors would be paid in full and within one year (s 293(1) of the Companies Act, now s 163(1) of the IRDA). Therefore, the court would give predominant

weight to the wishes of the members in ascertaining the real, honest and substantial interest of a solvent liquidation.

(b) Second, in deciding whether cause had been shown under s 174, a court had to assess the allegations against the liquidator in the light of the purpose of the liquidation. For instance, a liquidator of a solvent company had only a limited duty to investigate the company's affairs. Nevertheless, the liquidator still had a duty to conduct such an investigation, with two objectives: (i) to maximise the return to those interested in the liquidation by increasing the company's assets or reducing its debts; and (ii) to uphold standards of commercial morality by identifying improper or dishonest conduct by officers of the company that should be punished by prosecution or civil action.

102 However, regardless of whether the liquidation was a solvent or an insolvent liquidation, the liquidator had a duty to act impartially in carrying out the liquidation (*Petroships* at [144]). Thus, to establish that the removal of the liquidator was in the real, substantial and honest interest of the liquidation and would advance the purposes for which the liquidator was appointed, the applicant could attempt to show that the liquidator lacked impartiality. For instance, the applicant could show that the liquidator was biased in favour of any one or more of the members or creditors of the company. To succeed on the ground of partiality, the applicant could show either that the liquidator was guilty of actual bias or that he had so conducted himself as to give rise to a perception of bias (*Petroships* at [109(c)]).

103 Bias on the part of the liquidator could be demonstrated by the liquidator's failure to investigate the affairs of a company in liquidation without

rational basis, or in not exercising his discretion in good faith (*Petroships* at [163] and [168]–[169]).

104 The court would give significant weight to an applicant's perception of bias if the applicant could demonstrate (*Petroships* at [109(d)]):

(a) a subjective belief that the liquidator was biased;

(b) that that belief was reasonable; and

(c) that as a result, the applicant had lost confidence in the ability of the liquidator to carry out the liquidation without fear or favour.

105 If the applicant sought to present a decision by the liquidator as evidence of the liquidator's bias, the burden lay on the applicant to show that the liquidator took that decision without a rational basis (*Petroships* at [109(e)]).

106 While the liquidator's lack of impartiality (actual or perceived) was often determinative of the interest of the liquidation, the court would take into account all aspects of the liquidation in arriving at a decision, including the practical consequences of exercising the power under s 174 to remove the liquidator. These included (*Petroships* at [109(g)] and [174]):

(a) the costs, delay and disruption associated with the removal and replacement of the current liquidator;

(b) the stage of the liquidation;

(c) the familiarity of the current liquidator with the company; and

(d) the impact of removal on the liquidator's professional standing and reputation.

(2) The parties' submissions

(A) YANGBUM AND MR LOONG'S SUBMISSIONS

107 Yangbum and Mr Loong submitted that it was in the real, substantial and honest interest of the liquidation that the Liquidators be removed and replaced with impartial and objective liquidators.[99] They alleged that the Liquidators were clearly biased in favour of Ms Liang, based on the seven categories of allegations outlined at [21] above.[100] I shall deal with Yangbum and Mr Loong's submissions in respect of each specific allegation below.

108 Further, Yangbum and Mr Loong submitted that there were no significant practical obstacles to the removal of the Liquidators in the present case.[101] The costs, delay and disruption associated with the Liquidators' removal would be minimal as Yangbum and Mr Loong had already identified alternative liquidators who had provided their consent to act. The Liquidators had not raised any objection to these individuals or their ability to act as the liquidators of the Companies. Further, the liquidation of the Companies was still in early stages, given that the Liquidators claimed that they required further documents in order to proceed with the liquidation and had not yet adjudicated Yangbum's proofs of debt. In addition, the removal of the Liquidators would have no evident impact on their professional standing or reputation.[102]

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99 PWS at paras 2 and 48.

100 PWS at para 49.

101 PWS at paras 50 and 54.

102 PWS at paras 13 and 54–57.

(B) THE LIQUIDATORS' SUBMISSIONS

109 The Liquidators submitted that the shareholders' interests, and not Yangbum and Mr Loong's interests, were paramount in ascertaining whether their removal was in the real, substantial and honest interest of the liquidation. This was because the Companies were in solvent liquidation. As such, those entitled to participate in the ultimate distribution of the Companies' assets were their shareholders, who had the greatest interest in the liquidation. The purpose of the solvent liquidation was to distribute the Companies' surplus assets to the shareholders in proportion to their shareholding.[103] In this case, the sole registered shareholder of the Companies was Ms Liang (see [8] above).

110 The Liquidators contended that they had acted to advance the interests and purpose of the liquidations of the Companies from the outset of their appointment.[104] Following their appointment on 30 March 2020, the Liquidators made extensive and proactive efforts to obtain the books of the Companies. They continued to examine the books of the Companies that had been delivered to them and to familiarise themselves with the affairs of the Companies. The remainder of their work depended on receiving the complete set of books and assets of the Companies.[105]

111 The Liquidators submitted that Yangbum and Mr Loong's allegations of bias on the part of the Liquidators were wholly devoid of merit.[106] Yangbum and Mr Loong had not demonstrated actual bias or a reasonable perception of bias

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103 DWS at paras 35–40.

104 DWS at paras 11(d) and 66.

105 DWS at paras 67–68.

106 DWS at para 72.

on the part of the Liquidators. Yangbum and Mr Loong did not hold a genuine subjective belief that the Liquidators were biased. Nor had the Liquidators conducted themselves in a manner which would create a reasonable perception of bias in the mind of a rational creditor or contributory. Yangbum and Mr Loong had not discharged their burden of establishing that the Liquidators' decisions were taken without a rational basis. Further, Ms Liang, the sole registered shareholder of the Companies, had not suffered a justifiable loss of confidence in the Liquidators.[107]

112 According to the Liquidators, the application for their removal in OS 1061 was yet another attempt by Yangbum, Mr Loong and the Respondents to frustrate the liquidation of the Companies.[108] The Liquidators submitted that Yangbum, Mr Loong and the Respondents had at all times acted with hostility against the interests and purpose of the liquidations, such as by obstructing the Liquidators from obtaining the Companies' books from the officers and agents of the Companies.[109] For this reason, the Liquidators argued that their removal and replacement would not cure Mr Loong's hostility towards the liquidation.[110] The Liquidators also contended that it would amount to an unwarranted tarnish on their professional standing and reputation if they were removed in these circumstances.[111]

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107 DWS at paras 11(d) and 75–76.

108 DWS at para 11(d).

109 DWS at paras 48–65.

110 DWS at para 70.

111 DWS at para 69.

(3) My findings

113 As the Companies were in solvent liquidation, I gave predominant weight to the wishes and interests of the members of the Companies in ascertaining the real, substantial and honest interest of the liquidation. In this case, the only member of the Companies was Ms Liang, who was their sole registered shareholder (see [8] above).

114 Having considered the submissions made and the evidence adduced by both parties, I found that Yangbum and Mr Loong had failed to establish bias on the part of the Liquidators on a balance of probabilities. As this was the only ground relied on by Yangbum and Mr Loong to show cause, I concluded that they had failed to show that the removal of the Liquidators was in the real, substantial and honest interest of the liquidation and would advance the purposes for which the Liquidators were appointed.

115 I shall now address each of the specific allegations of bias made by Yangbum and Mr Loong in turn.

(A) THE TRESPASS ALLEGATION

116 First, Yangbum and Mr Loong submitted that on 18 March 2020, one of the Liquidators (namely, Mr Lau) trespassed into Yangbum's office together with Ms Liang and three other individuals. They demanded to be given documents relating to Yangbum and the six companies that had been incorporated to undertake subcontract work exclusively for Yangbum (which included the Companies).[112]

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112 PWS at paras 14 (at pp 8–9), 16 and 20.

117 On the other hand, the Liquidators denied that they had committed any trespass. Instead, the Liquidators contended that they had attended at Yangbum's office for the sole purpose of advancing the interest and purpose of the proposed liquidations by inspecting and obtaining the books of the Companies. They were not acting on Ms Liang's instructions or under her directions.[113]

118 The Liquidators also emphasised that it was not disputed that the books of the Companies were kept at Yangbum's office and store. As a director of the Companies, Ms Liang had the right to inspect the Companies' books at all times pursuant to s 199(3) of the Companies Act. Sections 199(1) and 199(3) provide as follows:[114]

> **Accounting records and systems of control**
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> **199.**—(1) Every company shall cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair financial statements and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.
>
> …
>
> (3) The records referred to in subsection (1) shall be kept at the registered office of the company or at such other place as the directors think fit and *shall at all times be open to inspection by the directors*.
>
> [emphasis added]

119 The Liquidators submitted that, when Mr Loong refused the Liquidators' attempt to inspect the Companies' books and, with Mr Su, asked

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113 DWS at paras 78–79, 83 and 85–86.

114 DWS at paras 81–82.

them to leave Yangbum's office, the Liquidators did so. Further, the allegation of trespass is undermined by the fact that Ms Liang was asked to sign some cheques in her capacity as director of the Companies while she was waiting to be attended to. The Liquidators contended that there was, therefore, no trespass.[115]

120 As a preliminary point, I emphasised that whether or not the Liquidators had committed a trespass was not directly relevant to my decision in the present proceedings.[116] The issue before me was whether the alleged acts of trespass either demonstrated actual bias or created a reasonable perception of bias on the part of the Liquidators.

121 In my view, the Liquidators' acts neither demonstrated actual bias nor created a reasonable perception of bias. It was undisputed that the Liquidators had attended at Yangbum's office on 18 March 2020 to obtain the books of the Companies, which were kept at Yangbum's office and store. I agreed with the Liquidators that Ms Liang, as a director of the Companies, had the right to inspect the Companies' books pursuant to s 199(3) of the Companies Act. Moreover, as the prospective liquidators of the Companies, the Liquidators would have needed to inspect the Companies' books in order to familiarise themselves with the Companies' affairs. The Trespass Allegation, therefore, did not support Yangbum and Mr Loong's allegation of bias.

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115 DWS at paras 84 and 87.

116 Certified Transcript (5 April 2021), p 37 at lines 7–21.

(B) THE PRIOR RELATIONSHIP ALLEGATION

122 Secondly, Yangbum and Mr Loong submitted that the Liquidators had a prior professional relationship with Ms Liang which pre-dated their appointment as the liquidators of the Companies. This is because they were already acting as Ms Liang's accountants in her disputes with Mr Loong.[117] In one of Ms Liang's affidavits filed in S 345, she described the group of individuals who had allegedly trespassed into Yangbum's office with her as "[her] solicitor and three accountants".[118] Yangbum and Mr Loong argued that this amounted to an admission that Mr Lau and his colleagues from Technic Inter-Asia Pte Ltd were Ms Liang's accountants.[119]

123 The Liquidators denied that Ms Liang had introduced them as her accountants. Further, the Liquidators submitted that Yangbum and Mr Loong had not adduced any evidence of their alleged prior association with Ms Liang that would create a reasonable perception of bias in the mind of a rational creditor or contributory. For example, while it was not denied that Ms Liang knew the Liquidators before they were appointed as such,[120] there was no evidence suggesting that the Liquidators had a longstanding professional or personal relationship with Ms Liang. There was also no evidence that the Liquidators had been involved in the affairs of the Companies prior to their attendance at Yangbum's office on 18 March 2020, which was for the purpose of familiarising themselves with the Companies' affairs.[121]

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117 PWS at paras 3 and 16.

118 LSM, p 77 (Affidavit of Liang Xihong in HC/SUM 1698/2020) at para 58.

119 LSM at para 33.

120 Transcript (5 April 2021), p 84 at lines 21–24 and p 85 at lines 1–7.

121 DWS at paras 88–94.

124 Having considered the parties' submissions, I was of the view that the Prior Relationship Allegation did not support Yangbum and Mr Loong's allegation of bias on the part of the Liquidators.

125 In the Australian cases of *Advance Housing Pty Lid (in liq) v Newcastle Classic Developments Pty Ltd* (1994) 14 ACSR 230 ("*Advance Housing*") (which was cited in *Petroships* at [155]) and *Commonwealth of Australia v Irving and another* (1996) 144 ALR 172 ("*Irving*"), the courts laid down the following principles:[122]

> (a) It was not the law that a liquidator could not have had any prior contact with the company or its directors or officers. It was commonplace for a company to seek professional advice with respect to actual or apprehended insolvency, often from someone who later accepted appointment as the company's liquidator. Hence, there would be "an air of commercial unreality about any suggestion that this course of events is necessarily improper" (*Irving* at 177). Indeed, creditors were frequently well served by the appointment of a liquidator with some familiarity with the affairs of the company, provided that the reasons leading to this familiarity did not give rise to an apprehension of lack of impartiality or reflect an actual or perceived conflict (*Advance Housing* at 234).
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> (b) Where personal associations were suggested to give rise to perceptions of possible bias, questions of judgment and degree would no doubt arise. On one end of the scale, "mere professional acquaintanceship" and "professional connections of a passing nature"

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122 DWS at paras 90–92.

would not create actual bias or a reasonable perception of bias. On the other end of the scale, "[i]ntimate relationships of long standing" likely would (*Irving* at 176).

(c) However, substantial involvement with a company prior to its liquidation would disqualify a person from appointment as that company's liquidator. This is because such involvement would be seen to detract from that person's ability to act fairly and impartially during the course of the liquidation (*Irving* at 177).

126 In the present case, Yangbum and Mr Loong's allegation of a prior relationship between Ms Liang and the Liquidators was based entirely on one line in an affidavit of Ms Liang filed in S 345. This line was ambiguous and did not, on a plain reading, amount to an admission that the Liquidators were *Ms Liang's accountants*. During the hearing, counsel for Yangbum and Mr Loong acknowledged that there was no other evidence of prior association between the Liquidators and Ms Liang apart from the following facts: that they had been approached by Ms Liang on or around 10 March 2020 in relation to the potential liquidation of the Companies,[123] that they had received documents from Ms Liang and that they had accompanied her to Yangbum's office on 18 March 2020.[124] These facts provided an extremely weak basis on which to allege bias on the part of the Liquidators. There was no evidence of any longstanding personal or professional relationship between the Liquidators and Ms Liang, nor any evidence of substantial involvement with the Companies

123 LCH at para 11.

124 Certified Transcript (5 April 2021), p 44 at lines 17–24 and p 45 at lines 1–3.

prior to their liquidation, that could give rise to actual bias or a reasonable perception of bias.

127 The facts of the present case stood in sharp contrast to the facts of *Advance Housing* and *Irving*. In *Advance Housing*, the Supreme Court of New South Wales held that there was an "inherent conflict of a liquidator investigating his firm's own debt" which gave rise to a reasonable apprehension of bias (*Advance Housing* at 238). In *Irving*, the Federal Court of Australia found that there was a longstanding relationship between the liquidator (Mr Irving) and one of the former directors of the company in liquidation (Mr Townsend). In his professional practice over many years, Mr Irving had looked to Mr Townsend for legal advice. It was implicit in this that Mr Irving regarded Mr Townsend's professional advice and judgment as sound. Further, Mr Irving and Mr Townsend had a publicised close association and personal friendship. In those circumstances, a reasonable person might apprehend that Mr Irving might tend to favour Mr Townsend if required to investigate Mr Townsend's conduct as a past director of the company. This was a case where the prior association between the parties went beyond mere professional acquaintanceship (*Irving* at 177). In the present case, the alleged prior association between Ms Liang and the Liquidators fell far short of this threshold.

128 During the hearing, counsel for Yangbum and Mr Loong drew my attention to a letter from Ms Liang and Mr Zhang's solicitors to the Liquidators dated 6 April 2020.[125] He argued that the Liquidators' letter was written as though they had not received any documents from Ms Liang, even though they

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125 LSM at pp 102–106.

had. He further suggested that there was some improper secretiveness or lack of candour in the Liquidators' attempt to "creat[e] the illusion of a certain distance of formality between themselves and Ms Liang.[126] I disagreed. In my view, it ran contrary to common sense for Yangbum and Mr Loong to allege bias on the ground that the Liquidators had conducted themselves *professionally* in requesting documents from Ms Liang, particularly in the context of a formal letter.

129 I, therefore, found that Yangbum and Mr Loong had not succeeded in showing that there was actual bias or a reasonable perception of bias based on the Prior Relationship Allegation.

(C) THE IRRATIONAL TARGETING ALLEGATION

130 Thirdly, Yangbum and Mr Loong submitted that the Liquidators took an irrationally targeted approach from the outset, hounding Mr Loong and his affiliates at Yangbum for documents (such as by filing SUM 310, SUM 303 and SUM 330) while not filing any similar applications against Ms Liang. According to Yangbum and Mr Loong, it was clear that Ms Liang had a significant store of documents and was herself an appointed director of the Companies. However, the Liquidators simply took Ms Liang's word that she had none of the documents sought.[127]

131 On the other hand, the Liquidators submitted that Yangbum and Mr Loong had failed to discharge their burden of establishing that the Liquidators' decision to pursue the Respondents in SUM 310, SUM 303 and

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126 Certified Transcript (5 April 2021), p 57 at lines 7–24 and p 58 at lines 1–23.

127 PWS at paras 17, 23–25 and 52(e).

SUM 330 for the Companies' books and assets (under s 313(5) of the Companies Act) were made without a rational basis. The Liquidators argued that any rational liquidator would have done the same, and that any rational creditor or contributory would have recognised that the s 313(5) Applications were necessary to advance the interest and purpose of the liquidations. In particular, the Liquidators submitted that the Respondents' refusal to deliver up and surrender a complete set of the Companies' books and assets to the Liquidators left the Liquidators with no choice but to obtain court orders to compel the Respondents to do so. On the other hand, the Liquidators did not need to pursue Ms Liang for any further books of the Companies in her possession as she had cooperated with the Liquidators' requests from the outset. Further, it would have been illogical for Ms Liang to wind up the Companies, appoint the Liquidators, and then proceed to obstruct the liquidations.[128]

132 The Liquidators also highlighted that the court would not have made the October 2020 Orders in their favour if the requirements of s 313(5) had not been satisfied.[129]

133 In my view, Yangbum and Mr Loong's argument was completely unmeritorious. As explained at [44] above, in making the October 2020 Orders sought by the Liquidators, I had found that the requirements of s 313(5) of the Companies Act were satisfied. Applying *Petroships*, in order to demonstrate bias in respect of the Liquidators' decision or exercise of discretion, Yangbum and Mr Loong were required to show that the decision was taken without a rational basis or that the discretion was not exercised in good faith (see [103]

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128 DWS at paras 114–129.

129 DWS at para 115.

and [105] above). In view of my previous findings in favour of the Liquidators in relation to the s 313(5) Applications, I was unable to accept that the Liquidators' s 313(5) Applications were made without a rational basis or not made in good faith. Therefore, I found that the Irrational Targeting Allegation did not support Yangbum and Mr Loong's allegation of bias.

(D) THE DECLARATIONS OF SOLVENCY ALLEGATION

134 Fourthly, Yangbum and Mr Loong submitted that Ms Liang and Mr Zhang had wrongfully appointed themselves as directors of the Companies on 12 March 2020, a mere two weeks before making written declarations of solvency for the Companies on 27 March 2020. Despite being fully aware that Ms Liang and Mr Zhang had only just been appointed as directors and had no experience managing the Companies, the Liquidators did not carry out any checks before relying on these declarations of solvency.[130]

135 The Liquidators submitted that it was clear from the statutory scheme that the burden of preparing and certifying the veracity of a declaration of solvency lay on the directors of the Companies, not the Liquidators. The declarations of solvency were made on 27 March 2020, *ie*, before the coming into operation of the IRDA. Hence, s 293(1) of the Companies Act (now s 163(1) of the IRDA) was applicable and it required a majority of directors to make a declaration of solvency. Further, s 293(4) of the Companies Act (now s 163(4) of the IRDA) imposed criminal liability on a director who made the declaration without reasonable grounds. In the English case of *De Courcy v Clements and another* [1971] 1 All ER 681, it was held that a liquidator was entitled to rely on a declaration of solvency provided that it complied with the

130 LSM at para 41; PWS at pp 8–9 and paras 26 and 52(c).

statutory scheme. Hence, in the present case, the Liquidators submitted that they simply had to be satisfied that the declarations of solvency complied with s 293 of the Companies Act. As this requirement was met, the declarations of solvency were valid and the Liquidators were entitled to rely on them.[131] In any event, the Liquidators submitted that Mr Loong had declared on oath in several affidavits that the Companies were going concerns at the time of their liquidation.[132] Hence, Yangbum and Mr Loong could not and did not hold the view that the Liquidators were biased because of their reliance on the declarations of solvency made by Ms Liang and Mr Zhang.[133] In these circumstances, the Liquidators submitted that no rational creditor or contributory would have reasonably perceived that the Liquidators were biased for relying on valid declarations of solvency. The Liquidators' reliance on the declarations of solvency was also not attributable to actual bias.[134]

136 Having considered the arguments made by both parties, I agreed with the Liquidators that the Declarations of Solvency Allegation failed to support Yangbum and Mr Loong's allegation of bias. It was not for this court to determine the truth of Yangbum and Mr Loong's allegation that Ms Liang and Mr Zhang had wrongfully appointed themselves as directors of the Companies. For present purposes, Ms Liang and Mr Zhang were the registered directors of the Companies at the time of their liquidation. It was not disputed that valid declarations of solvency had been made in respect of the Companies. It was also not disputed that the Companies were in fact solvent at the time of their

131 DWS at paras 103–107.

132 See, *eg*, LSM at para 39 and LCH, Tab 10, p 259 at para 39(a) and p 261 at para 45.

133 DWS at para 111.

134 DWS at para 112.

liquidation. In these circumstances, I was unable to accept that the Liquidators' reliance on these declarations of solvency demonstrated actual bias or created a reasonable perception of bias.

(E) THE REFUSAL TO WITHDRAW ALLEGATION

137 Fifthly, Mr Loong wrote to the Liquidators (through his solicitors) on 25 March 2020 stating that he was the beneficial owner of the Companies and drawing the Liquidators' attention to the allegedly wrongful acts of Ms Liang and Mr Zhang (the "25 March Letter").[135] Thus, Mr Loong requested the Liquidators to withdraw their consent to act as the liquidators of the Companies. However, the Liquidators replied on 30 March 2020 refusing to do so (the "30 March Reply").[136] Yangbum and Mr Loong submitted that the Liquidators' refusal to withdraw and insistence on proceeding was further evidence of bias.[137]

138 The Liquidators submitted that Yangbum and Mr Loong had failed to establish that the Liquidators' refusal to withdraw their consent to act as the liquidators of the Companies was made without a rational basis. Mr Loong's claim to be the beneficial owner of the Companies in the 25 March Letter was not supported by any objective evidence. For example, Mr Loong had not disclosed a deed of trust or any other documentation as evidence that Ms Liang held the shares in the Companies on trust for him. Hence, the Liquidators concluded that no valid grounds had been disclosed for them to withdraw their consent to act. In view of this, the Liquidators contended that no rational creditor

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135 LSM at pp 43–44.

136 LSM at p 48.

137 PWS at p 9 and paras 18 and 29.

or contributory would have concluded that the Liquidators were biased for refusing to withdraw.[138]

139 I agreed with the Liquidators' submission. In the 30 March Reply, the Liquidators declined to take a position or view in relation to the allegations made against Ms Liang as it was "neither appropriate nor necessary" for them to do so. The Liquidators stated that the content of the 25 March Letter "[did] not provide any valid reasons or grounds for [the Liquidators] to withdraw their consent to act as Liquidators of the Companies". The 30 March Reply concluded with the Liquidators stating that, in the event that they were appointed to act as the liquidators of the Companies, they "fully intend[ed] to carry out their powers, functions, and duties impartially and in accordance with the law".[139] In my view, this was a sensible response on the part of the Liquidators given that Ms Liang was the sole registered shareholder of the Companies and one of its appointed directors. The Liquidators were not in a position to make a determination on whether she held the shares in the Companies on trust for Mr Loong or whether Ms Liang's appointment as a director was wrongful. In these circumstances, it was entirely rational for the Liquidators to decline to withdraw their consent to act as the liquidators of the Companies on the basis that no valid grounds had been provided for them to do so.

140 Therefore, I found that the Refusal to Withdraw Allegation did not support Yangbum and Mr Loong's allegation that the Liquidators were biased.

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138 DWS at paras 95–102.

139 LSM at p 48.

(F) THE TERMINATION OF EMPLOYEES ALLEGATION

141 Sixthly, Yangbum and Mr Loong submitted that on 14 April 2020, shortly after the Liquidators assumed office, the Liquidators stated that they intended to terminate all of the Companies' 121 employees, of whom 86 were foreign employees. According to Yangbum and Mr Loong, no rational or sensible liquidator would have acted in such a rash manner. Further, when Yangbum proposed to transfer the employment of these employees to Yangbum to ensure that they were not left jobless, the Liquidators (in a letter dated 7 May 2020 (the "7 May Letter")) "stonewalled" and "came up with ludicrous allegations" of Yangbum and Mr Loong acting in bad faith.[140]

142 During the hearing, counsel for Yangbum and Mr Loong acknowledged that the Companies' employees would have to be terminated in any event when the Companies were liquidated. He clarified that the allegation of bias was based on the Liquidators' *response* to Yangbum's proposed transfer of the employees. In the 7 May Letter, the Liquidators had stated that the steps taken by Mr Loong to effect the transfer of various employees of the Companies to Yangbum was inconsistent with the injunction order sought by Yangbum in SUM 1698. The Liquidators had stated that Mr Loong's conduct was in bad faith as the Liquidators had agreed to take no further steps in the voluntary winding up of the Companies pending the disposal of SUM 1698 on the basis that Mr Loong would also seek to maintain the *status quo* within the Companies. Despite this, Mr Loong had acted to transfer employees from the Companies for his own benefit. In view of this, in the 7 May Letter, the Liquidators reserved their rights to ask for (*inter alia*) an order that Mr Loong take all necessary steps to unwind

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140 PWS at para 28; Transcript (5 April 2021), p 49 at lines 11–24; p 50 at lines 1–12; p 51 at lines 9–21.

the transfers of employees that had already been effected.[141] Counsel for Yangbum and Mr Loong submitted that this was irrational and unacceptable behaviour on the part of the Liquidators, as follows:[142]

> You know, with respect, is this the behaviour of sensible liquidators? You don't want the employees, we took them off your hands so that they will be around in the event that we are able to save the companies. Then you turn around, you attack us for acting in bad faith. And then you say unwind the transfers, in other words, make them employees again of these companies so that we can fire them.
>
> I mean, Your Honour, this shows, Your Honour, conduct which is surely not acceptable. I mean really, you just want them to be reinstated so that you can fire them and we have taken them off your hands. I mean we didn't expect gratitude, but we didn't expect an attack of this sort, Your Honour.

143 The Liquidators' version of events is vastly different. The Liquidators contended that they had made a good faith agreement with Mr Loong to maintain the *status quo* of the Companies pending the resolution of the injunction application in SUM 1698. In complete disregard of this agreement, Mr Loong had surreptitiously attempted to transfer the employees from the Companies to Yangbum without notifying the Liquidators. The Liquidators submitted that their demand for Mr Loong to unwind the transfer of these employees was made in response to Mr Loong's deliberate breach of this good faith agreement. It was not indicative of bias.[143] During the hearing, counsel for the Liquidators also explained that they had asked for the unwinding of the transfers as a matter of proper process. Half of the Companies' employees were foreign workers, in respect of which the Liquidators were potentially accountable to the Inland Revenue Authority of Singapore, the Ministry of

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141 LSM at pp 117–118.

142 Transcript (5 April 2021), p 54 at lines 10–21.

143 DWS at paras 131 and 133.

Manpower and the Immigration and Checkpoints Authority. Therefore, counsel for the Liquidators contended that Yangbum and Mr Loong should have written to the Liquidators with a list of employees to be transferred instead of surreptitiously transferring these employees to Yangbum.[144]

144 Further, the Liquidators submitted that no rational creditor or contributory would have reasonably perceived the intended termination of the employees as evidence of bias, especially in a solvent liquidation where the employees were likely to be paid in full and in priority. The termination of the employees of a company in liquidation was undertaken as a matter of course when the business of that company ceased. In any event, the Liquidators had not yet terminated any of the employees as Yangbum and Mr Loong had obstructed the Liquidators from obtaining the complete employment records of the Companies' employees which were in their possession.[145]

145 Having considered the parties' submissions, I was of the view that the Termination of Employees Allegation did not support Yangbum and Mr Loong's allegation of bias on the part of the Liquidators. On the contrary, the 7 May Letter, on which Yangbum and Mr Loong sought to rely, supported the Liquidators' version of events. The 7 May Letter recorded that the Liquidators had "agreed to take no further steps in the voluntary winding up of the [C]ompanies pending the disposal of SUM 1698 … on the basis that [Mr Loong] would also seek to maintain the status quo within the Companies".[146] It was Mr Loong who had breached this agreement by taking

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144 Transcript (5 April 2021), p 88 at lines 18–24 and p 89 at lines 1–18.

145 DWS at paras 132–136.

146 LSM at p 117.

steps to transfer the employment of various employees to Yangbum. In these circumstances, the Liquidators certainly had a rational basis for reserving their rights to seek orders for Mr Loong to cease taking any further steps to transfer any employees from the Companies to Yangbum and for Mr Loong to take all necessary steps to unwind the transfers that had already been effected. I agreed with the Liquidators' submission that this was a matter of proper process. In my view, this neither demonstrated actual bias nor gave rise to a reasonable perception of bias.

(G) THE PROOFS OF DEBT ALLEGATION

146 Finally, Yangbum and Mr Loong submitted that the Liquidators had made no perceptible effort to adjudicate Yangbum's proofs of debt, which were submitted on 30 September 2020 (more than five months ago), even though Yangbum was the most significant creditor of each of the Companies. As I have noted at [11] above, the provisional debt owed by the Companies to Yangbum amounted to more than $10.8m. According to Yangbum and Mr Loong, the Liquidators did not provide any basis for delaying the adjudication of Yangbum's proofs of debt.[147] Counsel for Yangbum and Mr Loong submitted that the Liquidators appeared to be waiting for Ms Liang to submit any proofs of debt that she might have, even though Ms Liang had no conceivable claim against the Companies.[148]

147 On the other hand, the Liquidators stated that they were examining Yangbum's proofs of debt and would adjudicate on Yangbum's claims as soon as they were able to do so. However, due to the delay in the handover of all the

147 PWS at paras 19, 30–31 and 52(f).

148 Transcript (5 April 2021), p 60 at lines 1–12.

books and records of the Companies, which was partly caused by Yangbum and Mr Loong (and which was the subject of SUM 310, SUM 303 and SUM 330), the Liquidators had not been able to properly examine Yangbum's proofs of debt.[149]

148 In my view, the fact that the Liquidators had not yet adjudicated Yangbum's proofs of debt did not support Yangbum and Mr Loong's allegation of bias, especially when the delay was attributable to Yangbum and Mr Loong's unwillingness to cooperate with the Liquidators.

149 In *Petroships*, the applicant made a similar allegation based on the liquidators' failure to promptly adjudicate one creditor's proof of debt. In rejecting this submission, Coomaraswamy J observed that the applicant had itself "contributed to the delay by withholding its assistance to the liquidators in considering [the creditor's] proof of debt". Having contributed to the delay in the liquidators' adjudication of the proof of debt, the applicant "surely [could not] now say that the liquidators [had] failed to adjudicate the proof of debt promptly" (*Petroships* at [228]–[230]).

150 Similar observations could be made in the present case. Notwithstanding repeated requests by the Liquidators, they had not yet been provided with a complete set of all the books and assets belonging to the Companies (see [46] above). This was precisely why the Liquidators filed SUM 310, SUM 303 and SUM 330 seeking orders for the Respondents to comply with the October 2020 Orders within a fixed timeframe. Without these books and assets, the Liquidators were unable to properly examine and adjudicate Yangbum's proofs

149 DWS at para 7.

of debt. While Yangbum and Mr Loong were not the Respondents in the summonses, the first respondent in each of the summonses was a director of the Companies who had been appointed by Mr Loong and who took instructions from him (see [9] above). The second and third respondents were employees of Yangbum and took instructions from Yangbum (see [1] and [39] above). Having contributed to the delay in the Liquidators' adjudication of Yangbum's proofs of debt, Yangbum and Mr Loong could not now rely on the Liquidators' delay in adjudicating these proofs as evidence of actual bias on the part of the Liquidators. Nor could this delay give rise to a reasonable perception of bias in the circumstances.

(H) PRACTICAL CONSEQUENCES OF REMOVING THE LIQUIDATORS

151 As both parties made submissions on the practical consequences of removing the Liquidators, I shall also address this point for completeness. In my view, the practical considerations further supported my conclusion that the removal and replacement of the Liquidators was not in the real, substantial and honest interest of the liquidation of the Companies.

152 Although the Liquidators' work was hindered by the fact that they had yet to receive a complete set of the Companies' books and assets, it had been more than a year since the Liquidators were appointed (on 30 March 2020). In these circumstances, it was likely that their removal and replacement with the alternative liquidators proposed by Yangbum and Mr Loong would occasion further costs, delay and disruption in the liquidation process of the Companies. Further, given the history of the acrimonious relationship between Mr Loong and Ms Liang, it was unlikely that Ms Liang, as the sole registered shareholder and director of the Companies, would accept the appointment of these alternative liquidators without contention.

153 In view of my findings that Yangbum and Mr Loong's allegations of bias on the part of the Liquidators were unsubstantiated, I also agreed with the Liquidators' submission that their removal would cast an unwarranted shadow over their professional standing and reputation. This would not have been fair to the Liquidators.

154 Therefore, Yangbum and Mr Loong failed to show cause that justified the removal of the Liquidators.

155 On the contrary, I agreed with the Liquidators that they had acted to advance the interests and purpose of the liquidations from the outset of their appointment. The Liquidators were appointed on 30 March 2020. The day immediately after their appointment (*ie*, 31 March 2020), they made their first request for the relevant documents, books and assets of the Companies (see [35] and [52] above).

156 Unfortunately, Yangbum and Mr Loong were uncooperative and tried to frustrate the work of the Liquidators as they were against the liquidation of the Companies. I shall now summarise some of their actions as elaborated in the Liquidators' submissions.

Yangbum and Mr Loong's attempts to frustrate the work of the Liquidators

157 Before the final disposal of Mr Loong's injunction application in SUM 1698, and in breach of the parties' agreement to maintain the *status quo*, Mr Loong surreptitiously took steps to transfer the Companies' employees to Yangbum without notifying the Liquidators. Yangbum and Mr Loong then argued that the Liquidators had acted in an unreasonable and biased manner

because they had asked for the transfers of the employees to be unwound (see [141]–[142] above).[150]

158 After Mr Loong failed to lawfully restrain the liquidation of the Companies through SUM 1698, Yangbum and Mr Loong resorted to obstructing the Liquidators from obtaining the books of the Companies from the Companies' officers and agents.[151]

159 Between 31 March 2020 and the filing of the s 313(5) Applications on 29 July 2020, the Liquidators sent three tranches of letters to the Respondents seeking the books and assets of the Companies. However, no response was received from the Respondents.[152]

160 On 6 July 2020, the Liquidators telephoned Mr Tan Boon Hwa (one of the directors of Ace Class), Mr Sim Chee Wei (one of the directors of Qing Lian) and Mr Su. Mr Tan Boon Hwa, Mr Sim Chee Wei and Mr Su were the Respondents in SUM 310, SUM 303 and SUM 330. In the telephone conversations, all three individuals informed the Liquidators that they would only deliver up and surrender the Companies' books and assets if they were served with an order of court.[153]

161 Subsequently, on 9 July 2020 and 20 July 2020, the Liquidators wrote to Mr Loong to seek his cooperation for the delivery up and surrender of the Companies' books and assets. The Liquidators emphasised that they had

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150 DWS at para 63(b).

151 DWS at para 48.

152 DWS at para 53.

153 DWS at para 54.

continuing obligations to exercise their powers, functions and duties expeditiously in the interests of the liquidations. As the Companies' books and assets were necessary for the Liquidators to carry out their functions and duties, they requested Mr Loong to make the necessary arrangements to deliver the Companies' books and assets by 27 July 2020.[154]

162 However, by 29 July 2020, neither Mr Loong nor the Respondents had responded to the Liquidators' requests. In the course of the s 313(5) Applications and subsequent correspondence after the October 2020 Orders, it became apparent that Mr Loong (through Yangbum) was instructing the Respondents not to cooperate with the Liquidators, in complete disregard of the October 2020 Orders and the interests and purpose of the liquidations.[155]

163 Notwithstanding the clear terms of the October 2020 Orders, Yangbum, Mr Loong and the Respondents continued to resist the delivery of a complete set of the Companies' books and assets to the Liquidators.[156] When documents *were* delivered to the Liquidators, they were delivered in a haphazard and piecemeal manner, in four separate batches over four months.[157] The Respondents also inexplicably refused to provide soft copies of these documents (see [46] above).[158] Subsequently, Yangbum and Mr Loong commenced OS 1061 seeking the removal of the Liquidators. However, as I have explained

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154 DWS at para 55.

155 DWS at paras 56–57.

156 DWS at para 60.

157 DWS at paras 63(i) and 63(l).

158 DWS at paras 63(j)–63(k).

at [113]–[150] above, Yangbum and Mr Loong's allegations of bias on the part of the Liquidators were unfounded and unmeritorious.[159]

Conclusion on cause for the removal of the liquidators

164 Therefore, I found that Yangbum and Mr Loong had not shown that the removal of the Liquidators was in the real, substantial and honest interest of the liquidation of the Companies and would advance the purposes for which the Liquidators were appointed. Yangbum and Mr Loong had failed to show that the Liquidators were guilty of actual bias or had conducted themselves in a manner that gave rise to a reasonable perception of bias. Further, the practical consequences weighed against removing the Liquidators in the circumstances of this case. On the contrary, the evidence showed that Yangbum and Mr Loong had attempted to frustrate the work of the Liquidators and had demonstrated hostility to the liquidation of the Companies.

Conclusion

165 For the above reasons, I granted the Liquidators' applications in SUM 310, SUM 303 and SUM 330, save that I allowed the Respondents four weeks from the date of the orders to comply with the October 2020 Orders. I dismissed Yangbum and Mr Loong's application for the removal of the Liquidators in OS 1061.

Costs

166 The Liquidators submitted that costs of SUM 310, SUM 303, SUM 330 and OS 1061 should be ordered against the Respondents on an indemnity basis.

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159 DWS at para 65.

With regard to SUM 310, SUM 303 and SUM 330, the Liquidators contended that the Respondents' conduct was not only disingenuous but also demonstrated an extreme lack of respect for the court's rulings and orders. Further, the Liquidators emphasised that the Respondents had resisted the imposition of a timeframe for compliance with the October 2020 Orders at the hearing on 2 October 2020, yet had subsequently refused to comply with the October 2020 Orders. In doing so, the Respondents had wasted considerable time, costs and judicial resources.[160]

167 In my view, having regard to the principles set out by Chan Seng Onn J in *Airtrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] 5 SLR 103 (at [17]–[24] and [50]), an award of indemnity costs was not justified in the circumstances of the present case. Notwithstanding my findings above, the conduct of the Respondents in SUM 310, SUM 303 and SUM 330 and the conduct of Yangbum and Mr Loong in OS 1061 did not warrant an award of indemnity costs.

168 The hearing before me on 5 April 2021 took approximately half a day. The time spent on SUM 310, SUM 303 and SUM 330 was less than 45 minutes. Under the Costs Guidelines in Appendix G of the Supreme Court Practice Directions, costs for an application on the normal list lasting less than 45 minutes would be in the range of $1,000 to $3,000. The Liquidators sought costs of $3,000 while the Respondents asked for costs to be fixed at $1,000. I ordered the Respondents to pay the Liquidators costs fixed at $3,000 (plus disbursements) in respect of SUM 310, SUM 303 and SUM 330.[161]

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160 AWS at paras 29–32; DWS at paras 10 and 140.

161 HC/ORC 2105/2021 (SUM 310); HC/ORC 2103/2021 (SUM 303); HC/ORC 2104/2021 (SUM 330).

169 With regard to OS 1061, under the Costs Guidelines, costs for a contentious originating summons before the General Division of the High Court (without cross-examination) were $12,000 *per* day. Having considered both parties' submissions on costs, I saw no reason to depart from the starting point of $6,000 for a half-day hearing. Therefore, I ordered Yangbum and Mr Loong to pay the Liquidators costs fixed at $6,000 (plus disbursements) in respect of OS 1061.[162]

Tan Siong Thye
Judge of the High Court

Michael Anthony Palmer, Lim Wei Ming Keith, Wu Siyue and Daryl Tan (Quahe Woo & Palmer LLC) for the applicants in SUM 310, SUM 303 and SUM 330 and the defendants in OS 1061;
Harish Kumar s/o Champaklal, Tng Sheng Rong, Devathas Satianathan, Marissa Zhao Yunan and Zheng Yirong (Rajah & Tann Singapore LLP) for the first to third respondents in SUM 310, SUM 303 and SUM 330 and the plaintiffs in OS 1061;
Han Guangyuan Keith (Oon & Bazul LLP) for the fourth respondent in SUM 310.

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[162] HC/ORC 2102/2021 (OS 1061).