Precious Shipping Public Company Ltd and others *v* O.W. Bunker Far East (Singapore) Pte Ltd and others and other matters
[2015] SGHC 187

Case Number : Originating Summons Nos 1076, 1144, 1147, 1148, 1162, 1163, 1164, 1165, 1166, 1172, 1173, 1202, and 1205 of 2014

Decision Date : 21 July 2015

Tribunal/Court : High Court

Coram : Steven Chong J

Counsel Name(s) : Purchasers: Mohan s/o Ramamirtha Subbaraman, Thio Soon Heng Jonathan Mark and Yee Weng Wai Bernard (Incisive Law LLC) for the applicants in OS 1076/2014; Kuek Chong Yeow Richard, Cheng Jiankai Eugene, Dharinni Kesavan (Gurbani & Co LLC) for the applicants in the rest of the consolidated applications; Sellers: Davinder Singh SC s/o Amar Singh, Jaikanth Shankar, Kok Chee Yeong Jared, Lee Xin Yi Cherrylene and Tham Yeying Melissa (Drew & Napier LLC) for ING Bank N.V. in the consolidated applications, as well as Goh Thien Phong and Chan Kheng Tek in all the consolidated applications save for OS 1076/2014; Ong Tun Wei Danny and Ng Hui Ping Sheila (Rajah & Tann Singapore LLP) for Dynamic Oil Trading (S) Pte Ltd in OS 1144, 1148, 1162, 1202 and 1205 of 2014; Nish Kumar Shetty, Darius Bragassam, Lim Shack Keong and Zhuo Wenzhao (Cavenagh Law LLP) for O.W. Bunker Far East in OS 1076, 1147, 1163, 1164, 1165, 1166, 1172 and 1173 of 2014; Yee Mun Howe Gerald and Nazirah d/o Kairo Din (Clasis LLC) for OceanConnect Marine Pte Ltd in OS 1202/2014; Physical Suppliers: Chua Chok Wah, Muhammad Raffli Bin Mohd Noor and Yeo Wen Yi Brenna (Joseph Tan Jude Benny LLP) for Uni Petroleum Pte Ltd in OS 1076, 1163 and 1165 of 2014 and Victory Supply Sdn Bhd in OS 1173/2014; Mohamed Ibrahim s/o Mohamed Yakub (Achievers LLC) for Sirius Marine Pte Ltd in OS 1144, 1163, 1172 and 1205 of 2014; Loo Dip Seng, Ng Weiting and Tan Siew Chi (Ang & Partners) for Tankoil Marine Services Pte Ltd in OS 1144/2014, Global Energy Trading Pte Ltd in OS 1162/2014 and Sentek Marine Pte Ltd in OS 1202/2014; Navin Anand and Teo Ke-Wei Ian (Rajah & Tann Singapore LLP) for Golden Island Diesel Oil Trading Pte Ltd in OS 1164/2014; Lam Kuet Keng Steven John (Templars Law LLC) for Panoil Petroleum Pte Ltd in OS 1166/2014; Chew Sui Gek Magdalene and Leong Marnyi Wendy (AsiaLegal LLC) for Shell Eastern Trading (Pte) Ltd in OS 1076/2014 and Universal Energy Pte Ltd in OS 1147/2014; Navinder Singh (KSCGP Juris LLP) for Transocean Oil Pte Ltd in OS 1076 and 1148 of 2014.

Parties : Precious Shipping Public Company Ltd and others — O.W. Bunker Far East (Singapore) Pte Ltd and others

Civil Procedure – Interpleader – Application – When Granted

Civil Procedure – Judgments and Orders – Admissions of Fact

Insolvency Law – Administration of Insolvent Estates – Conduct of Legal Proceedings

21 July 2015 Judgment reserved.

Steven Chong J:

Introduction

1 On 7 November 2014, O.W. Bunker & Trading A/S ("OW Bunker"), one of the world's largest bunker suppliers, announced that it (and some of its related entities) had commenced proceedings in the Danish courts to seek bankruptcy protection. In December 2013, OW Bunker and several of its subsidiaries entered into an omnibus security agreement with a syndicate of banks with ING Bank N.V. ("ING") appointed as the security agent. [note: 1] As part of the agreement, OW Bunker assigned its rights, title, and interest in its third party and inter-company receivables to ING which, in turn, appointed PricewaterhouseCoopers LLP as the global receiver of the secured assets. [note: 2] Two of its related entities in Singapore ("the OW entities") — O.W. Bunker Far East (Singapore) Pte Ltd ("OW Far East") and Dynamic Oil Trading (Singapore) Pte Ltd ("DOT") — were placed in creditor's voluntary liquidation shortly thereafter. [note: 3]

2 The general *modus operandi* of the OW entities was to enter into contracts with the end-users ("the purchasers") for the supply of bunkers to vessels and separately contract with bunker traders ("the physical suppliers") — at a lower price — to have them deliver the requisite bunkers, making a small margin in the process. The bunkers were stemmed and have been consumed [note: 4] but, in light of the liquidation, the physical suppliers have not received payment from the OW entities. The purchasers have also not paid the OW entities for the bunkers because some of the physical suppliers have written to the purchasers seeking to recover the price of the bunkers directly from them as they have not received any payment from the OW entities.

3 The purchasers accept that payments for the bunkers are due and owing but claim that they are unable to decide which party to pay. Under these circumstances, the purchasers decided that it would be prudent to seek interpleader relief from the court. This led the purchasers to file multiple interpleader summonses of which 13 came before me for hearing. As they generally relate to the same factual matrix and concern identical legal issues, it seemed eminently sensible to hear them on a consolidated basis ("the consolidated applications").

4 The consolidated applications are unusual in many respects, and they raise several questions about the scope and purpose of interpleader relief. Three stand out for mention. First, the purchasers have *all* taken the position, on the advice of their solicitors, that the purchase price is due to the OW entities and not the physical suppliers. [note: 5] In a typical interpleader summons, the applicant is faced with adverse claims and is genuinely in a legal dilemma as to which of the competing claimants to pay. Here, there seems to be no such predicament. In fact, some of the purchasers have explicitly written to the physical suppliers to deny their claims. [note: 6] Second, in spite of their threats, *none* of the physical suppliers (as at the date of the hearing) had actually commenced legal proceedings against the purchasers. This is perhaps because the physical suppliers appear to appreciate that, owing to the lack of privity of contract, their alleged claims against the purchasers are far from clear. They have therefore mounted a number of non-contractual arguments to justify their entitlement to recover the price of the bunkers directly from the purchasers. Third, the purchasers had received "competing claims" for *different amounts*. [note: 7] ING (as the assignees of the OW entities' receivables) claimed for the contractual price of the contracts the OW entities concluded with the purchasers whereas the physical suppliers claimed for the contractual price of the bunkers under the contracts they concluded with the OW entities, which was *always* for a lesser amount (see [8(b)] below).

5 Is interpleader necessary or even appropriate when the applicant appears to know exactly to whom he is liable? Is the mere assertion of "adverse claims", however remote or fanciful, sufficient? Can claims be adverse when they relate to different sums referable to different contracts? What are the court's powers upon a dismissal of an application for interpleader relief? These are some of the

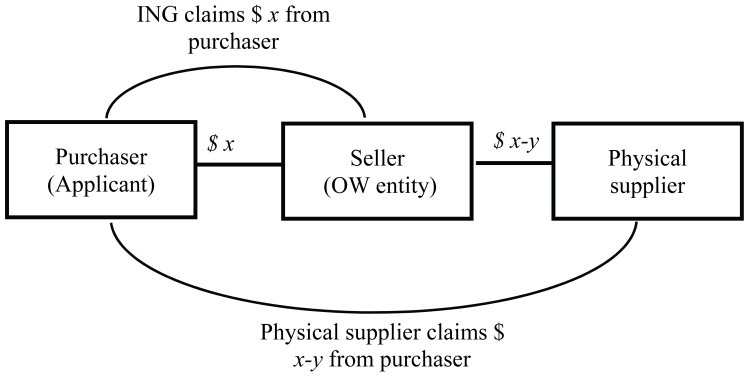
questions which will be addressed in the course of this judgment.

Facts

6 The consolidated applications concern different contracts with different terms and governing laws. However, I need not discuss the detailed facts of each application since only the barest level of detail is required for present purposes. I will first set out the facts of a notional "paradigm case" (which applies to the majority of the applications) before going on to discuss the implications, if any, of two notable "variants".

The paradigm case

7 In their essentials, the consolidated applications involve a tripartite relationship between (a) a purchaser; (b) a seller; and (c) a physical supplier. In the paradigm case, the purchaser contracted with an OW entity for the purchase of bunkers for delivery to a vessel (the "Purchaser–Seller contract"). The OW entity would, in turn, conclude a separate contract with a physical supplier which would stem the bunkers ("the Seller–Physical Supplier contract"). After the collapse of OW Bunker, many of the purchasers received two competing claims: (a) the first was from ING for the sum owing *under the Purchaser–Seller contract;* (b) the second was from the physical supplier for the sum owing *under the Seller-Physical Supplier contract*. The salient features of the paradigm case can be summarised in the following diagram:



8 I will highlight three features of the paradigm case.

(a) First, the relationships between the parties are governed by two separate contracts concluded at different prices: (i) the Purchaser–Seller contract (at price $*x*); (ii) the Seller–Physical Supplier contract (at price ($*x-y*). Each contract was concluded on separate terms and at different times. The Purchaser–Seller contract was concluded on the General Terms and Conditions ("GTCs") of the relevant OW entity whereas the Seller–Physical Supplier contract was governed by the physical supplier's GTCs. In *every* case, the OW entity would purchase the bunkers from the physical supplier under the Seller–Physical Supplier contract at a price which was between 2 and 20 USD per metric ton lower (I have expressed this margin as "y") than the price which it charged under the Purchaser–Seller contract.

(b) Second, there are only ever two competing claims in respect of each bunker delivery. In some of the applications (see, *eg*, Originating Summons No 1076 of 2014), several deliveries of bunkers were made. However, in respect of each delivery, there is never more than one set of competing claims: one from ING and the second from the relevant physical supplier which stemmed the bunkers. The smaller claim would be that from the physical supplier whereas the larger claim was ING's.

(c) Third, *none* of the purchasers (save for the exception of the purchaser in Originating Summons 1076 of 2014) were the owners of the vessels in which the bunkers were stemmed.

Variant 1

9 In Originating Summonses 1144, 1166, and 1205 of 2014 (I will refer to each as "OS 1144/2014", "OS 1166/2014", etc.), just as in the paradigm case, the OW entity was the immediate contractual seller and the three salient features of the paradigm case identified at [8] above are also present. The only difference is that an additional party — a bunker trader — was involved. In each of these summonses, the OW entity purchased the bunkers from a bunker trader which, in turn, separately ordered the bunkers from a physical supplier which would then stem the bunkers on the vessel. The only exception is OS 1166/2014, where three different types of bunkers were ordered of which one was physically stemmed by OW Far East itself.

10 In my view, the interposition of an additional party does not affect the legal analysis. It is interesting to note that none of the bunker traders in each of these OSes have elected to file submissions. One of them — TNS Bunkers (S) Pte Ltd, the bunker trader involved in both OS 1144 and 1205 of 2014 — filed an affidavit stating that it supported the claim of Sirius Marine Pte Ltd, which was the physical supplier with whom it contracted.

Variant 2

11 In Originating Summons No 1202 of 2014 ("OS 1202/2014"), the purchaser contracted with OceanConnect Marine Pte Ltd ("OCM"). OCM then purchased the requisite bunkers from DOT which, in turn, contracted with Sentek Marine & Trading Pte Ltd, the physical supplier, which delivered the bunkers. Therefore, it is OCM, instead of an OW entity, which occupies the position of immediate contractual seller of the bunkers. The competing claims in this case are between OCM — as the immediate contractual seller — and Sentek Marine, the physical supplier. Neither ING nor any of the OW entities have asserted any claims against the purchaser in OS 1202/2014 and have argued that they ought not to have been added as respondents.

The parties and their arguments

12 For ease of reference, I will refer to the parties by their substantive capacities: *viz*, "purchaser", "seller", and "physical supplier" instead of their designations in the action (*ie*, "applicant", "respondent" etc.). This is because some of the parties are named in several applications but have different designations in each (*eg*, ING is the fifth respondent in OS 1076/2014 but the second respondent in OS 1205/2014). Furthermore, I will attribute arguments to the particular counsel who advanced those submissions instead of attributing them to a particular party. This is because some of the parties have instructed the same counsel so there is substantial overlap in the legal arguments advanced by the parties in the consolidated applications.

Arguments in favour of interpleader relief: purchasers and physical suppliers

13 The purchasers and the physical suppliers' positions are aligned insofar as both of them argue that interpleader relief ought to be granted. The purchasers comprise a number of different companies, many of which belong to the "Stena" group. Only the purchasers in OS 1076/2014 own the vessels in which the bunkers were stemmed (see [8(c)] above). Mr Kuek, counsel for the rest of the purchasers in the consolidated applications, confirmed that none of his clients own the vessels in which the bunkers were stemmed. [note: 8] Similarly, the physical suppliers comprise a number of different companies, of which the most prominent are Uni Petroleum Pte Ltd ("Uni Petroleum") and

Sirius Marine Pte Ltd ("Sirius Marine"), who are named as respondents in six out of the 13 applications. Collectively, the purchasers and physical suppliers have filed five sets of written submissions in support of the consolidated applications (though I should mention that a number of physical suppliers who were added as respondents to the consolidated applications did not make any submissions, whether written or oral). These are:

(a) Mr Mohan s/o Ramamirtha Subbaraman on behalf of the purchaser in OS 1076/2014. [note: 9]

(b) Mr Richard Kuek on behalf of the purchasers in the remaining summonses. [note: 10]

(c) Mr Chua Chok Wah on behalf of Uni Petroleum, (the physical supplier in OS 1076, 1163, and 1165 of 2014) and Victory Supply Sdn Bhd (the physical supplier in OS 1173/2014). [note: 11]

(d) Mr Mohamed Ibrahim on behalf of Sirius Marine (the physical supplier in OS 1144, 1163, 1172, and 1205 of 2014). [note: 12]

(e) Mr Loo Dip Seng on behalf of Global Energy Trading Pte Ltd, (the physical supplier in OS 1162/2014) and Sentek Marine Pte Ltd (the physical supplier in OS 1202/2014). [note: 13]

14 The principal difficulty they face is the absence of privity of contract between the purchasers and the physical suppliers (see [4] above). It is not disputed that the physical suppliers have a contractual claim against the *sellers*, but that is strictly irrelevant for the purposes of the consolidated applications. In order for interpleader relief to lie, it must be the *applicant* (*ie*, the purchaser) who faces competing claims. Fittingly, therefore, the submissions focused extensively on the alleged causes of action which the physical suppliers may have against the purchasers. I will delve into the details of their arguments more fully later but a brief synopsis will suffice for now.

(a) All the physical suppliers rely on the existence of a retention of title clause ("ROT clause") in the Seller-Physical Supplier contract which specifies that title in the bunkers does not pass until the purchase price is paid. Given that the sellers have not paid them for the bunkers, they assert that they still hold title to the bunkers and one of the following two outcomes must follow: [note: 14]

(i) First, they contend that pending payment for the bunkers (and the transfer of title which follows), the OW entities stand as "fiduciary agents" or "bailees" of the bunkers and consequently they now hold the *sale proceeds* on trust for the physical suppliers ("the fiduciary agent/bailee argument"). [note: 15]

(ii) Second, they assert that the purchasers are liable to the physical suppliers in the tort of conversion since they have consumed the bunkers (the "tort of conversion" argument). [note: 16]

(b) Mr Ibrahim advances two additional arguments on behalf of his client. One is that there exists a collateral contract between the purchasers and the physical suppliers which allows the physical suppliers to assert a direct contractual claim against the purchasers for the price of the bunkers (the "collateral contract" argument). [note: 17] The next is that the physical suppliers have a direct restitutionary claim against the purchasers on account of the fact that the latter

have been unjustly enriched at the former's expense ("the "unjust enrichment argument"). [note: 18]

(c) Finally, Mr Mohan argues that while no maritime lien may arise in respect of unpaid bunkers in Singapore, it is *possible* that the physical suppliers could bring suit in a jurisdiction which recognises such a lien, in which event the purchasers' vessels would be liable to arrest. He contends that this suffices as a "competing claim" in respect of which interpleader relief ought to lie. [note: 19]

Arguments opposing interpleader relief: sellers

15 Opposing the application are the parties whom I shall refer to collectively as the "sellers". They comprise the OW entities, OCM, ING, Mr Chan Kheng Tek, and Mr Goh Thien Phong. Mr Chan and Mr Goh are both partners in PricewaterhouseCoopers Singapore, the receivers of the secured assets of the OW entities. The OW entities (through their liquidator, KPMG Services Pte Ltd) [note: 20] and OCM [note: 21] have both confirmed that their positions are aligned with that of ING. Nevertheless, each of the sellers has elected to file separate submissions in opposition to the consolidated applications. In total, the sellers have filed four sets of submissions:

(a) Mr Davinder Singh on behalf of ING, Mr Chan, and Mr Goh. [note: 22]

(b) Mr Lim Shack Keong on behalf of OW Far East. [note: 23]

(c) Mr Danny Ong on behalf of DOT. [note: 24]

(d) Mr Gerald Yee on behalf of OCM. [note: 25]

16 The sellers argue that the conditions precedent for the grant of interpleader relief have not been met because the competing claims asserted by the physical suppliers are factually and legally unsustainable [note: 26] and are, in any event, not "adverse" to the sellers' claims since they do not relate to the same subject matter. [note: 27]

The law on interpleader

The court's power to grant interpleader relief is conferred by statute

17 The power of the High Court to grant interpleader relief is expressly conferred by s 18(2) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") read with para 4 of the First Schedule. Paragraph 4 of the First Schedule to the SCJA provides that this court has the power to grant interpleader relief in two circumstances:

4. Power to grant relief by way of interpleader —

(a) where the person seeking relief is under liability for any debt, money, or goods or chattels, for or in respect of which he has been or expects to be, sued by 2 or more parties making adverse claims thereon; and

(b) where a Sheriff, bailiff or other officer of court is charged with the execution of process of court, and claim is made to any money or goods or chattels taken or intended to be taken

in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process is issued,

and to order the sale of any property subject to interpleader proceedings.

The language of para 4 is reproduced in O 17 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC").

18 It is important to appreciate the point which is being made here. The power of this court to grant interpleader relief is statutorily conferred and it is *only available* where the conditions precedent set out in para 4 of the SCJA are met. This court does not have the power to grant interpleader relief (or exercise any powers within the interpleader process) outside the parameters set out in statute. During the oral hearing, Mr Mohan submitted that the court should adopt a "light-touch, minimal evaluation" approach towards the requirements in O 17 in order that it can "'take the bull by its horns' to bring the dispute to an end once and for all". [note: 28] I do not think such a submission can be accepted. The powers of the court in this area have been delimited by Parliament and these limits demand scrupulous adherence. Adopting a liberal approach towards the grant of interpleader relief might open the floodgates, encouraging claimants who do not legitimately believe that they have a sustainable cause of action to participate in the interpleader summons in order to gauge the court's assessment of their claims. That would not only be improper, it borders on an abuse of process.

The structure of O 17

19 The relevant provisions of O 17 read:

Entitlement to relief by way of interpleader (O. 17, r. 1)

1. Where —

(a) the person seeking relief is under liability for any debt, money or goods or chattels, for or in respect of which he has been or expects to be, sued by 2 or more parties making adverse claims thereon; or

(b) the Sheriff or other officer of the Court is charged with the execution of process of the Court, and claim is made to any money or goods or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process is issued, and to order the sale of any property subject to interpleader proceedings,

the person under liability or (subject to Rule 2) the Sheriff, may apply to the Court for relief by way of interpleader.

Mode of application (O. 17, r. 3)

3.—(1) An application for relief under this Order must be made by originating summons unless made in a pending action, in which case it must be made by summons in the action in one of the forms in Form 27.

…

(3) Subject to paragraph (4), an originating summons or a summons under this Rule filed by the

Sheriff or a person under liability must be supported by a statement in Form 25 or an affidavit in Form 26, as the case may be, stating that the applicant —

(a) claims no interest in the subject-matter in dispute other than for charges or costs;

(b) does not collude with any of the claimants to that subject-matter; and

(c) is willing to pay or transfer that subject-matter into Court or to dispose of it as the Court may direct.

…

Powers of Court hearing originating summons or summons (O. 17, r. 5)

5.—(1) Where on the hearing of an originating summons or a summons under this Order all the persons by whom adverse claims to the subject-matter in dispute (referred to in this Order as the claimants) appear, the Court may order —

(a) that any claimant be made a defendant in any action pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order; or

(b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.

(2) Where —

(a) the applicant in an originating summons or a summons under this Order is the Sheriff;

(b) all the claimants consent or any of them so requests; or

(c) the question at issue between the claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.

(3) Where a claimant, having been duly served with an originating summons or a summons for relief under this Order, does not appear on the hearing or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, forever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

20 The scheme of O 17 of the ROC contemplates that any application for interpleader relief will proceed in two stages:

(a) At "stage 1", the court will ascertain if the conditions precedent for the grant of interpleader relief have been satisfied (O 17 rr 1 and 3). The only issue before the court is whether interpleader relief can be granted (*ie*, whether the statutory preconditions have been satisfied). It is only if this court finds that the conditions precedent for interpleader relief have been met that we move to "stage 2".

(b) At "stage 2", the court will decide what consequential orders ought to follow. The court has the discretion whether or not to grant interpleader relief (see O 17 r 5). If the court elects to grant interpleader relief, it may (i) order that a claimant to the interpleader proceedings be made a defendant in a subsisting action (O 17 r 5(1)(*a*)); (ii) direct that the contest between the claimants be stated and tried (O 17 r 5(1)(*b*)); or (iii) determine the question at issue between the competing claimants summarily (O 17 r 5(2)).

21 As is clear from the foregoing, the two substantive issues which arise for determination are: (a) have the conditions precedent for interpleader relief been satisfied; and (b) what consequential orders should the court make?

Is leave of court required?

22 As a preliminary point, I will first deal with Mr Kuek's submission (with which Mr Mohan, [note: 29] Mr Chua [note: 30] and Mr Lim [note: 31] all agree) that leave of court is required since the OW entities are presently in liquidation. Mr Kuek pointed to s 299(2) of the Companies Act (Cap 50, 2006 Rev Ed) ("CA"), which provides: [note: 32]

> After the commencement of the winding up no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes.

23 In the course of the oral hearing, I had offered the tentative observation that s 299(2) might not apply here since it did not appear that any action was being "proceeded with or commenced against" the OW Entities. However, upon further reflection, I agree with Mr Kuek that leave of court is necessary. To the best of my knowledge, no local case has considered this issue. However, the decision of the English High Court in *Eastern Holdings Establishment of Vaduz v Singer & Friedlander Ltd and Others* [1967] 1 WLR 1017 ("*Eastern Holdings*") is squarely on point. In *Eastern Holdings*, the defendant advanced several loans to A (a company) upon the provision of some shares as security for the loans. After A entered liquidation, another company, E, repaid the loans and asked that the shares be transferred to it on the basis that it was entitled to them by subrogation. A (through its liquidators) also made a claim for the shares. The defendant sought interpleader relief but its application was dismissed by Buckley J on the basis that leave was required under s 231 of the Companies Act 1948 (c 38) (UK) ("UK CA") (which is similar to s 299(2) of our CA) but had not been obtained. Buckley J reasoned as follows (at 1020G):

> In the present case, *the court might order that the issue between the plaintiff and the first claimant should be disposed of in this action, as between plaintiff and defendant, and that the first claimant be made a defendant accordingly*; and if it be the fact that there are issues to be tried between the first and second claimants the court would also direct such issues to be stated and tried between the two claimants. *As soon as this court had made such an order, it is manifest, I think, that proceedings would be on foot to which section 231 of the Companies Act, 1948, would apply, for those would be proceedings against the company in liquidation. In that way it would be impossible for anybody to proceed with those proceedings without leave of the court*, in the face of section 231, and if the companies court should conclude that, for some reason or other, the proceedings, as constituted by the directions given in this court, were unsatisfactory in the companies court, it would, it seems to me, be within its rights under section 231 to refuse leave to go on with those proceedings. … [emphasis added]

24 I respectfully agree. Even though interpleader proceedings "are not, in the strictest sense, proceedings against anybody" (see *Tong Lee Co Pte Ltd v Koh Chiow Meng and Another* [1993] SGHC 69), as soon as this court is seized of its interpleader jurisdiction, it has the power to order the insolvent company to put forward its claims in a substantive interpleader hearing and to summarily determine the dispute (either to the benefit or detriment of the insolvent company). Either way, the insolvent company would be exposed to further liability in terms of costs and litigation expenses. Given that the purpose of the statutory moratorium is to prevent the value of the insolvent company's estate from being dissipated in litigation (see *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, Rev 3rd Ed, 2009) at para 17.131), I am satisfied that the initiation of interpleader proceedings falls squarely within the scope of s 299(2) of the CA.

25 Furthermore, it is no answer to say that the insolvent company can avoid incurring litigation expenses by not entering an appearance. Order 17 r 5(3) provides that a claimant who — having been served with a summons for interpleader relief — either elects not to enter an appearance or, having entered appearance, refuses future participation in the hearing may be forever barred from prosecuting its claim against the applicant. In other words, an insolvent company who is named as a respondent in interpleader proceedings is *compelled* (perhaps against its will) to participate in the interpleader on pain of losing its claim to the subject matter of the interpleader. For example, if a bank seeks interpleader relief in respect of competing claims to money in the insolvent company's account, the company can choose not to enter an appearance (in which case it runs the risk of losing its claim to the money in the account to the detriment of its creditors) or it can choose to enter an appearance, in which case it would be exposed to the attendant costs of litigation. Either way, it seems to me that this is precisely the sort of situation which falls within the ambit of s 299(2) of the CA.

26 Having considered the circumstances in their totality, I am of the view that the "balance of convenience and the demands of justice" (see *Chatib bin Kari v Mosbert Bhd (in liquidation)* [1984] 2 MLJ 67) favour the grant of leave. The present case is unique in that the insolvent companies are not defendants *per se* but, rather, they are competing claimants that stand to gain if they prevail in the interpleader. Therefore, win or lose, the company's participation in the interpleader proceedings will not interfere with the *pari passu* distribution of the company's assets in the insolvency process save for the possible diminution of the insolvent estate in the form of expenses and costs which may be incurred in the prosecution of the interpleader. However, such costs should not be too significant, given that interpleader proceedings are structured to favour expedition. This is perhaps why Buckley J remarked that he had "little doubt that in most cases where interpleader summons proceedings are contemplated, no difficulty whatever would be encountered in obtaining the necessary leave and with very little expense". (see *Eastern Holdings* at 1021H). That is perhaps also why the liquidators have indicated that they have no objections for leave to be granted for the present interpleader proceedings. [note: 33]

Have the conditions precedent been satisfied?

27 As observed at [19]–[20] above, the power of the High Court to grant interpleader relief is expressly governed by O 17 of the ROC. In *Tay Yok Swee v United Overseas Bank Ltd and others* [1994] 2 SLR(R) 36 ("*Tay Yok Swee*") at [10], the Court of Appeal held that O 17 r 1(1) of the Rules of the Supreme Court (Cap 322, R 5, 1990 Ed) (which is *in pari materia* with O 17 r 1(*a*) of the 2014 ROC) set out three pre-conditions for the grant of interpleader relief:

(a) The applicant seeking interpleader relief must be "under a liability for any debt, money, goods or chattels".

(b) There must be "an expectation that he [*ie*, the applicant] would be sued by at least two persons".

(c) There must be "adverse claims for the debt, moneys, goods or chattels" from the persons whom the applicant expects will bring suit.

28 The burden of proving that the preconditions have been met fall on the applicant who is seeking relief (*ie*, the purchasers): see *Chin Leong Soon and Ors* v *Len Chee Omnibus Co Ltd & Anor* [1970] 2 MLJ 228 ("*Chin Leong Soon*") at 233G. It is not in dispute that condition (a) has been satisfied since the purchasers are clearly under a contractual obligation to make payment for the bunkers under the Purchaser–Seller Contracts. However, the parties disagree on whether conditions (b) and (c) have been satisfied.

An expectation of being sued by at least two persons

29 Mr Singh submitted that in order to satisfy condition (b), the purchasers have to show that the physical suppliers have "a *prima facie* case against the [purchasers] in respect of their claims." [note: 34] In support of his submission, he drew my attention to a number of authorities decided across the Commonwealth. Both Mr Mohan [note: 35] and Mr Chua [note: 36] agreed with this submission. However, Mr Kuek disagreed and instead submitted that it would suffice for the purchasers to establish that the competing claims are "not bound to fail".

The competing claims must have a prima facie basis

30 In *Watson v Park Royal Caterers Ltd* [1961] 1 WLR 727 ("*Watson*") (applied in *Chin Leong Soon* at 231C), Edmund Davies J (as he then was) held at 734 that "the discretionary relief of interpleader will not be granted unless *there appears to be some real foundation for the expectation of a rival claim*" [emphasis added]. However this begs the question: when can it be said that such a "real foundation" exists?

31 In *Chan King Sheen v KC Tsang & Co, Solicitors (a firm) & Ors* [2002] 3 HKC 209 ("*Chan King Sheen*"), the Hong Kong Court of Appeal opined, at [26], that "there can be no real foundation for any expectation to be sued unless a *prima facie* case exists". The gloss added in *Chan King Sheen* has since been applied in a number of other cases in Hong Kong (see, *eg*, *DLA Piper Hong Kong (a firm) v China Property Development (Holdings) Limited & Anor* [2010] HKCU 154 ("*DLA Piper*") and *Nanyang Commercial Bank Limited v The Personal Representative of Vannee Nativivat, Deceased and Another* [2013] HKCFI 485).

32 In *RHB Bank v Comax Sdn Bhd & Anor* [1999] 3 CLJ 552, the High Court of Johor Bahru, after citing *Watson*, put it in a slightly different way (at 557C–D):

> The conflict between the claimants *must be real in the sense that each claim, if proven, would give a* ***good cause of action*** against the applicant, so that where the applicant is not under any obligation to one of the claimants, or *where he can, without incurring any liability, pay the subject matter of the claim to one of the claimants, he is not entitled to relief* (of interpleader).
>
> Then again, *a mere pretext of conflicting claim is not enough and the* ***court must be satisfied that there is a question to be tried*** (*Sun Insurance Office v. Galinsky*) [1914] 2 KB 545, where in the circumstances it was doubtful whether there was any genuine adverse claim.
>
> [emphasis added in italics and bold italics]

33 In my view, the various expressions used— "prima facie case", "good cause of action", "real foundation" and "question to be tried" — all engage the same inquiry: *viz*, does the applicant really face a *genuine* threat of multiple proceedings? I pause here to make a clarification. The question is *not* whether the applicant has a genuine *subjective* apprehension (however acutely felt) that competing claims will be brought against him; rather, the question is whether the competing claims have an *objective* basis in law and fact. This is an important point. Interpleader relief exists for the hapless and innocent; not the flighty and skittish. Nervous or overly cautious stakeholders cannot hide themselves behind the skirts of the courts at the slightest sign of controversy. The office of interpleader is neither a licence for applicants to abdicate their duty to conduct an independent legal assessment of the tenability of the potential claims they face nor can it be used as an "insurance policy" against potential litigation.

34 When presented in this way, the test is really not very far away from Mr Kuek's submission that the purchasers need only show that the competing claims are "not bound to fail". I consider the *prima facie* case test to be most apt and easy to apply especially since there is already a significant body of case law which has expounded on this test, albeit in different contexts. In *Relfo Ltd (in liquidation) v Bhimji Velji Jadva Varsani* [2008] 4 SLR(R) 657 ("*Relfo*") at [20], Judith Prakash J held that a "*prima facie* case is determined by assuming that the evidence led by the plaintiff is true, unless it is inherently incredible or out of all common sense or reason".

Have the purchasers shown that they faced any prima facie claims from the physical suppliers?

(1) The fiduciary agent/bailee argument

35 The premise of the "fiduciary agent/bailee argument" is the assertion that the physical suppliers have title to the bunkers. Despite minor differences in the language of their respective contractual clauses, the argument takes the following basic form. First, the physical suppliers point out that a retention of title clause in the Seller-Physical Supplier contract provides that title does not pass until payment has been made (see, *eg*, cll 12.2 and 12.3 of Global Energy Trading's General Terms and Conditions of Sale ("GTCs")). [note: 37] Second, they argue that their GTCs have been incorporated into the Purchaser–Seller contract by virtue of cl L.4(*a*) of the OW Entity's GTCs, which provides that the purchasers are deemed to have read and accepted any terms and conditions imposed by the third party who physically supplies the bunkers (if any). [note: 38] Finally, they conclude that because payment has not been made, they retain title to the bunkers. [note: 39]

36 It is clear that this argument, alone, is a non-starter. Even assuming that the physical suppliers have title to the bunkers, they would not, without more, be entitled to the *proceeds of the sale* of the bunkers, which is what they now seek. As stated by the learned authors of *Benjamin's Sale of Goods* (M Bridge, gen ed) (Sweet & Maxwell, 9th Ed, 2014) ("*Benjamin's Sale of Goods*") at para 5-151, "a mere retention of title provision will not, of itself, impose upon the buyer an obligation to account to the seller for the proceeds of sale of the goods in which property is retained." Perhaps recognising this, some of the physical suppliers have pointed to the fact that their GTCs specify that, pending payment, the buyers hold the bunkers as "fiduciary agent and bailee" (see, *eg*, cl 12.3 of Sirius Marine's GTCs). On the strength of this, they argue that the OW entities hold the proceeds of sale of the bunkers on trust for them.

37 However, this argument is plainly unsustainable. It is clear that the physical suppliers do not, at present, have a proprietary interest in any "proceeds of sale". The purchasers have not paid the sellers for the bunkers so the sellers have no title to any "proceeds of sale" which can be impressed

with a trust. It is only when the sellers are paid that the trust can be constituted and the physical suppliers then acquire a proprietary interest in the moneys which have been received (see *FG Wilson (Engineering) Ltd v John Holt & Co (Liverpool) Ltd* [2014] 1 WLR 2365 ("*FG Wilson*") at 2383D–F, per Patten LJ).

38 In any event, I find that there is simply no evidence to support their claim that a fiduciary relationship exists. Just as the use of the word "trust" is not determinative of the existence of an intention to create a trust (see *Tito v Waddell (No 2)* [1977] Ch 106) so, too, the use of the expression "fiduciary agent" or "bailee" is not conclusive of the existence of a fiduciary relationship (see *Clough Mill v Martin* [1985] 1 WLR 111 at 116 per Robert Goff LJ). Ultimately, "[o]ne therefore has to examine the relationship in each individual case, to see whether it is of a fiduciary nature" (see *Hendy Lennox (Industrial Engines) Ltd v Grahame Puttick Ltd* [1984] 1 WLR 485 at 498H per Staughton J). In my view, there appears to be at least two strong reasons which militate against such a conclusion:

(a) First, the Physical Supplier-Seller contracts provided for a credit period of 30 days (see, *eg*, the Sales Confirmation from Universal Energy to OW Far East in OS 1147/2014). [note: 40] This is strong evidence that the relationship between the sellers and physical suppliers was a normal commercial relationship of buyer and seller, and not a fiduciary relationship in which there exists obligations of trust and confidence (see *Compaq Computer Ltd v Abercorn Group Ltd (t/a Osiris) and Others* [1993] BCLC 602 ("*Compaq*") at 612h per Mummery J).

(b) Second, there was never any requirement that the sale proceeds be kept separate. If a buyer is not bound to keep the proceeds of sale separate but is entitled to mix it with his own money and deal with it as he pleases, then properly speaking, he is not a fiduciary of that sum but merely a debtor (see *Henry v Hammond* [1913] 2 KB 515 at 521). Given that the sellers were never required to keep the proceeds of sale separate, it appears that it was always intended that they could sell the bunkers on their own account and not as a fiduciary. This is unlike the situation in *Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd* [1976] 1 WLR 676, ("*Romalpa*") where the receiver kept the proceeds from the sub-sales separate and never mixed them with his own money (see *Romalpa* at 687D, per Roskill LJ).

39 Some of the sellers have also submitted that, at best, the operative clauses grant the physical suppliers a *charge* over the proceeds of sale which would be void against the insolvent companies (*ie*, the OW entities) for want of registration (see s 131 of the Companies Act (Cap 50, 2006 Rev Ed). [note: 41] I have reservations whether it can be said that, on an objective construction of the contract, the parties intended to create a charge. In the ordinary course of operations, the OW entities would have concluded many bunker contracts on a daily basis with counterparties in a large number of jurisdictions. It seems to me that it is unlikely that the parties would have intended the physical suppliers to go through the cumbersome process of registering a charge in Singapore *each time* they concluded a contract for the sale of bunkers. Such a construction of the contract would not comport with commercial reality.

40 The bailment point can be disposed of summarily. The essence of bailment is possession: it arises where there has been a transfer of possession of a chattel to the recipient (see Norman Palmer, *Palmer on Bailment* (Sweet & Maxwell, 3rd Ed, 2009) ("*Palmer on Bailment*") at para 1-001–2). That being the case, the only purchasers who can be said to be bailees would be the shipowner/applicant in OS 1076/2014 (see [8(c)] above). As the other purchasers do not own the vessels in question, they cannot be said to have been in possession. In any event, an action for breach of a bailee's duties will usually lie in *damages* (see *Palmer on Bailment* at para 37-002). It will not entitle the physical supplier to lay claim to the proceeds of sale of the bunkers *unless* the

bailment was overlaid with a fiduciary relationship to account for the sale proceeds (see *Re Andrabell Ltd (in liq)* [1984] BCLC 522 ("*Re Andrabell*") at 529i–530f per Peter Gibson J), which I have found to be otherwise.

(2) The tort of conversion argument

41 The "tort of conversion" argument is similarly premised on the physical suppliers having title to the bunkers. The argument is that the purchasers, in consuming the bunkers, have interfered with the physical suppliers' possessory rights and are therefore liable in the tort of conversion. I do not agree.

42 A claim in conversion lies where there has been an unauthorised dealing with a chattel in a manner which deprives the claimant of the use and the possession of the same (see *Clerk & Lindsell on Torts* (Michael Jones, gen ed) (Sweet & Maxwell, 21st Ed, 2014) ("*Clerk & Lindsell*") at para 17-07). It necessarily follows, therefore, that acts which are performed within the scope of the actual owner's permission cannot attract liability in the tort of conversion (see *Clerk & Lindsell* at 17-08). In the present case, the physical suppliers *delivered* the bunkers to the vessels and must plainly have intended (or at least must be taken to have intended) for the bunkers to be consumed. This is consistent with cl H.2 of the OW entities' GTCs which permitted the bunkers to be used in the propulsion of the vessel even before payment. [note: 42] This being the case, it is clear that no claim in conversion may lie.

43 In any event, any claim in conversion, even if it does exist, will lie only in *damages*. It does not follow that the physical suppliers have a legitimate claim to the *contractual price* of the bunkers under the Purchaser–Seller contract.

(3) The collateral contract argument

44 Mr Ibrahim submits that, at the time the Purchaser–Seller Contract was concluded, there was also a *separate collateral* contract that the purchasers would make *direct* payment of the price of the bunkers in the event of the seller's insolvency. [note: 43] However, Mr Ibrahim has not made any attempt to particularise the alleged collateral contract: it is not clear *when* the offer was made, the *terms* upon which the offer was made, *when the offer was accepted* and on *what terms*. As the Court of Appeal in *Ang Sin Hock v Khoo Eng Lim* [2010] 3 SLR 179 cautioned at [80], "fresh contracts – and even collateral contracts, for that matter – cannot, as it were, be 'conjured' out of 'thin air'. Indeed, where the relevant legal criteria are *not* satisfied, the court concerned will certainly *reject* the argument in favour of a collateral (and/or fresh) contract in no uncertain terms…" [emphasis in original]. There is simply no evidence to support Mr Ibrahim's assertion that a collateral contract exists.

45 Mr Ibrahim had also submitted, for good measure, that "fairness and justice" demanded such an outcome to allow the physical supplier to recover the sum owed to them. In my view, this appeal to "fairness and justice" rings hollow. The fact that the OW entities are now insolvent does not extinguish the physical suppliers' contractual claims since their debts may still be provable in insolvency. What Mr Ibrahim is effectively seeking is for the physical suppliers to be allowed to side-step the insolvency process entirely and instead seek recovery of its claim directly from a *third party*, to the detriment of the OW entities' other creditors. This, it seems to me, is both unfair and unjust.

(4) The unjust enrichment argument

46 In order for a claim in unjust enrichment to succeed, a plaintiff has to show: (a) the defendant has received a benefit (*ie*, he has been enriched); (b) the enrichment is at the plaintiff's expense; (c)

it is unjust to allow the defendant to retain the enrichment; and (d) there are no defences available to the defendant (see *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 at [110]). Citing this passage, Mr Ibrahim submitted: [note: 44]

> On the facts of the present case, the [purchaser] has a legal compulsion (being the unjust factor) to *return* the [contractual price of the bunkers] to the [physical supplier] and it would be manifestly unjust if the [purchaser] does not do so. … Justice demand therefore demands (*sic*) that this Honourable Court should allows (*sic*) the [physical supplier's] claim by reversing the windfall obtained by the [purchaser], which in turn ensures certainty in the Bunker trade. [emphasis added]

47 This argument is plainly question-begging. What Mr Ibrahim seems to be saying is that the purchaser is legally liable to make restitution of the contractual price of the bunkers because it would be unjust of the purchaser not to when he is legally obliged to do so. This argument makes little sense. If the purchaser were legally obliged to pay the physical supplier, then there would be no need to appeal to the doctrine of unjust enrichment — the obligation to pay would stem from the primary obligation, be it in contract or otherwise. However, the question of whether the purchaser has a legal obligation to pay the contractual price of the bunkers to the physical supplier is *precisely the question which is in dispute*. In any case, the argument is simply factually unsustainable. The purchasers have admitted that they are liable to make payment for the bunkers so there is no question of them withholding payment and thereby being unjustly enriched. The only question is *to whom* they should make payment.

(5) The maritime lien argument

48 This argument is only relevant to the purchasers in OS 1076/2014 (see [8(c)] above) since they own the vessels in which the bunkers were stemmed (and whose vessels therefore face the threat of arrest). The argument is premised on the existence of a clause in some of the physical suppliers' GTCs which provides for the creation of a lien for the price of unpaid bunkers. For example, clause 5 of Uni Petroleum's GTCs provides that "[a]ll amounts due shall operate as a lien/s against such vessel/s". [note: 45]

49 As a starting point, maritime liens give rise to proprietary interests and their creation is therefore subject to the *numerus clausus* principle. This gives rise to two important consequences: (a) the circumstances under which they may arise in Singapore are limited and do not include liabilities arising out of unpaid bunkers (see *The "Ohm Mariana" ex Peony* [1992] 1 SLR(R) 556 at [18]); (b) they cannot be created by contract (see *Admiralty Commissioners v Valverda (Owners)* [1938] AC 173 at 186 per Lord Wright). In *The "Halcyon Isle"* [1979–1980] SLR(R) 538 ("*The Halcyon Isle*"), the Privy Council (on appeal from a decision of the Court of Appeal of Singapore), held that the recognition of a maritime lien was a matter that fell to be determined according to the *lex fori*.

50 Mr Mohan accepts that the foregoing represents the law in Singapore. However, he argues that there are jurisdictions which recognise the creation of maritime liens in respect of unpaid bunkers (*eg*, the United States of America). [note: 46] While the mere recognition of the existence of a maritime lien does not give the physical suppliers a direct cause of action against the purchasers for the price of the bunkers under the Seller-Physical Supplier contracts, he argues that it is always open to the physical suppliers to arrest the vessel in such a foreign jurisdiction in order to enforce their claims. The possibility of arrest, he argues, suffices to establish the existence of a "competing claim" in respect of which interpleader relief is available. [note: 47]

51 It is not clear to me how this can be a "competing claim". A maritime lien is an encumbrance on the vessel which accrues simultaneously with the cause of action but lies inchoate until it is carried into effect by an action in rem (see *The Bold Buccleugh* (1851) 7 Moo PC 267; *The Halcyon Isle* at [9]). In other words, a maritime lien exists as a form of security for an underlying claim which is *enforceable* through an action *in rem* and entitles the claimant to be paid out of the proceeds of sale of the vessel in priority to other classes of creditors (see *The Halcyon Isle* at [10] and [21]). It is not a separate claim *per se*.

52 Furthermore, it is clear that a right of arrest not recognised by the *lex fori* (*ie*, Singapore) cannot be a competing claim. An application for interpleader relief is not a claim for a substantive right, but for relief of a procedural nature: what the applicant is asking for is to be released from proceedings and to have the court compel the competing claimants to put forward their claims for adjudication (see *Glencore International AG v Shell International Trading and Shipping Co Ltd and Metro Oil Corporation* [1999] 2 Lloyd's Rep 692 at 697). In other words, the competing claimants are being asked to assert their claims *in Singapore*. However, the Singapore courts would never decide in favour of the party asserting a maritime lien over unpaid bunkers simply because such a lien (which is subject to the *lex fori*) does not exist under Singapore law. That is not to say that no foreign cause of action can be a competing claim for interpleader relief in Singapore. A distinction must be drawn between a right which is subject to the *lex fori* and a cause of action which is recognised by its proper law. Here the court is concerned with a right (*ie*, a maritime lien) which is subject to the *lex fori* and not the proper law of the Seller–Physical Supplier contract.

53 By way of a letter dated 14 July 2015, Mr Kuek brought the decision of the United States District Court for the Southern District of New York in *UPT Pool Ltd v Dynamic Oil Trading (Singapore) Pte Ltd et al* 14-CV-9262 (VEC) (SDNY July 1, 2015) ("*UPT*") to my attention without explaining its relevance to the issues before me other than to state that it involved "a factual matrix which is significantly similar to the facts" in the consolidated applications. It is clear to me that the decision is of little relevance. Apart from the fact that the US statutory requirements (see 28 USC § 1335) are different from O 17, both the physical suppliers and the sellers in that case were asserting a maritime lien in respect of the supply of bunkers against the vessels, thereby satisfying the symmetry requirement (see *UPT* at pp 11 and 18). More significantly, United States law, unlike Singapore law, recognises the existence of maritime liens in respect of "necessaries" (*eg*, bunkers). Therefore, the case of *UPT* is of no assistance to the question of whether interpleader relief is appropriate on our facts.

54 In any event, there is *no* evidence before this court that any of the physical suppliers intend to or have *any* basis to assert a claim in a jurisdiction which recognises a maritime lien in respect of unpaid bunkers. Indeed, *none* of the parties (not even the purchasers in OS 1076/2014, which Mr Mohan represent) has adduced any evidence that its vessels face any real threat of arrest. To do so, I would expect the purchasers to state at least the following matters in their supporting affidavits: (a) the trading pattern of the vessels; (b) the fact that the law of the jurisdiction where the vessels regularly trade recognises the existence of a maritime lien for unpaid bunkers; (c) that the physical suppliers have intimated or asserted a maritime lien against its vessels in the relevant jurisdiction; and (d) an opinion on foreign law that the court of the relevant jurisdiction would exercise its power of arrest to enforce the maritime lien in the circumstances of this case. None of this was placed before me. This court cannot recognise the existence of a *prima facie* competing (foreign) claim founded upon the speculative existence of a maritime lien in respect of the unpaid bunkers. The interpleader jurisdiction of this court can only be invoked against real and actual claims and not hypothetical and speculative claims of the sort articulated by Mr Mohan (see *Isaac v Spilsbury* (1883) 10 Bing 3).

55 In summary, I find that interpleader relief cannot be granted because the competing claims

raised do not disclose any *prima facie* case for relief. This finding is sufficient to dispose of the consolidated applications. However, for completeness, I will go on to examine whether the competing claims raised are truly "adverse".

Are there adverse claims?

56 A point which divided the parties during the hearing was the applicable test to determine whether the competing claims are "adverse". The parties disagreed on whether the competing claims had to be proprietary in nature. This dispute cuts across battle lines and there was no consensus, within any of the three groups (purchasers, physical suppliers, and sellers), as to what the correct legal position should be.

(a) Mr Chua, Mr Ibrahim, and Mr Ong all submitted that in order for the competing claims to be "adverse", the competing claims must be *proprietary in nature* and they must be asserted over the same subject matter. [note: 48] In support of this proposition, Mr Ong cited three decisions of the Court of Appeal: *Tay Yok Swee*, *Thahir Kartika Ratna v PT Pertambangan Minyak dan Gas Bumi Negara (Pertamina)* [1994] 3 SLR(R) 312 ("*Thahir*"), and *The Republic of the Philippines v Maler Foundation and others and other appeals* [2014] 1 SLR 1389 ("*Maler Foundation*"). At [84] of *Maler Foundation*, Chao Hick Tin JA stated,

> … The only question that the court is concerned with in an interpleader proceeding is the resolution of adverse claims to the *res* that forms the subject matter of the interpleader, and the entitlement must be founded on a title or proprietary interest … Interpleader proceedings are not concerned with a relative *in personam* entitlement to property, or an oblique *jus ad rem* in the form of a right relating to another person's right to the property.

(b) Mr Mohan, [note: 49] Mr Singh, [note: 50] Mr Lim, [note: 51] and Mr Kuek [note: 52] all appeared to accept that the competing claims need not be proprietary in nature. Mr Mohan argued that *Tay Yok Swee* and *Thahir* may be distinguished on the basis that each involved competing claims in respect of a specific fund in a bank account. He argued that it was only in such situations that the competing claims had to be proprietary in order to be "adverse". In support, Mr Mohan cited the decision of this court in *IMC Shipping Company Pte Ltd v Viking Offshore & Marine AS and Another* [1998] SGHC 168 ("*IMC Shipping*") wherein Lai Siu Chiu J stated at [9]:

> … Debts give rise to personal claims and there can be no requirement under O 17 r 1(a) that the 'adverse claims' to a debt must somehow be proprietary.

57 It is important to appreciate the importance of this point. The sellers have advanced *in personam* claims for the recovery of contractual debts due under the Purchaser–Seller contracts. Therefore, if the competing claims must be proprietary in nature, then it is clear that interpleader relief cannot lie. For that reason, I found it rather curious that Mr Chua and Mr Ibrahim — both of whom support the grant of interpleader relief — have advanced this submission.

The essence of interpleader proceedings

58 Before examining the cases which were cited in argument, I think it is useful to first take a step back to understand the history and purpose behind the grant of interpleader relief. The genesis of interpleader may be traced to the practice of the Court of Common Pleas in the fourteenth and fifteenth centuries (see Ralph V Rogers, "*Historical Origins of Interpleader*" (1924) 51 Yale LJ 924; Geoffrey C Hazard Jr and Myron Moskovitz, "An Historical and Critical Analysis of Interpleader" (1964)

52 Cal L Rev 706). However, the modern form of the interpleader as we now know it was developed in the Courts of Equity in the eighteenth and nineteenth centuries before it was reintroduced into the Common Law Courts with the passage of the Interpleader Act 1831 (c 58) (UK) and further refined by the Common Law Procedure Act 1860 (c 126) (UK). Section 12 of the Common Law Procedure Act 1860 empowered the "courts of law to give relief against adverse claims made upon persons having no interest in the subject of such claims" so long as the claims faced were "adverse to and independent of one another." In *De La Rue v Henru, Peron & Stockwell, Limited* [1936] 2 KB 164) ("*De La Rue*"), Greene LJ wrote (at 170–173):

> Interpleader proceedings originated in Courts of equity, and the appropriate procedure where a person found himself harassed by claims made on behalf of two or more persons was by way of a Bill of Interpleader. It is interesting to observe what the nature of that proceeding was. I read a passage from the Fourth Edition of Daniell's Chancery Practice, vol. ii., p. 1418, published in 1867, because it is from this practice in equity that the whole modern law of interpleader is ultimately derived. The learned author says this: "*Where two or more persons claim the same thing, by different or separate interests, and another person*, ***not knowing to which of the claimants he ought of right to render a debt or duty*** **, or to deliver property** *in his custody, fears he may be hurt by some of them, he may exhibit a Bill of Interpleader against them.*" …
>
> …
>
> In substance, when an interpleader issue is tried, two actions against the person interpleading are being dealt with. Interpleader proceedings are the method of compelling the parties—either one, or both, or neither of whom may have actually issued a writ—to prosecute their claims. *As it is the essence of interpleader proceedings that* ***the person who has interpleaded has no title himself he naturally drops out of the suit*** *.* But in effect the entire matter is tried out in the presence of all the parties concerned, and ***the real claimants are compelled to put forward their claims and have them adjudicated upon*** . ***The reason for that is not their own benefit, it is for the relief of the person interpleading.*** [emphasis added in italics and bold italics]

59 In other words, interpleader proceedings exist to assist applicants who want to discharge their legal obligations (to pay a debt, deliver up property etc.) but do not know *to whom* they should do so. The essence of interpleader was eloquently summarised by Sir James Wigram VC in *Crawford v Fisher* (1842) 1 Hare 436 more than half a century before *De La Rue* (at 441 and 442):

> ***The office of an interpleading suit is not to protect a party against a double liability, but against double vexation in respect of one liability*** . If the circumstances of a case shew that the Plaintiff is liable to both claimants, that is no case for interpleader. *It is of the essence of an interpleading suit, that the Plaintiff shall be liable to one only of the claimants*; and the relief which the Court affords him is against the vexation of two proceedings on a matter which may be settled in a single suit. [emphasis added in italics and bold italics]

60 The applicant in an interpleader summons is caught between the devil and the deep blue sea — if he discharges his obligation to one claimant, he exposes himself to suit from the other. In such a situation, the relief of interpleader comes to his aid by compelling the real claimants to present their cases in order that the court can determine which one of the competing claimants has the legal entitlement to call on the enforcement of the applicant's admitted liability. The applicant, having disclaimed any interest in the subject matter of the dispute, "drops out" and is released from the proceedings (see *De La Rue* at 173). In other words, the object of an interpleader is the determination of the *incidence of liability*: *ie*, it serves to identify the person to whom the applicant is

liable. It follows from this that interpleader relief is not available where the applicant is separately liable to both claimants (see *Farr v Ward* [1837] 150 ER 1000) because there is no controversy in such a case: there are two obligations both of which the applicant is legally bound to discharge.

61 From my review of the cases, I have distilled three features that competing claims in an interpleader proceeding must possess in order to be considered "adverse".

62 The first is the requirement of "symmetry": the competing claims must be made in respect of *same subject matter*. This proposition is supported by a long and unbroken line of authority (see *Chin Leong Soon* at 229B–230I) and the parties do not dispute that this represents the law. [note: 53] However, it is important to understand what the expression "subject matter" refers to. The "subject matter" of an interpleader is not, strictly speaking, the *res* which is in the possession of the applicant (*ie*, the goods or chattel or the debt). In some cases, there is no "*res*" to speak of (for example, in *Meynell v Angell* (1863) 32 LJQB 14 ("*Meynell*"), the applicant received competing claims for a debt due under a contract for building works). It is more accurate to describe the "subject matter" of the interpleader as the *legal obligation which the applicant has admitted to*. Looking at it from another perspective, both competing claimants must be calling on the enforcement of the same legal liability. The following two examples are instructive.

63 In *Ingham v Walker* (1887) 3 TLR 448 ("*Ingham*"), the defendant faced two competing claims for the purchase price of a horse: the first was from the plaintiff, on whose behalf he sold the horse; the second was from the buyer of the horse, who claimed damages for misrepresentation (he claimed that the horse did not conform to the description in the catalogue). The English Court of Appeal, in rejecting the defendant's application for interpleader relief, held that "[a] claim on the one side to a specific sum of money and a claim on the other side for unliquidated damages could not be the subject of interpleader proceedings". In other words, the claims, though both referable to the same horse, did not relate to the same legal liability. The first was a claim that the defendant was liable, *in the law of agency*, to account for the *purchase price of the horse* to his principal. The second was a claim that the defendant was liable *in contract* to the purchaser for *damages arising from misrepresentation*.

64 In *Greatorex v Shackle* [1895] 2 QB 249 ("*Greatorex*"), the defendant arranged for her house to be sold at auction. Following that, she received competing claims from two auctioneers, both of whom claimed a commission for the sale of the house. The first claim was for 35*l* and 12s while the second was for 25*l*. The defendant argued that since commission was being claimed by two different parties in respect of the sale of the same house, the subject matter of the claims was the same. The English Court of Appeal disagreed. On the facts, it was clear that the claims asserted by the competing parties were founded on two separate contracts (generating *two different sets of contractual obligations*) and giving rise to two separate causes of action. Thus, the claims, though both referable to the same house, were "not adverse, in the sense of being claims to the same money, but were entirely different claims" (at 252, per Wright J).

65 The second feature is mutual exclusivity: the resolution of the interpleader *must* result in the extinction of the unsuccessful competing claims. This is a corollary of the fact that interpleader proceedings serve to decide who is entitled to call on the applicant to discharge the specified liability. Once the court rules in favour of one of the competing claimants, it must follow, as a consequence, that the other competing claims *to the same subject matter* fall away. If it were not the case, then the interpleader proceedings would offer the applicant no way out from the quandary he finds himself in. For example, in both *Ingham* and *Greatorex*, it was clear that interpleader relief was not appropriate because the extinction of any one of the claims would have absolutely no effect on the remaining claims.

66 As a clarification, I do not mean to suggest that it is a prerequisite to interpleader relief that the competing claims must be co-extensive. It has been clear, since the decision in *Percy Attenborough v The London and St Katharine's Dock Company* (1878) 3 CPD 450, that there is no such requirement. For example, in *Reading v School Board for London* (1886) 16 QBD 686, the plaintiff sued the defendants for a sum of 977*l*. The defendants admitted liability to the extent of 861*l* but disputed the balance sum. Subsequently, a third party also demanded the sum of 861*l* from the defendant, claiming to have been assigned the right to the money by the plaintiff. The court granted interpleader relief in respect of the disputed debt of 861*l*. In that case, the determination of the interpleader resulted in the extinction of one of the competing claims to a sum of 861*l*, *which was the subject matter of the interpleader*. However, the resolution of the interpleader did not affect the third party's claim to the balance sum.

67 The third key feature is that there must be actual disagreement: *ie*, the applicant must face an actual dilemma as to how he should act. As noted at [60] above, interpleader relief exists to extricate the applicant from a genuine practical difficulty. If the competing claimants are *ad idem* as to what should be done but disagree on their rights and entitlements *inter se*, then interpleader relief will not lie. The decision of the Hong Kong Court of Appeal in *Yinggao Resources Ltd v ECO Metal (Hong Kong) Ltd and Another* [2014] HKCA 566 ("*Yinggao*"), which was cited in argument by Mr Mohan, is on point.

68 In *Yinggao*, the plaintiff entered into an agreement for the purchase of copper from Eco and, pursuant to this agreement, transferred a sum of $28m HKD to the latter. Subsequently, Eco came under investigation by the authorities so the parties agreed that this agreement should be terminated and the money repaid. The plaintiff wrote to the bank to ask that the sum be repaid on the basis that Eco was holding the sums *on trust* for its benefit. Eco wrote to the bank separately to state that it specifically denied that the funds were held on trust for the plaintiff but nevertheless informed the bank that, as the named account holder, it was asserting its right to direct that the funds be transferred to the plaintiff. The bank then sought interpleader relief, arguing that although both claims sought the same outcome (*ie*, the transfer of the money to Yinggao), they were nevertheless "adverse" since they put forward different (and inconsistent) bases for their instructions. This argument was accepted at first instance but overturned on appeal. The Hong Kong Court of Appeal held that the claims were not adverse since they did not seek different outcomes. Hon Barma JA observed :

> 13. … *Given that both Yinggao and Eco are in agreement that the two sums should be paid to Yinggao, their claims in respect of the two sums cannot be said to be "adverse" to one another.* ***They seek the same, and not different outcomes*** *, albeit for different reasons.* …
>
> …
>
> 15. *Here, it cannot be said that the Bank does not know to which of Yinggao or Eco it should pay the two sums*. By 10 October 2012 at the latest, it was clear that it was being called upon by both to pay the two sums to Yinggao. ***Where there is no dispute as to which of two parties should receive payment or delivery of the sums or goods held by a third party, there is no practical need for interpleader relief.***
>
> [emphasis added in italics and bold italics]

Must the competing claims be proprietary?

69 With those points in mind, I now turn to the cases cited in argument. In *Tay Yok Swee*, the competing claimants (which included the appellant) were parties to a joint-venture agreement ("the

JV") for the purchase and development of a piece of property, which was mortgaged to the bank as security for a loan. Under the indenture of mortgage, the appellant was named the proprietor of a one-third share in the property whereas the remaining competing claimants ("the second and third respondents") were each stated as the owners of the remaining shares. The parties failed to service their loan repayments and the bank exercised its powers of sale. The surplus proceeds of sale amounted to $2.1m and the appellant argued that he was entitled to a one-third share. The second and third respondents, who had brought suit against the appellant for an account of profits and damages for the breach of the JV, argued that the appellant's one third share ought to be reduced to reflect the damages it owed them. The bank sought interpleader relief.

70 The appellant's claim to a one-third share of the sale proceeds was grounded on *the bank's liability* (as a mortgagee who had exercised the power of sale) to hold the surplus proceeds of sale on trust for the mortgagor who is entitled to the residue. On the other hand, the second and third respondents founded their claims on *the appellant's liability for breach of contract*. It is clear that the competing claims were not in respect of the same *subject matter*: they differed both in terms of the identity of the liable party (the bank or the appellant) as well as in kind (in trust or in contract). In the circumstances, it is clear that the Court of Appeal dismissed the application because the competing claims were not made *in respect of the same subject matter* (*ie*, the requirement of symmetry was not satisfied). The Court of Appeal held (at [15] and [25]):

> 15 … The facts show that, *although the second and third respondents have claimed an entitlement to the remaining one-third surplus, the claim is not a direct one; it is not a proprietary claim on the fund.* According to the statement of claim in Suit No 239 of 1992, they claim for under-contribution by the appellant to the costs of development of the project and also an account of profits arising from the appellant's management of the project. It is essentially a claim under the joint venture agreement.
>
> …
>
> 25 In our opinion, on the material before us, the second and third respondents have no claim on the remaining one-third surplus; that surplus belongs to the appellant. ***They may have a claim against the appellant in contract and for an account; that is a personal claim and has yet to be determined. Such a claim is not adverse to the appellant's claim to the fund.*** [emphasis added in italics and in bold]

71 The other competing claimants never asserted that they had any direct claim to the one-third share of the balance sale proceeds. It was always clear that the bank, as mortgagee, was liable to render one-third of the surplus sale proceeds to the appellant and that the claims mounted by the second and third respondents did not affect the appellant's entitlement. This was not a situation in which there were adverse claims which amounted to "double vexation in respect of one liability". The Court of Appeal only stressed that the second and third respondents did not have a "proprietary claim to the fund" in order to highlight that they, in contradistinction to the appellant, were not making any claim *against the bank*.

72 In *Thahir*, the Court of Appeal had to consider several competing claims over sums of money in 19 fixed deposit accounts ("the accounts") which were in the joint names of General Thahir and his wife, the appellant. Upon the death of General Thahir, the appellant demanded that certain sums in the accounts be paid out to her. However, the bank received a competing claim from Pertamina, General Thahir's former employer. Pertamina claimed to be beneficially entitled to the money in the accounts on the ground that General Thahir had received the sums therein by way of bribes while he was an employee of Pertamina so he — and the appellant, by reason of her complicity in the bribes —

were constructive trustees of the sums in the accounts. Before the Court of Appeal, it was argued that Pertamina had to show that it had a proprietary claim to the deposits in order for interpleader relief to lie. LP Thean JA held (at [14]):

> *The essential question is, therefore, which of the claimants is entitled to the moneys*. … As we see it, the *appellant and Pertamina are competing claimants to the ACU deposits. As the amended first issue recognises, the essence of it is "entitlement" to the moneys*. Hence, even if what Pertamina maintain is the essential issue, their "entitlement" to the deposits must still be founded on some title or proprietary interest they have in the deposits. *It is not enough for Pertamina to show that they have a personal claim* against Gen Thahir and/or the appellant for recovery of the bribes. *They must show that, on one or more of the grounds stated in the amended first issue, they have some title or proprietary interest in the deposit.* … [emphasis added]

73 As a customer of the bank, the appellant was its creditor (see *Bank of America National Trust and Savings Association v Herman Iskandar and another* [1998] 1 SLR(R) 848 at [31]) and, as a corollary, the owner of a chose in action constituted by the indebtedness of the bank to her (see *Ng Wei Teck Michael v Oversea-Chinese Banking Corp Ltd* [1998] 1 SLR(R) 778 at [38]). It was in this capacity — *qua* the owner of a chose of action — that the appellant asserted a claim that the bank, as a debtor, was liable to her in the amount of the funds in the account. Thus, when the court held that "[Pertamina's] 'entitlement' to the deposits must still be founded on some title or proprietary interest they have in the deposits", what it meant was that in order for Pertamina's claim to be "adverse" to that of the appellant's, it likewise had to be a claim which pertained to the bank's liability *qua* debtor in the context of the banker-customer relationship. This required proof that Pertamina had a (proprietary) right to call on the debt (the chose in action) which was the subject matter of the competing claims.

74 Finally, I turn to *Maler Foundation*. Following the overthrow of President Ferdinand E Marcos of the Philippines, the Republic of the Philippines ("the Republic") took steps to recover the ill-gotten wealth which Mr Marcos and his wife had accumulated. *Maler Foundation* concerned competing claims to a portion of this wealth, which was kept in an account with a bank in Singapore opened in the name of the Philippine National Bank ("PNB"). Several parties laid claim to this sum of money, including the Republic (pointing to a decision of the Philippines Supreme Court ordering that all of the Marcos' assets be forfeited to the State), PNB (as account-holders), several Swiss foundations set up by the Marcoses (from whom the money had been seized in Switzerland), and the plaintiffs in a human rights class action suit filed in the United States District Court of Hawaii ("the HR Victims"). The bank then sought interpleader relief.

75 In that section of the judgment which was quoted by Mr Ong (see [56(a)] above), the court was considering the competing claim of the HR Victims. The HR Victims had prevailed in their class action suit in the United States and had obtained judgment for a sum of about US$2b. Pursuant to this, a Clerk of the District Court of Hawaii, one Walter A Y Chinn, executed a deed of assignment of the assets of the Marcos Estate in favour of the HR Victims ("the Chinn Assignment"). The HR Victims argued that, by virtue of the Chinn Assignment, they had acquired title to the sums in the Singapore accounts. Given that their argument involved a foreign law element, the first issue which the court had to deal with was the characterisation of the relevant legal issue, as this was a prerequisite to determine the appropriate governing law of the dispute (see *Maler Foundation* at [81]). The HR Victims submitted that the issue ought to be characterised as one concerning the validity of the Chinn Assignment *vis-à-vis* the assignor (the Marcos Estate) and the assignee (the HR Victims) *only*, and not whether the Chinn Assignment validly granted them title to the sums in the Singapore accounts. The court disagreed and held:

84 … As the Human Rights Victims seemed to be saying that the formulation of their claim to the Funds did not involve any assertion that they had obtained proprietary rights to the Funds at the time the Chinn Assignment was executed, then in the context of the present Interpleader Proceedings, their claim would be seriously undermined. The only question that the court is concerned with in an interpleader proceeding is the resolution of adverse claims to the *res* that forms the subject matter of the interpleader, and the entitlement must be founded on a title or proprietary interest: see the decision of this court in *Tay Yok Swee v United Overseas Bank* [1994] 2 SLR(R) 36 at [12]–[15], followed in *Thahir Kartika Ratna v PT Pertambangan Minyak dan Gas Bumi Negara (Pertamina)* [1994] 3 SLR(R) 312 at [14]–[16]; Singapore Civil Procedure 2013 (Sweet & Maxwell Asia, 2013) at para 17/1/6. Interpleader proceedings are not concerned with a relative *in personam* entitlement to property, or an oblique *jus ad rem* in the form of a right relating to another person's right to the property.

85 *While the Human Rights Victims chose to frame their cause of action based on a hierarchy of relative entitlement to the Funds, we consider that the* ***defining element of the claims of all the parties to the Interpleader Proceedings is the question of title to property*** – the correct characterisation of ***the substance of the issue before this court is the effect of the Chinn Assignment on the title to the Swiss Deposits*** at the time that the judicial assignment allegedly took place, and this falls most appropriately within a proprietary rubric.

[emphasis added in italics and bold italics]

76 It is essential to bear in mind that *Maler Foundation* was an appeal from the *substantive* interpleader proceeding which was held in the court below (*ie*, it was a "stage 2" case: see [20] above). Thus, the court was not concerned with the test to be applied in determining whether a claim is "adverse" (that being a "stage 1" issue). Rather, the court had to decide on the most appropriate characterisation of the claim that was *consistent with the premise that it was an adverse claim*. In *Maler Foundation* (like in *Tay Yok Swee* and *Thahir*), all the competing claimants were asserting proprietary claims ("… the defining element of the claims of all the parties … is the question of title to property …") over funds in a bank account. So what the court was saying was that in the context of this "stage 2" analysis, one *had* to understand the legal relevance of the Chinn Assignment as being an assertion that it had conferred title on the HR Victims to the deposits. If this were not the case, interpleader relief would not have been appropriate to begin with since the competing claims would not even relate to the same subject matter.

77 It is also worth highlighting that paragraph 17/1/6 of *Singapore Civil Procedure 2013* vol 1 (G P Selvam gen ed) (Sweet & Maxwell, 2013) ("*Singapore Civil Procedure 2013*"), which the Court of Appeal cited in *Maler Foundation*, states that the competing claims need not be proprietary in nature. It reads:

> In *IMC Shipping v. Viking Offshore & Anor.* (unreported, delivered on May 18, 1998) Lai Siu Chiu J. held that where the adverse claims were in respect of a debt within the meaning of O. 17, r.1(a), such debts give rise to personal claims and there can be no requirement under O.17, r.1(a) that the adverse claims to a debt must somehow be proprietary. …

78 In *IMC*, two companies (Viking and BELMI) entered into an agreement to set up a joint-venture company in which Viking would contribute a sum of US$450,000 in return for a 30% shareholding. This sum was duly transferred from the bank account of a Norwegian individual, Ohna, on Viking's behalf. Subsequently, it was decided that the share capital of the new company would be reduced to US$10,000, which meant that Viking would only have to contribute a sum of US$3,000. Following this decision, a sum of US$372,000 (after deductions) was to be refunded to Viking. Both Viking and Ohna

laid claim to this sum of US$372,000. The applicant (BELMI's parent company) then sought interpleader relief. Viking resisted the application on the basis that Ohna did not have a proprietary claim (citing *Tay Yok Swee* and *Thahir*). Lai J wrote (at [9]):

> Viking's submission that Ohna's claim had to be a proprietary claim was, in my view, relevant only if IMC was, in the alternative, alleged to be under a liability for 'money' within the meaning of O17 r 1(a) RSC. If the parties were proceeding on this footing, I would agree that the two Court of Appeal cases cited above do suggest that the claims concerned must be proprietary, i.e. must relate to a specific fund. To satisfy this, both defendants here would probably have to argue that the money with IMC was being held under some kind of trust, either express or implied; otherwise any claim for payment by either defendant would appear to be personal and not proprietary. … But as stated above, I was of the view that *Ohna and Viking were making adverse claims to a 'debt' within the meaning of O17 r 1(a). Debts give rise to personal claims and there can be no requirement under O17 r 1(a) that the 'adverse claims' to a debt must somehow be proprietary*. [emphasis added]

79 As Lai J pointed out, the competing claims in *Tay Yok Swee* and *Thahir* both pertained to competing claims to a sum of money in a bank account. In such a situation, the competing claims had to be proprietary (*ie*, relate to title to the chose in action constituted by the sum of money in the bank account) to satisfy the symmetry requirement. However, it did not mean that this had to be so in *every* case. In summary, the decisions cited — *Tay Yok Swee*, *Thahir*, and *Maler Foundation* — do not stand for the proposition that competing claims in an application for interpleader relief had to be proprietary.

80 This also appears to be consistent with the decided cases. In *Meynell*, it was held that interpleader relief was available in a situation where the applicant faced competing claims from A on the one hand and a person claiming to be A's undisclosed principal on the other. In *Development Bank of Singapore Ltd v Eng Keong Realty Pte Ltd and another* [1990] 1 SLR(R) 265, this court granted interpleader relief in respect of a dispute as to whom the applicant-bank ought to pay a sum of $170,000 under a banker's guarantee. In *Australia and New Zealand Banking Group Ltd v Ding Pei Chai and others* [2004] 3 SLR(R) 489 ("*Ding Pei Chai*"), this court granted interpleader relief in respect of competing claims to manage a deposit account opened in the name of a company. None of these cases involved an adjudication of competing *proprietary* claims. Instead, the common denominator is all these cases involved an admitted liability (the payment of a contractual debt, the bank's obligation to its customers etc.) and a dispute over the identity of the party to whom the liability is owed. With that, I will now examine whether the competing claims satisfy the three requirements of symmetry, mutual exclusivity, and actual disagreement identified at [61]–[67] above.

Are the competing claims "adverse"?

81 On the facts, the seller's claim appears to be a simple claim for a contractual debt: *viz*, the contractual price for the bunkers due under the Purchaser–Seller contract. However, Mr Loo disputed this. He submitted that, owing to the presence of the retention of title clause in the Purchaser-Seller contracts, title in the bunkers was never transferred from the Sellers to the Purchasers. That being the case, he argues, on the authority of *FG Wilson*, that s 49(1) of the Sale of Goods Act (Cap 393, 1999 Rev Ed) ("SOGA") precludes the Sellers from maintaining an action for the price of the bunkers. [note: 54] In response, Mr Singh submitted that the SOGA did not apply because the Purchaser-Seller contracts were not contracts for the transfer of property in the bunkers but were instead contracts for the transfer of bunkers for immediate consumption. [note: 55] Ultimately, I do not have to decide this point. If Mr Loo is correct and the sellers cannot maintain an action for the price of the bunkers then, *ipso facto*, there are no competing claims and hence interpleader relief would not be available

(which is why I find it rather odd that Mr Loo has raised this argument). However, for the purposes of evaluating whether the competing claims are adverse to each other, I will proceed on the basis that the sellers can maintain an action for the price of the bunkers.

82 I now turn to the appropriate characterisation of the potpourri of claims put forward by the physical suppliers:

(a) The "fiduciary agent/bailee argument" (see [35]–[40] above) amounts to a proprietary claim for the *proceeds of sale of the bunkers*.

(b) The "tort of conversion argument" (see [42]–[44] above) amounts to an *in personam* claim against *the purchaser* for *damages*.

(c) The "collateral contract argument" (see [44] above) amounts to an *in personam* claim against the *purchasers* for the *price of the bunkers (as set out in the Seller-Physical Supplier contract)* under a *separate contract*.

(d) The "unjust enrichment argument" (see [46] and [47] above) amounts to a *restitutionary claim* against the *purchaser*.

(e) The "maritime lien argument" (see [48]–[54] above), amounts to a claim that the physical suppliers have a *right to proceed in rem* against the vessels in satisfaction of their claim for the unpaid bunkers *and*, further, that they ought to accorded *priority in the distribution of the sale proceeds of the vessel* (see *The Halcyon Isle* at 235D per Lord Diplock).

83 It is clear that none of the competing claims listed above assert that the physical supplier has a *contractual right to be paid the price of the bunkers* under the *Purchaser-Seller contract*. Therefore, the requirement of symmetry has clearly not been satisfied. Furthermore, the extinction of these competing claims will not have *any* impact on the sellers' claim for the purchase price of the bunkers or *vice versa* so the requirement of mutual exclusivity is also not satisfied. By way of illustration, even if I were to accept that the physical suppliers have a maritime lien against the vessel, a holding by this court that the purchasers are liable to the sellers would not extinguish the maritime lien which arises by operation of law in the relevant jurisdiction regardless of *in personam* liability. The claims of the sellers and the physical suppliers are not adverse to one another and are therefore not suitable for interpleader relief.

84 In summary, the conditions precedent for interpleader relief have not been satisfied since the competing claims of the physical suppliers neither disclose any *prima facie* case for relief nor are they "adverse" to the sellers' claims within the meaning of O 17 of the ROC.

What consequential orders should follow?

85 The sellers submitted that even if I were to find that interpleader relief is unsuitable, I may nevertheless "summarily determine, and dismiss, the physical suppliers' claims on the merits" and then order "payment out" in their favour. [note: 56] In support, they cite O 17 r 8 of the ROC, which reads:

> Subject to Rules 1 to 7, the Court may in or for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

86 In oral argument, to Mr Mohan's credit, he expressed some reservations whether the court could do so. He pointed out that the powers of the court under O 17 r 8, though wide, are expressly

circumscribed by the requirement that they are "subject to Rules 1 to 7". Under O 17 r 5, the court has the power to summarily determine the question at issue between the competing claimants *if* it finds that interpleader relief is appropriate. By implication, Mr Mohan suggested, this court does not have the power to do so if it finds that interpleader relief is not available. [note: 57]

87 Before I proceed further, it is important to appreciate exactly what the sellers want this court to do. During the oral hearing, Mr Singh consistently used the expression "payment out" when describing the process of the court ordering payment in their favour. The expression "payment out" typically refers to an order of court made at the end of a trial directing that a sum of money paid into court be applied in satisfaction of the claim of the successful party. In the instant case, no sum has been paid into court. More importantly, there has yet to be a determination of the merits of the claims. The only question which the court has considered thus far is the "stage 1" inquiry of whether the conditions precedents for interpleader relief have been satisfied. That being the case, what the sellers presently have is a *claim* (and that is all it is for the moment, a claim) for the recovery of a contractual debt. In calling for payment to be made to them, they are effectively seeking *summary judgment* in their favour. The question is whether this court has, *upon the dismissal of an interpleader summons*, the power to summarily determine the merits of the competing claims and to grant judgment pursuant to that determination. I do not think so.

The statutory scheme

88 Order 14 r 1 of the ROC governs the grant of summary judgment and it provides that four conditions precedent must be met before such an application can be brought (see *Singapore Civil Procedure 2015* vol 1 (G P Selvam gen ed) (Sweet & Maxwell, 2015) at para 14/1/4). It is not disputed that none of these requirements have been met — for example, neither a statement of claim nor a defence has been served, as required under O 14 r 1. It is also no answer to point to the inherent jurisdiction of this court as has been suggested [note: 58] since it is well established that this court does not have the inherent power to order summary judgment outside the circumstances set out in the ROC (see *Samsung Corp v Chinese Chamber Realty Pte Ltd and others* [2004] 1 SLR(R) 382 at [12]).

89 Ordinarily, that would be the end of the matter. However, the sellers have invoked O 17 r 8 to seek judgment in light of the arguments and evidence presented during the hearing. As a starting point, I accept Mr Mohan's submission that the generality of O 17 r 8 is constrained by the proviso that it is "[s]ubject to Rules 1 to 7". In order to fall within the scope of O 17 r 8, any contemplated order has to cohere with the structure of the interpleader process and must be connected with its central purpose, which is the determination of the incidence of an *admitted* liability (see [60] above). With that in mind, I am of the view that there are two reasons why O 17 r 8 cannot be interpreted to grant this court the power to order summary judgment.

90 The first is that it would offend the structure of O 17. In *Tetuan Teh Kim Teh, Salina & Co (a firm) v Tan Kau Tiah @ Tan Ching Hai & Anor* [2013] 4 MLJ 313 ("*Tetuan*"), the Federal Court of Malaysia considered the structure of O 17 of the Malaysian RHC 1980 (which is *in pari materia* with O 17 of our ROC) and held at [50]:

> On hearing the interpleader summons, ***if the preconditions under O 17 r 1 of the RHC and O 17 r 3 of the RHC are not satisfied, the court should dismiss the summons*** . *On the other hand if the preconditions under O 17 rr 1 and 3 of the RHC are satisfied, then the court may make any of the orders provided under O 17 r 5 of the RHC as appropriate*. The court may order that an issue (in this case the issue relating to the 18 documents of title) be stated and tried, and may direct which of the claimants is to be plaintiff and which defendant. For this purpose

provisions for discovery and inspection of documents as well as interrogatories, and for trial of interpleader issue are provided under O 17 of the RHC. Where all the claimants consent or any of them so requests, or the question at issue between the claimants is a question of law and the facts are not in dispute, the court may 'summarily determine the question at issue between the claimants' and make an order accordingly on terms as may be just. **It is *important to note that the summary determination provided is for 'the question at issue between the claimants' not between the claimants or any of them with the interpleader applicant* .** … [emphasis added in italics and bold italics]

91 I respectfully agree with the Federal Court's analysis of the nature and structure of O 17. At "stage 1" of an interpleader summons, the remit of the court's inquiry is whether the conditions precedent for interpleader relief have been satisfied (see [19] above). Consequently, the court is limited only to allowing or dismissing the application for interpleader relief. It is only at "stage 2" that the court takes cognisance of the merits of the competing claims and may exercise its power to dispose of them. Having dismissed the application for interpleader relief on the basis that the conditions precedent have not been satisfied, I find that I do not have the power to summarily determine the claim and/or order payment in the sellers' favour.

92 Furthermore, it is worth noting that the power of this court to summarily determine the relative merits of the competing claims in the interpleader process is specifically provided for under O 17 r 5(2) of the ROC. However, this power is tightly circumscribed. It only applies to cases where the conditions for interpleader relief have already been satisfied (*ie*, "stage 2" cases) where either (a) the applicant is the sheriff; *or* (b) all the parties consent or any of them so requests; *or* (c) it involves a pure question of law. In other words, the statutory scheme itself imposes specific and clear constraints on the court's power of summary determination. This, I find, is a further reason why I am precluded from reading in a general power of summary determination into O 17 r 8, particularly for "stage 1" cases, where the merits of the competing claims do not even fall to be determined.

93 The second reason is that such a power would fall outside the scope of the interpleader process. At [50] of *Tetuan*, the court emphasised that the power of summary determination provided under O 17 r 5 of the Malaysian RHC 1980 is limited to the "question at issue *between* the claimants" and not an issue "between the claimants or any of them with the interpleader applicant". In *Tetuan*, the application for interpleader relief was granted at first instance. The second defendant then appealed to the Malaysian Court of Appeal which, in addition to reversing the decision of the High Court, allowed a counterclaim for damages arising from wrongful detention. In doing so, the Court of Appeal held that O 28 r 7(1) of the Malaysian RHC 1980 permitted defendants in originating summonses to bring counterclaims in the same matter without the necessity of initiating a separate action. The Federal Court affirmed the dismissal of the interpleader summons but held that interpleader proceedings, though initiated by originating summons, was a class of summonses that fell outside the scope of O 28 so the counterclaim ought properly to have been the subject of a separate action. At [49], the Federal Court explained:

> … [*A*]*n interpleader summons is a type of originating summons excepted under O 28 r 1 of the RHC from the originating summons procedure* under O 28 of the RHC. The *plaintiff came to the High Court seeking for interpleader relief, seeking decision of the court as to whom he should account for the 18 documents of title*. ***All that the court had to determine was whether or not it was necessary, for the purpose of assisting by means of interpleader, to make an order which would enable the plaintiff to know to whom he had to account for the documents of titles*** (applying *De La Rue*). For this purpose the interpleader summons called upon the first and the second defendants to come out and state their claims so that the court could decide to whom the plaintiff should account for the documents of titles. That was where the

affidavits filed by the first and second defendants came into play. They should contain the particulars of their respective claims to the documents of titles.

[emphasis added in italics and bold italics]

94 Although the specific issue in *Tetuan* concerned a counterclaim made in an affidavit opposing an application for interpleader relief, the more general point that the Federal Court was making is that the scope of an interpleader summons is a narrow one: it exists to allow the court to determine the incidence of liability. It was never intended as (and, indeed, it is manifestly unsuited to function as) a mechanism for the *determination of liability*, which is the raison d'être of the summary judgment procedure. Therefore, I find that I am precluded from construing O 17 r 8 as providing this court with a general power of summary determination.

The cases cited in argument

95 The sellers cited four cases in support of their submission that this court has the power to order payment in their favour: *BP Benzin und Petroleum AG v European-American Banking Corporation and Others* [1978] 1 Lloyd's Rep 364 ("*BP Benzin*"), *Ding Pei Chai, Hong Leong Bank Bhd v Manducekap Hi-Tec Sdn Bhd & Ors* [2009] 7 MLJ 124 ("*Hong Leong Bank*"), and *Tay Yok Swee*. In my view, none of the cases are of assistance.

9 6 *BP Benzin* and *Ding Pei Chai* can both be distinguished as they were both "stage 2" cases where the court had found that the conditions precedent for interpleader relief had been satisfied. Once the court is seized of its interpleader jurisdiction, it has full access to the powers afforded by O 17, including the power to summarily determine the merits of the competing claims (see O 17 r 5). *BP Benzin* concerned competing claims to the charter hire of a vessel. Before the substantive interpleader hearing was held, Goff J made an interlocutory order that a portion of the sum paid into court be disbursed to defray the expenses incurred in the upkeep of the vessels until the matter could be definitively decided. *Ding Pei Chai* concerned the question of who had the lawful authority to deal with a set of funds in a company account. At the end of the substantive interpleader hearing, Belinda Ang Saw Ean J ordered that the sum of money remain in the bank account until further order with the successful claimants being granted general liberty to apply. Neither of these two cases lends support to the argument that summary judgment may be ordered upon the dismissal of the interpleader summons.

97 Neither *Hong Leong Bank* nor *Tay Yok Swee*, though "stage 1" cases, involved the entry of summary judgment. In *Hong Leong Bank*, the applicant seeking relief was a bank with whom the first claimant (a company) had an account. The bank received competing claims for control of the account from, *inter alia*, the company's former board of directors and the company's shareholders, so it sought interpleader relief. The High Court of Kuala Lumpur held that interpleader relief was not available since there was no real foundation for the applicant's avowed expectation that it would be sued by the competing claimants. The court held that it was clear that the company was the legal owner of the money in the account: not only was it the named account holder, there were also several court orders which had affirmed this fact (see *Hong Leong Bank* at [13]). Having dismissed the interpleader summons, the court, on the application of the bank, went to make a further order under O 17 r 8 for the bank to issue a banker's cheque for the full amount in the account in favour of the company. In *Tay Yok Swee*, the Court of Appeal, having found that interpleader relief was unavailable (see [71] above), held that the one-third share of the surplus proceeds of sale belonged to the appellant and that this sum should be paid to the Official Assignee since the appellant was a bankrupt.

98 There are two important points to note about *Hong Leong Bank* and *Tay Yok Swee*. First, both

concerned the issue of title: in the case of the former, it was title to the money in a bank account; in the latter, it was the beneficial interest to the surplus proceeds of sale. Second, the courts dismissed the applications for interpleader relief because there were *no serious disputes on the question of title*. In *Hong Leong Bank*, the company was the named account holder and therefore was the full legal owner of the money. In *Tay Yok Swee*, the appellant was named as the proprietor of a one-third share in the indenture of mortgage and the competing claims did not relate to his proprietary entitlement to the proceeds of sale (see [69] above). When these two points are considered, it is clear that the court merely recognised the consequences of its findings on the question of title. In *Hong Leong Bank*, the company, as the full legal owner of the money in the account, was entitled to have a banker's cheque for the funds in the account made out in its favour, with or without the assistance of an order of court. Similarly, in *Tay Yok Swee*, once the court found that the one-third share of the surplus proceeds of sale belonged to the appellant, it followed, as a consequence, that it was part of his estate and should be made available for distribution to all his creditors in the bankruptcy process.

Should judgment on admission be granted?

99 During the oral hearing, I separately asked Mr Mohan and Mr Kuek of their respective clients' positions on the merits of the competing claims. Both of them confirmed that their clients accepted that they were liable to the respective OW entities with whom they had contracted and denied that they were liable to the physical suppliers. [note: 59] Seizing on this, Mr Singh made an oral application for judgment on admission to be entered against the purchasers under O 27 r 3 of the ROC, which reads: [note: 60]

> Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

Understandably, Mr Mohan and Mr Kuek both balked and immediately sought to clarify that their responses were premised on a common understanding that the Purchaser-Seller contracts were contracts for the sale of goods under the SOGA. They clarified that, given Mr Singh's submission that the SOGA did not apply (see [81] above), their clients no longer accepted that they were liable to the OW entities. [note: 61] They also reiterated that they might have possible counterclaims against the sellers, though they did not specify what these counterclaims might be.

100 While these eleventh hour developments raise interesting questions as to the extent to which parties may be permitted to qualify or resile from their earlier "admissions", I do not have to decide this point. Ultimately, I am of the view that the grant of judgment on admission is unavailable because there is no "cause or matter" within the meaning of O 27 r 3 upon which judgment may be granted. The expression "cause or matter" in O 27 r 3 contemplates that there is a claim by one person against another in the context of a subsisting suit or action *between the parties* of which the court is seized of jurisdiction. However, as noted at [20] above, the only question which arises for determination at "stage 1" is whether the conditions precedent for interpleader relief have been satisfied. At this stage, no party has been impleaded and no legal liabilities fall for adjudication, these being "stage 2" concerns. Given that I have already held that this court does not have the power of summary judgment at "stage 1", it would be anomalous to now grant judgment on admission on the legal merits of the competing claims.

101 Furthermore, it does not appear to me that Mr Kuek or Mr Mohan had made any admissions of fact which are relevant to the sellers' claim for the purchase price of the bunkers. While the admissions relied on in an O 27 r 3 application can be made by counsel at proceedings (see *The State of Perak v PRALM Muthukaruppan Chettiar* [1938] MLJ 247 at 255 and 256), the statement must still constitute "a clear admission of *all* the facts necessary to establish the cause of action and not merely evidence of some of the facts" (see *Mycitydeal Ltd (trading as Groupon UK) and others v Villas International Property Pte Ltd and others* [2014] 4 SLR 1077 at [69]) [emphasis in original]. The purported "admissions" made by Mr Kuek and Mr Mohan were responses from the Bar to questions from the Bench as regards the *legal positions* of their respective clients. They have no bearing on the question of whether the elements of the sellers' claims have been made out and are therefore not suitable for judgment on admission. Having said that, given that the purchasers do not appear to be disputing the sellers' claims and this court's finding that the claims by the physical suppliers do not even satisfy the *prima facie* case test, any resistance by the purchasers to pay the sellers' claims will inevitably engender the commencement of fresh legal proceedings with obvious costs consequences.

Conclusion

102 In the result, the consolidated applications are dismissed because the conditions precedent for interpleader relief have not been satisfied and I decline to make any order in relation to the sellers' substantive claims for the purchase price of the bunkers.

Costs

103 Costs should follow the event. The physical suppliers who supported the unsuccessful applications will bear their own costs save for the physical supplier in OS 1164/2014, Golden Island Diesel Oil Trading Pte Ltd ("Golden Island"). Golden Island never brought a claim against the purchaser and had objected to the initiation of interpleader proceedings from the outset but Mr Kuek only indicated his clients' intention to withdraw OS 1164/2014 one week before the oral hearing. Even though no submissions were filed, Golden Island is still entitled to be indemnified for the costs it incurred in the filing of affidavits, which I fix at $1,500 (inclusive of disbursements) to be paid by the purchaser in OS 1164/2014, Stena Weco A/S.

104 The purchasers should bear the costs of the sellers as well as the disbursements they have incurred. Before turning to the quantum, I first observe that the sellers each prepared a single compendious set of submissions in opposition to the consolidated applications (save for ING, which prepared supplemental submissions for each summons in addition to a single set of submissions which addressed the legal principles applicable to all). These submissions addressed the points raised in support of interpleader relief, irrespective of whether they were raised by Mr Mohan's clients or by Mr Kuek's. Thus, the costs incurred by the sellers should be apportioned. During the hearing on costs, Mr Mohan and Mr Eugene Cheng both helpfully agreed that the costs, insofar as ING and OW Far East are concerned, should be apportioned as follows: (a) 25 percent of the costs are to be borne by Mr Mohan's clients, the purchasers in OS 1076/2014; (b) the remaining 75 percent are to be borne by the purchasers in the remaining applications. This apportionment does not apply to DOT and OCM as they were not named as respondents in OS 1076/2014.

105 With that in mind, my costs orders (inclusive of disbursements) are as follows:

(a) ING, Mr Goh, and Mr Chan (who were all represented by Mr Singh) are awarded one set of costs which I fix at $36,000. In so doing, I am mindful that there was no necessity for ING to have been added as a respondent in OS 1166/2014 and OS 1202/2014 and that ING had been awarded costs of $18,000 for dismissal of a related interpleader summons in OS 1120 of 2014.

$9,000 is to be borne by the purchasers in OS 1076/2014. The remaining $27,000 is to be borne jointly by the purchasers in the remaining applications.

(b) OW Far East is awarded costs which I fix at $10,000. $2,500 is to be borne by the purchasers in OS 1076/2014. The remaining $7,500 is to be borne jointly by the purchasers in OSes 1147, 1163, 1164, 1165, 1166, 1172, and 1173 of 2014.

(c) DOT is awarded costs which I also fix at $10,000. These costs are to be borne jointly by the purchasers in OSes 1144, 1148, 1162, 1202, and 1205 of 2014.

(d) As OCM was only involved in one application, I fix costs at $5,000 to be paid by the purchaser in OS 1202 of 2014.

[note: 1] Affidavit of Paul David Copley in OS 1076/2014 dated 10 April 2015 ("Paul David Copley's Affidavit") at paras 13–14.

[note: 2] Paul David Copley's Affidavit at para 1.

[note: 3] Affidavit of Bob Yap Cheng Ghee in OS 1076 and 1205 of 2014 both dated 10 April 2015 ("Bob Yap's Affidavits") at para 1.

[note: 4] Written Submissions of ING Bank NV on the Applicable Legal Principles in OS 1076/2014 ("Mr Singh's Submissions on the Law") at para 11(d)(iii).

[note: 5] Minute Sheet of Steven Chong J dated 26 May 2015 ("Minute Sheet of Chong J") at p2, para 7; p 3, para 3.

[note: 6] See, *eg*, the position taken by the purchasers in OS 1166/2014 as disclosed in the affidavit of Ganesh, Bharath Ratnam in OS 1205/2014 dated 10 December 2014 ("Ganesh's OS 1205 Affidavit") at pp 19–22.

[note: 7] See, *eg*:OS 1076/2014: In respect of bunkers supplied to the "Ploypailin Naree", ING demanded payment of a sum of $295,059.30 for bunkers supplied to the "Ploypailin Naree"; the physical supplier, Uni Petroleum Pte Ltd, demanded a sum of $ 291,653.45: see Affidavit of Vasudevan Neelakantan in OS 1076/2014 at paras 12 and 17; pp 39 and 40OS 1147/2014: ING demanded payment of a sum of $339,235.51; the physical supplier, Universal Energy Pte Ltd, demanded a sum of $ 333,988.92: see Affidavit of Ganesh, Bharath Ratnam in OS 1147/2014 at paras 8 and 9.OS 1205/2014: ING demanded payment of a sum of $485,685.12; the physical supplier, Sirius Marine Pte Ltd, demanded a sum of $ 481,977.60: see Ganesh's OS 1205 Affidavit at para 9 and at p 48.

[note: 8] Minute sheet of Steven Chong J at p 2, para 8.

[note: 9] Written Submissions of Precious Shipping Public Company Limited et al. in OS 1076/2014 ("Mr Mohan's Submissions") and Skeletal Reply Submissions of Precious Shipping Public Company Limited et al. in OS 1076/2014 ("Mr Mohan's Reply Submissions").

[note: 10] Written Submissions of Rudder S.A.M. in OS 1205/2014 ("Mr Kuek's Submissions").

[note: 11] Written Submissions of Uni Petroleum Pte Ltd in OS 1076/2014 ("Mr Chua's Submissions").

[note: 12] Written Submissions of Sirius Marine Pte Ltd in OS 1205/2014 ("Mr Ibrahim's Submissions").

[note: 13] Written Submissions of Global Energy Trading Pte Ltd in OS 1162/2014 ("Mr Loo's Submissions").

[note: 14] Mr Chua's Submissions at paras 63–79; Mr Ibrahim's submissions at paras 32–56; Mr Loo's submissions at paras 23–28.

[note: 15] Mr Ibrahim's Submissions at paras 72–74; Mr Loo's submissions at para 29–33.

[note: 16] Mr Ibrahim's Submissions at paras 93–97; Mr Chua's submissions at paras 88–90.

[note: 17] Mr Ibrahim's submissions at paras 62–64.

[note: 18] Mr Ibrahim's submissions at paras 98–112.

[note: 19] Mr Mohan's submissions at paras 49 and 50.

[note: 20] Bob Yap's Affidavits at para 4(b).

[note: 21] Minute Sheet of Chong J at p8, para 2.

[note: 22] Written Submissions of ING Bank NV on the Applicable Legal Principles in OS 1076/2014 ("Mr Singh's Submissions on the Law").

[note: 23] Consolidated written submissions of OW Bunker Far East (Singapore) Pte Ltd ("Mr Lim's Submissions").

[note: 24] Written Submissions of Dynamic Oil Trading (Singapore) Pte Ltd (in creditors' voluntary liquidation) in OS 1205/2014 ("Mr Ong's submissions").

[note: 25] Written Submissions of OceanConnect Marine Pte Ltd in OS 1202/2014 ("Mr Yee's Submissions").

[note: 26] Mr Singh's Submissions at para 55–121; Mr Ong's Submissions at para 28–31; Mr Lim's Submissions at paras 19 and 20.

[note: 27] Mr Singh's Submissions at para 20; Mr Ong's Submissions at para 9; Mr Lim's Submissions at para 27 and 32; Mr Yee's submissions at para 3.2.

[note: 28] Mr Mohan's Reply Submissions at paras 21 and 48.

[note: 29] Mr Mohan's Submissions at paras 94–102.

[note: 30] Mr Chua's Submissions at para 59 and 60.

[note: 31] Mr Lim's Submissions at 74.

[note: 32] Mr Kuek's Submissions at paras 8–12.

[note: 33] Mr Lim's Submissions at para 74.

[note: 34] Mr Singh's Submissions on the Law at para 16(m).

[note: 35] Minute Sheet of Chong J at p 2, para 1.

[note: 36] Minute Sheet of Chong J at p3, para 5.

[note: 37] ING's Core Bundle at Tab 6.

[note: 38] ING's Core Bundle at Tabs 1 and 2.

[note: 39] Mr Chua's submissions at para 88–90; Mr Ibrahim's submissions at paras 48–51.

[note: 40] ING's Core Bundle at Tabs 7 and 8.

[note: 41] Mr Singh's submissions on the law at paras 71(d)–74; Mr Ong's submissions at para 25.

[note: 42] ING's Core Bundle at Tabs 1 and 2.

[note: 43] Mr Ibrahim's submissions at paras 63 and 64.

[note: 44] Mr Ibrahim's submissions at paras 100 and 112.

[note: 45] 1st Affidavit of Ong Teck Chuan in OS 1076/2014 dated 10 April 2015 ("1st Affidavit of Ong Teck Chuan") at p 44.

[note: 46] Mr Mohan's submissions at para 49.

[note: 47] Mr Mohan's reply submissions at paras 31–33.

[note: 48] Mr Chua's Submissions at para 49 and 54; Mr Ibrahim's submissions at 69; Mr Ong's submissions at paras 9 and 10.

[note: 49] Mr Mohan's submissions at para 52.

[note: 50] Mr Singh's submissions on the law at para 16(e)–(g).

[note: 51] Mr Lim's submissions at para 28.

[note: 52] Mr Kuek's submissions at para 30.

[note: 53] Mr Mohan's submissions at para 51; Mr Chua's Submissions at para 49; Mr Ong's submissions at para 9; Mr Lim's Submissions at para 31.

[note: 54] Mr Loo's submissions at paras 34–38.

[note: 55] Aide Memoire of ING Bank N.V. ("Mr Singh's Reply Submissions") at paras 53–59.

[note: 56] Mr Singh's Submissions on the law at para 22–46.

[note: 57] Minute Sheet of Chong J at p2, para 6.

[note: 58] Mr Singh's Submissions on the Law at para 45.

[note: 59] Minute Sheet of Chong J at p2, para 7; p 3, para 3.

[note: 60] Minute Sheet of Chong J at p 7, para 2.

[note: 61] Minute Sheet of Chong J at p 7, paras 4 and 8.