

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

[2023] SGHC 303

Originating Claim No 125 of 2022 (Registrar's Appeals Nos 168, 169 and 170 of 2023)

Between

Value Monetization III Ltd

... Respondent/Claimant

And

Lim Beng Choo

... Appellant/Defendant

And

- (1) Crest Capital Asia Pte Ltd
- (2) Crest Catalyst Equity Pte Ltd
(now known as Crest Capital
Asia Fund Mgmt Pte Ltd)
- (3) The Enterprise Fund III Ltd
- (4) Tan Yang Hwee
- (5) Chan Pee Teck Peter
- (6) Chia Kwok Ping
- (7) Lim Chu Pei
- (8) VMF3 Ltd

... Respondents/Third Parties

Originating Claim No 126 of 2022 (Registrar's Appeals Nos 171, 172 and 173 of 2023)

Between

The Enterprise Fund III Ltd

... Respondent/Claimant

And

Lim Beng Choo

... Appellant/Defendant

And

- (1) Crest Capital Asia Pte Ltd
- (2) Crest Catalyst Equity Pte Ltd
(now known as Crest Capital
Asia Fund Mgmt Pte Ltd)
- (3) Value Monetization III Ltd
- (4) VMF3 Ltd
- (5) Tan Yang Hwee
- (6) Chan Pee Teck Peter
- (7) Chia Kwok Ping
- (8) Lim Chu Pei

... Respondents/Third Parties

GROUPS OF DECISION

[Tort — Damages — Joint and several liability — Contribution — Limitation Act]

[Tort — Damages — Joint and several liability — Contribution — Procedure]

[Res Judicata — Applicable principles]

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Value Monetization III Ltd
v
Lim Beng Choo and another matter
(Crest Capital Asia Pte Ltd and others, third parties)

[2023] SGHC 303

General Division of the High Court — Originating Claim No 125 of 2022 (Registrar's Appeals Nos 168, 169 and 170 of 2023) and Originating Claim No 126 of 2022 (Registrar's Appeals Nos 171, 172 and 173 of 2023)
Hri Kumar Nair J
7, 11 September 2023

27 October 2023

Hri Kumar Nair J:

Introduction

1 The six appeals before me (HC/RA 168/2023 through to HC/RA 173/2023) were against the whole of the decision of the learned AR (“the AR”), in which the AR struck out the appellant’s third party statements of claim (“the TPSOCs”) in HC/OC 125/2022 (“OC 125”) and HC/OC 126/2022 (“OC 126”) (collectively, “the Contribution Claims”). I dismissed all the appeals on 11 September 2023, delivering brief grounds then. The appellant has since appealed my decision, but only with respect to one of the third parties. I therefore provide my full grounds of decision.

Background

2 The appellant, Ms Lim Beng Choo (“Ms Lim”), is the defendant in the Contribution Claims. The claimants in the Contribution Claims are Value Monetization III Ltd (“VMIII”) and The Enterprise Fund III Ltd (“EFIII”) (VMIII in OC 125 and EFIII in OC 126).

3 The Contribution Claims arose from HC/S 441/2016 (“Suit 441”). Suit 441 was a claim by International Healthway Corp Ltd (“IHC”) against eight defendants (“the Suit 441 Defendants”):¹

- (a) VMIII, EFIII, and Ms Lim;
- (b) Crest Capital Asia Pte Ltd (“Crest Capital”);
- (c) Crest Catalyst Equity Pte Ltd (now known as Crest Capital Asia Fund Mgmt Pte Ltd) (“Crest Catalyst”);
- (d) VMF3 Ltd (“VMF3”);
- (e) Mr Fan Kow Hin (“Mr Fan”), IHC’s Chief Executive Officer (“CEO”) from May 2015 to Jan 2016;² and
- (f) Mr Aathar Ah Kong Andrew (“Mr Aathar”).

I shall refer to VMIII, EFIII, Crest Capital, Crest Catalyst and VMF3 collectively as the “Crest Entities”.

4 Suit 441 concerned certain loan facilities (“the Disputed Facilities”) extended by, *inter alia*, EFIII, VMIII and VMF3 to IHC. Crest Catalyst acted

¹ Affidavit of Peh Hong Yee (20 Feb 2023) filed in HC/SUM 1126/2023 (“PHY-1”) at para 4.

² Affidavit of Lim Beng Choo (15 Jun 2023) (“LBC-1”) at p 18.

as EFIII and VMIII’s manager and agent in respect of the Disputed Facilities.³ Ms Lim was, at the material time, a senior officer in IHC.⁴

5 The High Court had previously held the Disputed Facilities to be void and unenforceable – *International Healthway Corp Ltd v The Enterprise Fund III Ltd and others* [2018] SGHC 246 at [85]. This finding was affirmed by the Court of Appeal in *The Enterprise Fund III Ltd and others v OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd)* [2019] 2 SLR 524 at [134].⁵ In summary, the Disputed Facilities were void and unenforceable as they contravened s 76A of the Companies Act (Cap 50, 2006 Rev Ed), which addresses, *inter alia*, transactions by which a company acquires its own shares.

6 Suit 441 involved IHC’s subsequent claim against the Suit 441 Defendants for their roles in causing IHC to enter the Disputed Facilities. On 9 July 2020, Hoo Sheau Peng J (“the Judge”) held in *OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd) and another v Crest Capital Asia Pte Ltd and others* [2020] SGHC 142 (“the Suit 441 HC Judgment”) that:

- (a) the Crest Entities had, by attribution through their agent, Mr Tan Yang Hwee (“Mr Tan”) (their main representative in respect of the deals which resulted in the Disputed Facilities), dishonestly assisted Mr Fan to breach his fiduciary duties to IHC and engaged in an unlawful means conspiracy with Mr Fan and Mr Aathar to injure IHC, and were therefore

³ PHY-1 at para 4; Affidavit of Thomas Teo Liang Huat (20 Feb 2023) filed in HC/SUM 1130/2023 (“TLH-1”) at para 4.

⁴ PHY-1 at para 5.

⁵ PHY-1 at para 6.

liable to IHC for dishonest assistance and unlawful means conspiracy: the Suit 441 HC Judgment at [148] and [335];⁶

(b) the Crest Entities and Mr Fan were jointly and severally liable to IHC for, *inter alia*, the judgment sum of \$12,594,646.74 (“the Judgment Sum”): the Suit 441 HC Judgment at [336];⁷ and

(c) out of the Judgment Sum, Ms Lim was jointly and severally liable for a sum of \$4,538,800 as she was held to be negligent in her duties owed to IHC: the Suit 441 HC Judgment at [301], [302] and [336(a)].⁸

7 The Suit 441 HC Judgment was appealed by the Crest Entities, Mr Fan and Ms Lim.⁹ Pending the outcome of the appeals, for the purposes of discharging their respective liabilities under the Judgment Sum:

(a) EFIII paid \$2,443,991 to IHC on 3 and 24 September 2020 (“the EFIII Payment”);¹⁰ and

(b) VMIII paid \$10,622,600.79 to IHC on 3 and 24 September 2020 (“the VMIII Payment”).¹¹

8 On 30 March 2021, the Court of Appeal in *Crest Capital Asia Pte Ltd and others v OUE Lippo Healthcare Ltd (formerly known as International*

⁶ TLH-1 at para 11.1.

⁷ TLH-1 at para 11.2.

⁸ TLH-1 at para 11.2.

⁹ TLH-1 at para 14.

¹⁰ TLH-1 at para 15.1.

¹¹ PHY-1 at para 15.2

Healthway Corp Ltd) and another and other appeals [2021] 1 SLR 1337 (“the Suit 441 CA Judgment”):

- (a) dismissed Crest Capital, Crest Catalyst, and EFIII’s appeals, as Mr Tan’s knowledge of the purpose of the Disputed Facilities was rightly attributed to these entities: the Suit 441 CA Judgment at [108];
- (b) dismissed Mr Fan’s appeal as the evidence showed that he breached his fiduciary duties to IHC: the Suit 441 CA Judgment at [130];
- (c) overturned the finding in the Suit 441 HC Judgment that VMF3 and VMIII were liable in dishonest assistance and unlawful means conspiracy, since Mr Tan’s knowledge could not be attributed to VMF3 and VMIII: the Suit 441 CA Judgment at [122];¹² and
- (d) affirmed Ms Lim’s joint and several liability for the sum of \$4,538,800, as her negligence caused the same indivisible damage as the Crest Entities’ (excluding VMF3 and VMIII) dishonest assistance and unlawful means conspiracy, and Mr Fan’s breach of fiduciary duties and unlawful means conspiracy: the Suit 441 CA Judgment at [176]–[184].¹³

9 Following the Suit 441 CA Judgment, VMIII sought a consequential order for IHC to return the VMIII Payment with interest. However, on 24 May 2021, the Court of Appeal found that VMIII had elected to pay the judgment debt on behalf of all the Crest Entities, despite it having been apparent at the time of payment that VMIII and VMF3’s appeals were no longer completely aligned with those of the remaining Crest Entities. Hence, the Court of Appeal

¹² TLH-1 at para 17.1.

¹³ TLH-1 at para 17.2.

held that VMIII bore the risk of non-payment and the VMIII Payment was not to be refunded by IHC. Rather, the proper course of action was for VMIII to look to the other co-defendants for contributions: *Crest Capital Asia Pte Ltd and others v OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd) and another* [2021] 2 SLR 424 (“*Crest Capital (Consequential Order)*”) at [19]–[20]).

10 On 8 July 2022, VMIII and EFIII filed the Contribution Claims against Ms Lim:¹⁴ in OC 125, VMIII claimed for contribution against Ms Lim in respect of the VMIII Payment towards the Judgment Sum; in OC 126, EFIII similarly claimed for contribution against Ms Lim in respect of the EFIII Payment towards the Judgment Sum.

11 On 12 September 2022, Ms Lim commenced third party proceedings in the Contribution Claims by filing third party notices (“the Third Party Notices”).¹⁵ She filed the TPSOCs on the same day.

12 These were the third parties in Ms Lim’s TPSOC in OC 125 (“the OC 125 TPSOC”):¹⁶

- (a) Crest Capital, Crest Catalyst, and EFIII;
- (b) Mr Tan;

¹⁴ HC/OC 125/2022 and HC/OC 126/2022.

¹⁵ Third Party Notice (12 Sep 2022) filed in HC/OC 125/2022 (“OC 125 TPN”); Third Party Notice (12 Sep 2022) filed in HC/OC 126/2022 (“OC 126 TPN”).

¹⁶ Third Party Statement of Claim (26 Nov 2022) filed in HC/OC 125/2022 (“OC 125 TPSOC”).

- (c) Chan Pee Teck Peter (“Mr Peter Chan”), Crest Capital’s Managing Partner at the material time;¹⁷
- (d) Chia Kwok Ping (“Mr Chia”), Mr Fan’s predecessor as IHC’s CEO from March to June 2015;¹⁸
- (e) Lim Chu Pei (“Mr Lim”), an investment analyst with Crest Capital at the material time;¹⁹ and
- (f) VMF3.

13 Ms Lim pleaded that it would be just and equitable for her liability for the sum of \$4,538,800 paid by VMIII to IHC (under the VMIII Payment) to be borne by the 1st to 7th third parties in the OC 125 TPSOC (*ie*, all excluding VMF3) “having regard to the culpability of [their] acts ... in comparison to an innocent error of judgment or neglect on [her] part”.²⁰ Further, Ms Lim pleaded that there be a declaration that VMF3 indemnify her against any liability for a sum of \$3,883,950 (out of the sum of \$4,538,800) on the ground that this sum (“the Geelong Payment”), which IHC paid to EFIII on 18 December 2015, was a mandated payment towards the Geelong Facility (another loan taken out by IHC, which was not one of the Disputed Facilities) which was wrongfully diverted and misapplied towards the Disputed Facilities by the Crest Entities.²¹

14 Ms Lim’s TPSOC in OC 126 (“the OC 126 TPSOC”) involved the same third parties as the OC 125 TPSOC, save that EFIII was replaced by VMIII.

¹⁷ OC 125 TPSOC at para 7.

¹⁸ OC 125 TPSOC at para 11; LBC-1 at p 18.

¹⁹ OC 125 TPSOC at para 8.

²⁰ OC 125 TPSOC at para 34.

²¹ OC 125 TPSOC at para 34.

Similarly, Ms Lim pleaded in the OC 126 TPSOC that her liability for the sum of \$2,442,991 paid by EFIII to IHC (under the EFIII Payment) be borne wholly by all the third parties except VMIII and VMF3.²² She also pleaded that VMIII and VMF3 indemnify her in respect of the Geelong Payment.²³

15 The following third parties filed to strike out the TPSOCs (“the Striking Out Applications”):

- (a) EFIII and VMIII filed HC/SUM 1126/2023 and HC/SUM 1130/2023;
- (b) Crest Capital, Crest Catalyst and Mr Peter Chan filed HC/SUM 1128/2023 and HC/SUM 1129/2023; and
- (c) Mr Chia filed HC/SUM 1127/2023 and HC/SUM 1131/2023.

Mr Tan, Mr Lim and VMF3 did not apply to strike out the TPSOCs.

The decision below

16 The AR allowed the Striking Out Applications on the ground that the claims in the TPSOCs were time-barred. His decision may be summarised as such:²⁴

- (a) Under s 6A(1) of the Limitation Act 1959 (2020 Rev Ed) (“the LA”), the time limit for claiming contribution in respect of any damage

²² Third Party Statement of Claim (26 Nov 2022) filed in HC/OC 126/2022 (“OC 126 TPSOC”) at para 34.

²³ OC 126 TPSOC at para 34.

²⁴ Minute Sheet (24 Jul 2023) in HC/SUM 1127/2023 at pp 10–14 (“AR Decision”).

from any other person is two years from the date on which that right to recover contribution accrued.²⁵

(b) Under ss 6A(2) and 6A(3) of the LA, the relevant date on which the right to recover contribution accrued to Ms Lim was “the date on which the judgment is given” holding her liable in respect of that damage – *ie*, 9 July 2020 when the Suit 441 HC Judgment was issued. The two-year limitation period therefore ended on 8 July 2020.²⁶

(c) Section 6A(4) of the LA, which provides that in respect of the relevant accrual date “no account shall be taken of any judgment made on appeal”, made clear that the relevant date could not be that of the Suit 441 CA Judgment’s issuance on 30 Mar 2021.²⁷

(d) Section 15(2) of the Civil Law Act 1909 (2020 Rev Ed) (“the CLA”) did not assist Ms Lim.²⁸

17 VMIII and EFIII also argued that the TPSOCs should be struck out on *res judicata* grounds, but the AR did not hear oral arguments on, or decide, that issue.²⁹

²⁵ AR Decision at para 9.

²⁶ AR Decision at para 9.

²⁷ AR Decision at para 11.

²⁸ AR Decision at para 12.

²⁹ EFIII and VMIII’s Written Submissions (11 Jul 2023) filed in HC/SUM 1126/2023 and HC/SUM 1130/2023; AR Decision at para 18.

The parties' cases before me

Ms Lim's case

18 Ms Lim gave three reasons why the appeals should be allowed.

19 First, Ms Lim pointed out that before the hearing below commenced, counsel for (a) EFIII and VMIII and (b) Crest Capital, Crest Catalyst and Mr Peter Chan, had confirmed that they would not be relying on a time bar argument. At that time, only Mr Chia had pleaded limitation in his defence, and had brought his Striking Out Applications on that ground. Hence, the AR erred in allowing those parties to amend their defences at the hearing to include the limitation defence.³⁰

20 Second, Ms Lim argued that she was not time-barred in bringing a contribution claim against the third parties. As EFIII and VMIII had paid off the Judgment Sum in September 2020 via the EFIII Payment and VMIII Payment respectively, Ms Lim submitted that she had no outstanding liabilities to meet in relation to the Judgment Sum, and could not therefore have brought a contribution claim following those payments.³¹ Her right to recover contribution from the third parties arose only after the Contribution Claims were brought against her.³² She further argued that considering the stipulation in s 6A(3) of the LA that the “relevant date [for accrual of the right to contribution] shall be the date on which the judgment is given”, the two-year limitation period should

³⁰ Appellant's Written Submissions (30 Aug 2023) (“AWS”) at pp 2–6.

³¹ AWS at pp 8–9.

³² AWS at pp 6, 9.

run only from the date of judgment against her in the Contribution Claims (which had yet to pass).³³

21 Third, Ms Lim submitted that the issue of *res judicata* (which was raised in written submissions before the AR, and also before me) was not relevant in these appeals, since the AR decided not to hear oral arguments on that issue and no appeal had been filed by the third parties against the AR’s decision.³⁴ In any case, *res judicata* should not prevent her from raising any issues in the Contribution Claims, even if she could have raised them previously.³⁵

EFIII and VMIII’s case

22 EFIII and VMIII submitted that the TPSOCs should be struck out because they disclosed no reasonable cause of action, constituted an abuse of process, and it was in the interests of justice to do so.³⁶

23 First, EFIII and VMIII argued that Ms Lim’s third party claims were time-barred pursuant to s 6A(1) of the LA. Ms Lim’s third party claims arose from her joint and several liability under the Suit 441 HC Judgment, such that on a plain construction of s 6A(1) read with s 6A(3) of the LA, the relevant date on which she became entitled to a right to recover contribution in respect of that damage was 9 July 2020, the date of the Suit 441 HC Judgment. Hence, the two-year limitation period ended on 8 July 2022, before the Third Party Notices were filed on 12 September 2022.³⁷

³³ AWS at p 9.

³⁴ AWS at p 11.

³⁵ AWS at pp 11–13.

³⁶ EFIII and VMIII’s Written Submissions (30 Aug 2023) (“EVWS”) at para 53.

³⁷ EVWS at paras 58–63.

24 Second, EFIII and VMIII submitted that the facts and issues in the TPSOCs were *res judicata*. In particular, all the elements of cause of action and issue estoppel were satisfied as:³⁸

- (a) the Suit 441 CA Judgment was a final and conclusive judgment on the merits of Ms Lim's, VMIII's and EFIII's respective cases in relation to their liability for the Judgment Sum;
- (b) the Court of Appeal in the Suit 441 CA Judgment was a competent court;
- (c) there was identity between the parties in Suit 441 and the Contribution Claims; and
- (d) there was identity of cause of action in the TPSOCs and Suit 441,³⁹ and there was identity of subject matter in the TPSOCs and Suit 441.⁴⁰

25 EFIII and VMIII also argued that Ms Lim was estopped under the extended doctrine of *res judicata* from raising further issues in the TPSOCs.⁴¹ Ms Lim had ample opportunity to make her present claims against VMIII and EFIII in Suit 441, but did not do so.⁴²

26 Third, EFIII and VMIII submitted that the TPSOCs amounted to a collateral attack on the Suit 441 Judgments.⁴³ Her claims were in effect seeking

³⁸ EVWS at para 64.

³⁹ EVWS at paras 65–69.

⁴⁰ EVWS at paras 70–76.

⁴¹ EVWS at paras 77–78.

⁴² EVWS at paras 84–85.

⁴³ EVWS at para 82.

to completely absolve her from any liability even though she had been adjudged to be liable for the same indivisible damage by both the High Court and the Court of Appeal in Suit 441.⁴⁴ Further, the claims were seeking to re-impose liability on VMIII, which had been absolved of liability in the Suit 441 CA Judgment.⁴⁵

The other third parties' cases

27 Crest Capital, Crest Catalyst and Mr Peter Chan argued that the AR's decision to allow the amendment of their defences was correct as it allowed the real question in controversy to be determined.⁴⁶ Further, no prejudice was occasioned to Ms Lim by the amendments since Mr Chia had pleaded limitation in his defence.⁴⁷

28 In respect of the limitation issue, Crest Capital, Crest Catalyst, Mr Peter Chan and Mr Chia similarly contended that Ms Lim's third party claims were time-barred.⁴⁸

29 In respect of *res judicata*, Crest Capital, Crest Catalyst and Mr Peter Chan argued that the TPSOCs constituted a collateral attack on the Suit 441 Judgments, since the allegations in the TPSOCs were an attempt to re-litigate

⁴⁴ EVWS at para 81.

⁴⁵ EVWS at para 80.

⁴⁶ Crest Capital Asia Pte Ltd, Crest Catalyst Equity Pte Ltd and Chan Pee Teck Peter's Written Submissions (30 Aug 2023) ("CCCWS") at para 28.

⁴⁷ CCCWS at paras 32–35.

⁴⁸ CCCWS at para 8; Chia Kwok Ping's Written Submissions (30 Aug 2023) ("KPWS") at para 26.

the issue of Ms Lim's negligence.⁴⁹ Mr Chia did not rely on, or make any submissions, on *res judicata*.

30 Ms Lim has filed an appeal only against my decision in OC 125 (not OC 126), and only in respect of Mr Peter Chan.⁵⁰ My grounds of decision below nonetheless deal with all the relevant third parties in both actions.

My decision

Amendment of pleadings

31 I disagreed with Ms Lim that the AR exercised his discretion wrongly in allowing the relevant third party defences to be amended to include the defence of limitation. The proceedings were at an early stage, and it was not, and nor could it be, Ms Lim's case that the relevant third parties were precluded from applying to amend their pleadings. Ms Lim's real complaint was that the relevant third parties should not have been allowed to amend and rely on the limitation defence on the day of the hearing of the Striking Out Applications, despite initially contending that they would not be relying on the same. While the relevant third parties can and should be criticised for vacillating, there was ultimately no good reason to deny them their applications. No new facts were pleaded or relied on. Ms Lim was also not prejudiced since she was prepared to address the limitation defence as it was pleaded by Mr Chia, and his Striking Out Applications were brought on that basis; nor had she changed or compromised her position on account of the relevant third parties' earlier position. To allow the relevant third parties to only plead and rely on limitation

⁴⁹ CCCWS at paras 44–46.

⁵⁰ Minute Sheet (19 Oct 2023) filed in AD/CA 109/2023 at p 4.

later would have been an inefficient and costly way to deal with the issue, and contrary to the Ideals of the Rules of Court 2021 (“ROC 2021”) under O 3 r 1.

The limitation issue

32 I agreed with the third parties that Ms Lim was time-barred from bringing an action for contribution against them by reason of s 6A of the LA.

33 The right to contribution arises from s 15(1) of the CLA:

Entitlement to contribution

15.—(1) Subject to subsections (2) to (5), any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise).

34 Section 6A of the LA imposes a two-year time limit for claiming contribution:

Special time limit for claiming contribution

6A.—(1) Where under section 15 of the Civil Law Act 1909 any person becomes entitled to a right to recover contribution in respect of any damage from any other person, no action to recover contribution by virtue of that right shall, subject to subsection (3), *be brought after the end of the period of 2 years from the date on which that right accrued.*

...

(3) If the person in question is held liable in respect of that damage —

- (a) by a judgment given in any civil proceedings; or
- (b) by an award made on any arbitration,

the relevant date shall be the date on which the judgment is given or the date of the award, as the case may be.

(4) For the purposes of subsection (3), *no account shall be taken of any judgment or award given or made on appeal* insofar as it

varies the amount of damages awarded against the person in question.

...

[emphasis added]

35 A defendant’s right to recover contribution arises from his liability in the original action. Where judgment is entered against two or more defendants jointly and severally, they have a common liability in respect of that judgment sum. Contrary to what Ms Lim appeared to be arguing, there is no separate or new right which arises at the point where a defendant seeks contribution against co-defendant(s) or third parties. As the Court of Appeal in *Tan Juay Pah v Kimly Construction Pte Ltd and others* [2012] 2 SLR 549 noted at [48] (citing Lord Bingham’s observation in *Royal Brompton Hospital NHS Trust v Hammond and others (Taylor Woodrow Construction (Holdings) Ltd)* [2002] 1 WLR 1397 at [5]), “[i]t is ... a constant theme of the law of contribution from the beginning that B’s claim to *share with others his liability to A* rests upon the fact that they (whether equally with B or not) *are subject to a common liability to A* ... the words ‘in respect of the same damage’, *emphasise the need for one loss to be apportioned among those liable*” [emphasis added]. Contribution is therefore simply an apportionment with others of the liability owed to the plaintiff in the original action. The right to contribution arises from that initial liability and there is no additional or different liability that arises at the point that a defendant seeks contribution from co-defendant(s) or third parties.

36 Significantly, Ms Lim’s own pleaded case was that her claims against the third parties arose from her liability under the Suit 441 HC Judgment, and not some different liability. The Third Party Notices read:⁵¹

⁵¹ OC 125 and OC 126 TPNs.

The [Appellant] now claims against you an indemnity and/or contribution against the Claimant's claim and the costs of this action, on the grounds that you are liable in respect of *the same or other damage for which the [Appellant] was found liable for in HC/S 441/2016*. [emphasis added]

37 Section 6A of the LA governs when this contribution claim must be brought. On a plain reading of s 6A(1) read with s 6A(3)(a) of the LA, the relevant date on which Ms Lim’s right to recover contribution from the third parties accrued was 9 July 2020, being the date of the Suit 441 HC Judgment, which held her liable (and dealt with quantum) in respect of the damage (to IHC). Section 6A(4) of the LA makes clear that the Suit 441 CA Judgment issued on 30 March 2021 did not affect the date on which the right to recover contribution accrued.

38 Section 6A of the LA provides that the contribution claim must be brought within two years of the Suit 441 HC Judgment. The two-year limitation period expired on 8 July 2022. The Third Party Notices and the TPSOCs, filed on 12 September 2022, were therefore time-barred.

39 I rejected Ms Lim’s submission that her right to claim contribution was suspended or extinguished because the damages payable under the Suit 441 HC Judgment were satisfied by the EFIII and VMIII Payments. While those payments meant that she was no longer liable to IHC, she remained liable to contribute her share of the “common liability” arising out of the Suit 441 HC Judgment to EFIII and VMIII. Her right to recover contribution from the third parties arose from her liability in Suit 441, with the right accruing on the date of the Suit 441 HC Judgment, pursuant to s 6A of the LA.

40 It follows that contrary to Ms Lim’s submission, her claim against the third parties after the EFIII and VMIII Payments were not for “\$0”, before the

Contribution Claims were brought against her.⁵² Her right to claim contribution was always in respect of the same damage under the Suit 441 HC Judgment – the EFIII and VMIII Payments did not change that. She would therefore have been entitled to seek contribution against the third parties even before the Contribution Claims were filed and notwithstanding the EFIII and VMIII Payments.

41 For completeness, Ms Lim could have brought a contribution claim even *before* liability had been determined in Suit 441. I deal with the proper procedure in respect of contribution claims below at [50]–[63]. Section 6A of the LA effectively allowed her to bring a contribution claim *after* her liability (and quantum of damages payable) had been determined, but she had to do so within two years of that determination.

42 Further, Ms Lim contradicted herself in her arguments. She argued that “given that the current claim by the Claimants in [the Contribution Claims] has yet to be proven or even adjudicated upon ... her liability in respect of any damage has not even come to pass”.⁵³ If she is not liable in respect of any damage until after the judgments in the Contribution Claims against her are entered, then her right to seek contribution against the third parties under s 15(1) of the CLA had not yet arisen as well. She cannot have it both ways.

43 Finally, Ms Lim relied on the English Court of Appeal’s statement in *Aer Lingus plc v Gildacraft Ltd and another* [2006] EWCA Civ 4 (“*Aer Lingus*”) (at [43]), in the context of the Limitation Act 1980 (c 58) (UK) (the English equivalent of the LA) (“the UK Limitation Act”), that “the relevant date

⁵² AWS at p 9.

⁵³ AWS at p 9.

for the running of time against a tortfeasor who seeks contribution ... [is] *a judgment or award which ascertains the quantum*, and not merely the existence, of the tortfeasor's liability" [emphasis added].

44 I agree with this statement in *Aer Lingus*, not least because (as discussed in *Aer Lingus* at [35]) s 6A(5) of the LA provides that in the context of a settlement agreement, the relevant date to claim contribution would be the date on which the person seeking contribution *agrees on the amount to be paid* by him to the person to whom payment is to be made. This indicates that in the context of a judgment, the date of a judgment on *quantum* would be the relevant date for the purposes of s 6A(3). However, the problem for Ms Lim was that the Suit 441 HC Judgment was a judgment on both liability *and* quantum. In so far as she was attempting to argue that the quantum for which she was liable would only be determined in the Contribution Claims, that is not correct – she was already adjudged to be jointly and severally liable for \$4,538,800 in the Suit 441 HC Judgment; *apportionment* of that sum is a different issue.

45 As noted above at [14], Ms Lim also brought an indemnity claim in the OC 126 TPSOC against VMIII and VMF3 for the Geelong Payment, as distinguished from the contributions she sought from the other third parties.⁵⁴ The OC 125 TPSOC similarly claimed an indemnity against VMF3 in respect of the Geelong Payment.⁵⁵ Against this, counsel for EFIII and VMIII argued that the claim for indemnity was a collateral attack on the Suit 441 Judgments, as it sought to re-impose liability on VMIII which had been exonerated in the Judgments.⁵⁶

⁵⁴ OC 126 TPSOC at para 34.

⁵⁵ OC 125 TPSOC at para 34.

⁵⁶ EVWS at paras 79–82.

46 Although not strictly relevant to Ms Lim’s appeal against Mr Peter Chan, I make two points in respect of this claim for indemnity against VMIII and VMF3. First, Ms Lim was not precluded from seeking contribution or an indemnity from VMIII and VMF3 simply because they had been exonerated of liability in the Suit 441 Judgments. VMIII and VMF3 succeeded in their appeals on a narrow point relating to proof of attribution of Mr Tan’s knowledge (see *Crest Capital (Consequential Order)* at [30]) – this did not preclude Ms Lim from seeking contribution from them *on some other basis*. However, Ms Lim’s basis for claiming the indemnity was unclear – she simply pleaded that it was “just and equitable” that VMIII and VMF3 indemnify her on the basis that the Geelong Payment was wrongfully diverted and misapplied towards one of the Disputed Facilities (“the Standby Facility”), without pleading how they were responsible for this.⁵⁷ Second, in so far as Ms Lim was attempting to *challenge* findings made in the Suit 441 Judgments by claiming an indemnity in respect of the Geelong Payment, she may be precluded from doing so because of *res judicata* and/or abuse of process.

47 I make further observations on the issue of *res judicata* below at [64]–[76]. It suffices to note here that the High Court and the Court of Appeal did not appear to make conclusive findings on whether IHC had intended the Geelong Payment for the Geelong Facility and not the Disputed Facilities. Both courts found this issue irrelevant to the question of the Suit 441 Defendants’ liability towards IHC: the Suit 441 HC Judgment at [227] and the Suit 441 CA Judgment at [191(b)]. Hence, in so far as Ms Lim’s claim for indemnity was based on the argument that IHC had intended the Geelong Payment for the Geelong Facility, but the Crest Entities had wrongfully diverted the Geelong Payment to the

⁵⁷ OC 125 and OC 126 TPSOCs at para 34.

Disputed Facilities (see [13] above), *res judicata* may not apply to preclude it. In the event, I did not have to deal with this issue since the claim for indemnity under the TPSOCs was likewise time-barred under s 6A of the LA.

48 For completeness, I address Mr Chia’s argument that the pleaded cause of action against him at para 13 of the TPSOCs – *ie*, that he breached his duty to Ms Lim to take reasonable care in issuing instructions to her, and not to issue instructions for improper purposes which would expose her to legal liability – was also time-barred pursuant to s 24A(3) of the Limitation Act.⁵⁸ Mr Chia submitted that the cause of action had accrued in April or May 2015 when the instructions were given, and would be time-barred after May 2021 (*ie*, six years later). Further, even if Ms Lim could only have brought the action after she had the requisite knowledge to bring the action – see s 24A(3) of the Limitation Act – that knowledge would have been gained by the time she was sued in Suit 441 on 8 May 2018, and she would be barred from bringing an action after 8 May 2021 (*ie*, three years later).

49 The relevance of this argument was unclear given that Ms Lim’s claim was for contribution under s 15 of the CLA, and the time to bring the action is governed by s 6A of the LA. Section 24A of the LA does not apply to an action to recover contribution – see s 6A(6) of the LA.

The proper process for claiming contribution

50 I make some observations on the procedure adopted by EFIII, VMIII and Ms Lim for claiming contribution.

⁵⁸ OC 125 and OC 126 TPSOCs at para 13.

51 It appears not uncommon that parties fail to follow the proper procedure for claiming contribution: see *Hwa Aik Engineering Pte Ltd v Munshi Mohammad Faiz and another* [2021] 1 SLR 1288 (“*Hwa Aik*”) at [32]. Hence, the Appellate Division took pains to emphasise the proper procedure for claiming contribution from a co-defendant under O 16 r 8 of the Rules of Court (Cap 322, 2014 Rev Ed) (“ROC 2014”): *Hwa Aik* at [32].

52 Presently, the procedure for seeking contribution from co-defendants is set out in O 10 r 8 of the ROC 2021 (the successor provision to O 16 r 8 of the ROC 2014). Where the defendant is seeking contribution from another party to the action (for ease, the “co-defendant”), O 10 r 8(1) provides:

**Claims and issues between defendant and some other party
(O. 10, r. 8)**

8.—(1) Where in any action a defendant —

(a) claims against a person who is already a party to the action any contribution or indemnity;

...

then, subject to paragraph (2), the defendant may, after having filed and served a notice of intention to contest or not contest if required to do so under these Rules, *without permission, issue and serve on that person a notice* containing a statement of the nature and grounds of the defendant’s claim or (as the case may be) of the question or issue required to be determined.

[emphasis added]

53 Where the defendant is seeking contribution from a person who is not a party to the action (*ie*, a third party), O 10 r 1 provides:

Third party notice (O. 10, r. 1)

1.—(1) Where in any action a defendant —

(a) claims against a person not already a party to the action any contribution or indemnity;

...

then, subject to paragraph (2), the defendant may, after having filed a notice of intention to contest or not contest if required to do so under these Rules, *issue a notice in Form 20 or Form 21, whichever is appropriate (called in this Order a third party notice)*, containing a statement of the nature of the claim made against the defendant and (as the case may be) either of the nature and grounds of the claim made by the defendant or of the question or issue required to be determined.

54 The first step in making a claim for contribution is therefore for the defendant to issue and serve on the relevant party either a third party notice under O 10 r 1 or the notice specified in O 10 r 8, as appropriate. Permission is generally required for the issuance of a third party notice under O 10 r 1: see O 10 r 1(2). However, permission is not required for the issuance of the notice to a co-defendant under O 10 r 8: see O 10 r 8(1). Further, under O 10 r 8(3)(a), the co-defendant is generally not required to file a notice of intention to contest or not contest.

55 The defendant claiming contribution is to then issue a summons, to be served on all the other parties to the action, applying to the court for directions: see O 10 r 4(1) and O 10 r 8(4).

56 The same procedure will be adopted for the determination between the defendant claiming contribution and the co-defendant, as if the latter were a third party: see O 10 r 8(3)(d). Essentially, the court may at or after the trial of the action, or, if the action is decided otherwise than by trial, on an application by summons, order such judgment as the nature of the case may require to be entered for the defendant against the co-defendant: see O 10 r 7.

57 The *time* at which a contribution claim may be made is also important. In this regard, as noted earlier at [41], a contribution claim may be made even

before liability has been determined at trial. Hence, the Appellate Division in *Hwa Aik* (at [31]) emphasised that:

Solicitor[s] should be *immediately aware of the possible need to seek contribution from another co-defendant under ss 15 and 16 of the CLA where there is possibly more than one tortfeasor*, and then consider taking the step to file a formal claim for contribution. [emphasis added]

58 At first blush, it may appear inconsistent to state that a contribution claim may be made before liability has been determined at trial, when the right to recover contribution under s 6A of the LA only accrues when judgment is given. The two are not inconsistent. The “accrual” of the right to recover contribution under s 6A of the LA is different from when the entitlement to recover contribution arises under s 15(1) of the CLA. As the court in *Aer Lingus* observed at [10] in relation to s 1 of the Civil Liability (Contribution) Act 1978 (c 47) (UK) and s 10 of the UK Limitation Act (which are *in pari materia* to s 15 of the CLA and s 6A of the LA respectively):

[A]lthough the two-year period [under the UK Limitation Act] is said to run from the date on which a right to recover contribution “accrues”, *it is difficult to think, in the absence of contrary authority, that that expression is intended to convey that the cause of action for a contribution under the 1978 Act only arises at the time of any judgment ...* the 1978 Act, which creates the right to contribution, is written in terms of the mere occurrence (or concurrence) of liability in respect of the same damage. There is no apparent need for that liability to have been established. [emphasis added]

59 Indeed, the cause of action for contribution arises under s 15(1) of the CLA, not s 6A of the LA. The latter only deals with when the limitation period for seeking contribution expires – *ie*, two years after a judgment/award is given or a settlement amount is agreed upon. Thus, the “accrual” of the right to recover contribution under s 6A of the LA is characterised as such merely for the purpose of establishing a date from which the limitation period starts to run.

This explains the practice of claiming contribution before trial. As observed by the court in *Aer Lingus* (at [10]):

If the cause of action for a contribution only arose after judgment ... then a defendant could never claim contribution from a co-defendant ... at any earlier stage: but that is something which happens all the time. Rather, section 10 [of the UK Limitation Act] is stating a “special time limit for claiming contribution”, as the heading to the section indicates, and *the concept of the right accruing is fashioned merely for the purposes of dating the beginning of the two-year limitation period.* [emphasis added]

60 In the present case, Ms Lim sought contribution based on liability which was established in the Suit 441 HC Judgment. Section 6A(3) of the LA therefore clearly applied to impose a two-year limitation period on her claim for contribution starting from the date of the Suit 441 HC Judgment.

61 In the circumstances, it is important for parties or their counsel to (a) assess, as early as possible, the issue of seeking contribution from another co-defendant or third party; (b) follow the proper procedure for filing a contribution claim; and (c) take into account the application of the two-year limitation period under s 6A of the LA. This would avoid defendants being unable to obtain contribution due to the absence of a formal claim for contribution, as was the case in *Hwa Aik* (at [30]) and *Manickam Sankar v Selvaraj Madhavan (trading as MKN Construction & Engineering)* and another [2012] SGHC 99 at [85]. It would also avoid the unfortunate situation of a defendant being time-barred from bringing his or her contribution claim, as was the case for Ms Lim.

62 Further, while s 6A of the LA allows parties to file contribution claims after the rendering of judgment following trial, there are practical reasons why it may be preferable for parties to do so prior to trial:

(a) first, it may in some cases be beneficial to have contribution claims decided within the same proceedings, as the trial judge would be able to decide such claims with the facts and issues of the case still fresh in his or her mind;

(b) second, parties would avoid the time and costs associated with bringing a fresh and separate claim for contribution outside of the main proceedings. From the court's case-management perspective, deciding contribution claims within the main proceedings would also be more efficacious;

(c) third, bringing all the relevant parties within the same action would allow a full ventilation of the evidence and issues in dispute, and bind them to the findings made by the court. This will avoid inconsistent findings of fact. It may also facilitate a settlement of the claims or issues in dispute; and

(d) fourth, parties would avoid the risk of being time-barred from bringing their contribution claims. Parties who delay bringing their contribution claims in the hope that they will not be found liable or that their co-defendants will settle their common liability and not look to them for contribution are simply burying their heads in the sand.

63 That said, in certain situations, it is understandable why parties may delay the bringing of contribution claims until after the pronouncement of judgment on liability; for example, where the main claim is not likely to succeed such that the party incurs unnecessary costs by bringing a claim for contribution. However, such concerns should be immaterial where contribution is sought against a co-defendant. In such a case, the procedure under O 10 r 8 of the ROC

2021 should almost always be invoked. If that had been done in this case, Ms Lim would not find herself in the situation she is in.

Res judicata

64 Given his finding on the limitation issue, the AR did not consider it necessary to deal with the arguments on *res judicata* and abuse of process. As noted above at [21], Ms Lim submitted that *res judicata* was not relevant since the AR decided not to hear arguments on this ground and no appeal had been filed by the third parties against the AR's decision. I rejected that argument. The third parties could not have filed an appeal against the AR's decision not to hear this ground given his decision to strike out Ms Lim's third party actions. The arguments on *res judicata* were made in the written submissions and not abandoned – they remained alive in the appeals before me.

65 Having said that, it was not necessary for me to decide the issue of *res judicata* given my finding that Ms Lim's claim against the third parties was time-barred. Nevertheless, I make several observations on the issue.

66 First, there was plainly an identity of parties and subject matter in the Contributions Claims with Suit 441:

- (a) the Crest Entities, along with Ms Lim, were parties to Suit 441 and the appeals therefrom to the Court of Appeal. They were also parties to the Contribution Claims;
- (b) the facts pleaded by Ms Lim to claim a contribution/indemnity from the Crest Entities arose in Suit 441 and were considered in both the Suit 441 HC and CA Judgments;

(c) based on the evidence led, the High Court concluded that Ms Lim was negligent on account of her failure to inquire as to the purposes of the drawdowns on the Disputed Facilities, and to raise the matter to the IHC board of directors before the legal documentation for the Standby Facility was executed (the Suit 441 HC Judgment at [135]). It was based on this finding of negligence that the High Court found her liable for certain amounts that were paid out, in that IHC would not have incurred that loss but for its entry into the Standby Facility (the Suit 441 HC Judgment at [335] and [336]). These findings were upheld by the Court of Appeal in the Suit 441 CA Judgment at [176]–[184];

(d) the above finding of negligence was attributable to Ms Lim’s own conduct and breach of duty to IHC, and was independent of the conduct of the Crest Entities (see the Suit 441 CA Judgment at [157]); and

(e) the Suit 441 CA Judgment was a final and conclusive judgment on the merits of Ms Lim’s and the Crest Entities’ respective cases in relation to their liability to IHC for the damages awarded under the Suit 441 HC Judgment.

67 Ms Lim in her TPSOCs appeared in some respects to be re-litigating matters decided in the Suit 441 Judgments. While apparently acknowledging that she breached the duty of due skill, care and diligence which she owed to IHC, the thrust of the TPSOCs was that the third parties should pay contribution because their actions *caused or contributed* to her breach of duty to IHC.

68 There were two difficulties with Ms Lim’s pleaded case. First, she asserted that the relevant third parties were culpable to such an extent that they

should bear the entirety of the amount in contribution claimed against her. Ms Lim pleaded, *inter alia*, that the relevant third parties should bear the *whole* of her liability under the Suit 441 HC Judgment having regard to their culpability “in comparison to *an innocent error of judgment* or neglect on [her] part” [emphasis added].⁵⁹ In so far as Ms Lim was seeking to implicitly challenge the finding that she was negligent, that clearly raised issues of *res judicata* and amounted to an impermissible collateral attack on the Suit 441 Judgments.

69 Second, Ms Lim in her TPSOCs appeared to be challenging the implicit finding in the Suit 441 Judgments that the actions of the relevant third parties did not cause or contribute to her breach of duty. She referred to three statements made by Mr Lim (“Chu Pei’s statements”), and pleaded that:⁶⁰

- (a) *in reliance* on Chu Pei’s statements, she did not see any need to and did not make further enquiries regarding the alleged drawdowns;⁶¹ and
- (b) her reliance on Chu Pei’s statements “*caused or contributed*” [emphasis added] to her breach of duty which she owed to IHC.⁶²

70 Ms Lim further pleaded that Chu Pei’s statements were measures taken by Mr Lim, and/or the Crest Entities, and/or Mr Peter Chan to conceal the fact that drawdowns and purchases of IHC shares had taken place.⁶³

⁵⁹ OC 125 and OC 126 TPSOCs at para 34.

⁶⁰ OC 125 and OC 126 TPSOCs at para 24.

⁶¹ OC 125 and OC 126 TPSOCs at para 25.

⁶² OC 125 and OC 126 TPSOCs at para 27.

⁶³ OC 125 and OC 126 TPSOCs at para 23.

71 It was also Ms Lim’s case that:⁶⁴

- (a) Mr Lim was “a servant or agent or representative of” the Crest Entities – in raising this point, Ms Lim was presumably seeking to make those entities vicariously responsible for Chu Pei’s statements; and
- (b) Chu Pei’s statements were made “in agreement with and/or on the instruction and/or with the connivance of”, amongst others, Mr Peter Chan.

72 But Chu Pei’s statements were in evidence in Suit 441, and no finding was made in the Suit 441 HC Judgment or the Suit 441 CA Judgment that they were in any way relevant to Ms Lim’s breach of duty. That also did not appear to be the case she ran in Suit 441, although she could have done so. More importantly, the Court of Appeal found (at [157] of the Suit 441 CA Judgment) that Ms Lim breached her duty because:

- (a) she was aware that IHC had secured the Standby Facility for general working capital purposes;
- (b) she was aware that the drawdowns under the Standby Facility must have taken place;
- (c) she would have been aware that the drawdowns were concealed from IHC and her;
- (d) she therefore did not know what the drawdowns were in fact used for;

⁶⁴ OC 125 and OC 126 TPSOCs at para 28.

- (e) it was the confluence of such circumstances that should have caused Ms Lim to realise that there were some irregularities and improprieties in relation to the drawdowns; and
- (f) the fact that the drawdowns were concealed from her should have heightened her concern and caused her to alert the board of IHC.

73 In other words, the fact that the drawdowns and purchases of IHC shares had been concealed from her did not cause or contribute to her breach of duty to IHC; on the contrary, it strengthened the case against her. Ms Lim’s pleaded case in the TPSOCs therefore appeared to directly challenge the factual findings made in the Suit 441 CA Judgment.

74 I note further that the position taken by Ms Lim in the TPSOCs – *ie*, that the third parties should pay contribution *because* their actions caused or contributed to her breach – presents challenges for the *merits* of the contribution claim itself, as regards the Crest Entities, Mr Peter Chan and Mr Lim. For the reasons above, the Court of Appeal found that their actions did not cause or contribute to Ms Lim’s breach; hence, these third parties cannot be liable to pay contribution on that ground. On the other hand, in so far as the conduct of these third parties was one of the causes of IHC’s loss, alongside Ms Lim’s (unrelated) breach, that may be grounds for her to claim contribution (subject to the limitation issue). But that was not how her case was pleaded.

75 I also note that Ms Lim sought, in the TPSOCs, to minimise her role in IHC – she pleaded that her “role in oversight of the Corporate Finance team was confined to the administrative part of Corporate Finance; to see that the work

was done in time”.⁶⁵ This appeared to be contrary to the findings in the Suit 441 HC Judgment (at [124]), where the court noted that as Vice-President (Investment) of IHC at the material time, Ms Lim was involved with asset management, financing and disposition activities, and also assisted IHC’s chairman at the time with loan reviews and cash flow management for the company. The Court of Appeal affirmed this finding in the Suit 441 CA Judgment (at [158]).

76 In the circumstances, Ms Lim’s third party claims against the Crest Entities, Mr Peter Chan and Mr Lim appeared to be an abuse of process. Ms Lim’s counsel suggested in arguments that some of the concerns above may be addressed by way of amendment, but no draft was tendered.⁶⁶ In the event, this was moot given my decision on the limitation issue.

Conclusion

77 I dismissed the appeals as Ms Lim’s contribution claims against the third parties were time-barred. The AR therefore did not err in striking out the TPSOCs.

Hri Kumar Nair
Judge of the High Court

⁶⁵ OC 125 and OC 126 TPSOCs at para 14.

⁶⁶ Transcript (7 Sep 2023) at p 85 lines 21–27.

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Claim No 125 of 2022 and the first, second and sixth third parties in
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