

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

[2024] SGHC 292

Originating Application No 650 of 2024

Between

Ang Kian Tiong

... Claimant

And

DBS Bank Ltd

... Defendant

JUDGMENT

[Credit and Security — Bonds — Assignment]

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Ang Kian Tiong

v

DBS Bank Ltd

[2024] SGHC 292

General Division of the High Court — Originating Application No 650 of 2024

Christopher Tan JC

1 October 2024, 13 November 2024

13 November 2024

Judgment reserved

Christopher Tan JC:

1 The claimant in this application (“Claimant”) is a customer of DBS Bank Ltd (“Defendant Bank”), under the latter’s Treasures Private Client division.¹ By this application, he prays for various declarations to be made against the Defendant Bank, in respect of bonds issued by a company incorporated in Singapore called Innovate Capital Pte Ltd (“Issuer”).

2 I dismiss the Claimant’s application and now set out my reasons for doing so.

¹ Marcus Teo Soon Kiat’s affidavit dated 7 August 2024 (“Marcus Teo Soon Kiat’s affidavit”) at para 4.

Background

3 In or around December 2017,² the Issuer issued a series of US\$6.00 per cent guaranteed convertible bonds (“Bonds”). The Bonds were constituted pursuant to a trust deed (“Trust Deed”) under which:

- (a) the guarantor of the Bonds was a company called PT Bumi Resources Tbk (“Guarantor”);
- (b) the trustee was Madison Pacific Trust Limited (“Trustee”); and
- (c) the principal paying agent and conversion agent was the Bank of New York Mellon, London Branch (“BNY Mellon”).

The Bonds were cleared through Euroclear Bank, SA/NV or Clearstream Banking, SA (“Clearstream”). The Defendant Bank is a direct participant of Clearstream, holding an account with the latter.³

4 The “Conditions of the bonds and the guarantee” (“Conditions”) were annexed to Schedule 1 of the Trust Deed.⁴ Condition 5.1 of the Conditions stipulated that the Bonds would bear a finance charge from the date of issue at the rate of 6% per annum.⁵ Under condition 7.2.2, if the Issuer had insufficient funds to pay any finance charge by the relevant deadline due to specified circumstances, it was permitted to *capitalise* the accrued finance charges into additional bonds (“Additional Bonds”).⁶ Condition 6.1 gave the bondholder the

² Ang Kian Tiong’s affidavit dated 5 July 2024 (“Ang Kian Tiong’s affidavit”) at para 6.

³ See the Notice of Elections at p 224 of Ang Kian Tiong’s affidavit.

⁴ Ang Kian Tiong’s affidavit at p 271.

⁵ Ang Kian Tiong’s affidavit at p 278.

⁶ Ang Kian Tiong’s affidavit at p 299.

right to convert the Bonds into shares within the Guarantor.⁷ Both the principal amount of the Bonds and any Additional Bonds issued thereafter were eligible for conversion.⁸

5 From December 2020 to March 2022, the Defendant Bank purchased the Bonds on behalf of the Claimant. The purchases were made over seven tranches, following which the Bonds in the Claimant’s account collectively added to a nominal value of US\$1.6m (the “Nominal Bonds”).⁹ It is common ground between the parties that in purchasing the Nominal Bonds, the Claimant was buying not only the Bonds but also the right to the finance charges which had accrued (and remained unpaid by the Issuer) in respect of the Bonds being purchased. In this respect, it is not in dispute that the Issuer had at no time paid any of the finance charges accruing in respect of the Bonds. As at the time of the purchase, finance charges amounting to a total of US\$285,203.22 had accrued in respect of the Nominal Bonds bought on the Claimant’s behalf – the right to these finance charges thus accrued to the Claimant’s benefit, when he came to own the Nominal Bonds. After the Claimant came into ownership of the Nominal Bonds, *further* finance charges were incurred by the Issuer, increasing the quantum of finance charges that had accrued in the Claimant’s favour from US\$285,203.22 to US\$300,263.

6 Throughout the course of owning the Nominal Bonds, the Claimant gave the Defendant Bank instructions on several occasions to submit them for conversion into shares in the Guarantor. It is undisputed that *all* the Nominal Bonds purchased on the Claimant’s behalf were successfully submitted for

⁷ Ang Kian Tiong’s affidavit at p 279.

⁸ See the definition of “Additional Bonds” at p 231 of Ang Kian Tiong’s affidavit.

⁹ Marcus Teo Soon Kiat’s affidavit at para 11.

conversion, with the resulting shares in the Guarantor being credited to the Claimant's account with the Defendant Bank.¹⁰ The crux of the present dispute before me centres on the status of the *accrued finance charges*, totalling US\$300,263.

7 According to the Claimant, as at the point when each tranche of Nominal Bonds were bought on his behalf, the relevant finance charges which had accrued in respect of the Nominal Bonds being purchased had *already* been capitalised into Additional Bonds. Thus, when the Defendant Bank purchased the Nominal Bonds, it would have held (on the Claimant's behalf) not only the Nominal Bonds but US\$285,203.22 worth of Additional Bonds as well.¹¹ It is also the Claimant's case that as additional finance charges arose over the course of the Claimant holding the Bonds, these too were capitalised into Additional Bonds. This meant that the Defendant Bank would eventually hold, on behalf of the Claimant, US\$300,263 worth of Additional Bonds. The Claimant further submits that pursuant to the Claimant's instructions, the Defendant Bank ought to have submitted all of these Additional Bonds for conversion into shares in the Guarantor.

8 The path for transformation of the accrued finance charges into shares within the Guarantor was beset with regulatory obstacles. Apparently, Indonesian regulations contained restrictions on the conversion of capitalised finance charges into shares in the Guarantor (which was an Indonesian company).¹² In the face of the hurdles to conversion, the Issuer had offered a cash option on 29 November 2022, under which the finance charges (which the

¹⁰ Marcus Teo Soon Kiat's affidavit at para 22.

¹¹ Ang Kian Tiong's affidavit at paras 16 and 17.

¹² Ang Kian Tiong's affidavit at p 848.

Claimant alleges had already been capitalised into Additional Bonds) could be exchanged for cash.¹³ The Claimant rejected this, relaying to the Defendant Bank that the offer was too low and that he preferred to adhere to the route of conversion into shares within the Guarantor.¹⁴

9 To date, the Issuer has failed to issue any shares in the Guarantor in exchange for the Claimant’s finance charges (which, according to the Claimant, had already been capitalised into Additional Bonds).¹⁵ A factual issue that is heavily disputed pertains to the *form* in which the accrued finance charges now exist:

(a) The Defendant Bank maintains that the accrued finance charges have remained as a chose in action against the Issuer.

(b) The Claimant insists that the accrued finance charges have been capitalised into Additional Bonds, which the Defendant Bank now holds for the Claimant’s benefit.

10 In that regard, the Defendant Bank maintains that the accrued finance charges were *never* capitalised into Additional Bonds, but instead continued to be reflected as a “pool factor” within the records.¹⁶ This was a ratio assigned by the relevant clearing house to the Bonds, to reflect the face value of the outstanding amount yet to be redeemed.¹⁷ Accordingly, the Defendant Bank argues that the outstanding finance charges remain as a cause of action that

¹³ Marcus Teo Soon Kiat’s affidavit at pp 221–223.

¹⁴ Ang Kian Tiong’s affidavit at p 873.

¹⁵ Ang Kian Tiong’s affidavit at para 31.

¹⁶ Defendant’s Written Submissions dated 24 September 2024 (“Defendant’s submissions”) at para 47.

¹⁷ Ang Kian Tiong’s affidavit at p 828.

bondholders may pursue against the Issuer.¹⁸

11 The Issuer has since commenced the process of voluntary winding up. The Claimant submits that due to the Defendant Bank’s refusal to acknowledge that it holds the Additional Bonds on his behalf, he is unable to enforce his rights against the Issuer in the latter’s liquidation process. This is because the Clearstream system operates on a “no look-through” principle, *ie*, each party only has rights against its counterparty.¹⁹ Thus, any actions taken by and on behalf of beneficial bondholders (such as the Claimant) can only be taken through those institutions entitled to payment through the clearing system, such as the Defendant Bank, as well as other institutions holding accounts with Clearstream.²⁰

12 On 5 July 2024, the Claimant brought the present application, seeking the following reliefs:

(a) A declaration that the Defendant Bank purchased for and on the Claimant’s behalf US\$1.6m worth of Nominal Bonds and US\$285,203.22 worth of Additional Bonds, which were issued by the Issuer pursuant to the Trust Deed.

(b) A declaration that as a result of capitalisation of further unpaid finance charges, the Defendant Bank now holds a total of US\$300,263 worth of Additional Bonds for and on behalf of the Claimant.

¹⁸ Defendant’s submissions at para 55.

¹⁹ Applicant’s Submissions dated 24 September 2024 (“Claimant’s submissions”) at para 6.

²⁰ Claimant’s submissions at para 9.

(c) An order that the Defendant Bank acts in accordance with the Claimant’s instructions, including the filing of a proof of debt in connection with the Additional Bonds.

(d) An order that the Defendant Bank assigns the Additional Bonds and/or all their associated rights in connection with the Additional Bonds to the Claimant, including taking all steps necessary to transfer to the Claimant the title of the Additional Bonds, in the manner contemplated by the Trust Deed.

The parties’ cases

13 According to the Claimant, the circumstantial evidence shows that the finance charges accrued in his favour *had* been capitalised into Additional Bonds.

14 Firstly, as alluded to at [8] above, the Claimant had on 29 November 2022 received an offer by the Issuer to redeem the “capitalised interest portion of the Bonds” for cash. The relevant portion of the notice, which was sent to the Claimant through the Defendant Bank, reads:²¹

While the Company is working diligently with Indonesian counsel to find a solution that allows for the delivery of Shares for the *capitalised interest portion of the Bonds*, it is prepared to adopt a practical solution to ensure that these converted Bonds can be settled now. To settle *these converted Bonds* now, the Company is offering to redeem the capitalised interest portion of such converted Bonds in cash at par (100%) of the capitalised interest amount of such Bonds.

[emphasis added]

Apart from relying on the words “capitalised interest portion”, the Claimant also

²¹ Marcus Teo Soon Kiat’s affidavit at p 222.

focuses on the words “these converted Bonds”²² to argue that the Additional Bonds were ultimately issued after all.²³

15 Secondly, after the failure to obtain shares in the Guarantor in exchange for the accrued finance charges, the Defendant Bank had sent an email to the Claimant on 5 May 2023, informing him that they had no more of the Bonds in their system as all his Bonds had been redeemed.²⁴ Following further correspondence, the Defendant Bank emailed the Claimant on 21 September 2023 stating, *inter alia*:²⁵

... Issuer is unable to issue shares for this *capitalized interest portion* and had made a cash offer in Dec 2022 instead.

... We do not deny your ownership of the USD 300,263 capitalized accrued interest.

[emphasis in original omitted; emphasis added in italics]

The Claimant takes the use of the word “capitalized” in the Defendant Bank’s email as an admission by the Defendant Bank that the Additional Bonds have already been capitalised into existence and are now being held by the Defendant Bank on his behalf.²⁶

16 The Claimant further argues that the following factors suggest that the Additional Bonds were in fact issued by the Issuer and are now held by the Defendant Bank on behalf of the Claimant:

²² Marcus Teo Soon Kiat’s affidavit at p 222.

²³ Claimant’s submissions at para 30.

²⁴ Ang Kian Tiong’s Affidavit at p 880.

²⁵ Ang Kian Tiong’s affidavit at pp 882–883.

²⁶ Ang Kian Tiong’s affidavit at para 46.

(a) At the point of purchasing the Nominal Bonds, the bond buy forms specifically contained entries called the “Price Factor”,²⁷ which was a ratio capturing the accrued finance charges relative to the Nominal Bonds being purchased. The Claimant interprets these entries to mean that he was purchasing not just the Nominal Bonds, but Additional Bonds that were capitalised from the finance charges.²⁸

(b) Over the course of the many months when the Claimant held the Bonds, the Issuer had issued notices stating that as it was unable to pay the finance charges on the Bonds, it would capitalise these charges into Additional Bonds.²⁹

(c) When the Claimant submitted his Nominal Bonds for conversion into shares in the Guarantor, the Issuer had sent out conversion notices. The Claimant adduced two of these conversion notices, which reflected that US\$1.4m worth of Nominal Bonds had been exchanged for shares in the Guarantor over two tranches.³⁰ The Claimant points out that apart from recording the exchange of the Nominal Bonds into shares, each conversion notice also bore a column stating: “Shares for Interest Portion to be Settle [*sic*] Later”. The column also stipulated a “pool factor” corresponding to the accrued finance charges in respect of the Nominal Bonds being exchanged. The Claimant argues that the reference in the conversion notices to the “Interest Portion” shows that

²⁷ Ang Kian Tiong’s affidavit at pp 830–835.

²⁸ Claimant’s submissions at paras 23–24.

²⁹ Ang Kian Tiong’s affidavit at paras 16–17; pp 676–825.

³⁰ Ang Kian Tiong’s affidavit at pp 848–850.

the finance charges must have been capitalised into Additional Bonds, which could be exchanged for shares in the Guarantor later.³¹

(d) The Claimant also relies on a telex sent from BNY Mellon to the Defendant Bank, which alludes to his holding of the Bonds. The telex similarly refers to the amount of shares in the Guarantor to be delivered for the “interest portion” of the Bonds held by the Claimant.³² The Claimant argues that this again suggested that the “interest portion”, *ie*, the accrued finance charges, must have been capitalised into Additional Bonds.³³

17 The Claimant also points to condition 6.1.1 of the Conditions, which sets out the consequences of conversion of the Bonds into shares within the Guarantor:³⁴

Upon the exercise of Conversion Rights in relation to any Bond and the fulfilment by the Issuer of all of its obligations in respect thereof, the relevant Bondholder shall have *no further rights* in respect of such Bond and the obligations of the Issuer and the Guarantor in respect thereof shall be extinguished.

[emphasis added]

The condition thus states that rights of the bondholder are extinguished not just upon exercise of the conversion rights but also upon *the fulfilment by the Issuer of all its obligations in respect of the Bonds*. The Claimant argues that the fact that the conversion right was exercised in respect of the Nominal Bonds did not mean that the rights of the Defendant Bank, as the legal bondholder, were

³¹ Claimant’s submissions at paras 24.3–24.4.

³² Ang Kian Tiong’s affidavit at p 839.

³³ Claimant’s submissions at para 26.

³⁴ Ang Kian Tiong’s affidavit at pp 279–280.

extinguished.³⁵ This is because the Issuer has failed to fulfil all its obligations, particularly the obligation to convert the Additional Bonds into shares in the Guarantor. This, argues the Claimant, means that the Defendant Bank still has “further rights” against the Issuer and Guarantor in respect of the Additional Bonds. The Claimant thus says that he is entitled to have the Defendant Bank pursue these rights on his behalf.

18 The Defendant Bank does not dispute that the accrued finance charges *are* due and owing. However, it maintains that there is no evidence of the Additional Bonds ever having been issued, on account of these finance charges. The Investment Statements sent to the Claimant over the course of many months to document his portfolio mentioned only the Nominal Bonds and contained absolutely no references to the holding of Additional Bonds. These Investment Statements reflected that the US\$1.6m worth of Nominal Bonds were debited in full, having been converted to shares in the Guarantor, such that the Claimant had no more Bonds in his account by June 2022. The Defendant Bank points out that the Claimant never objected to the contents of the Investment Statements.³⁶

19 The Defendant Bank takes the position that these accrued finance charges could themselves potentially have been exchanged for shares in the Guarantor, *even* if they had not been capitalised into Additional Bonds. However, the Defendant Bank contends that the Claimant’s grievance about not getting any shares in the Guarantor in exchange for his accrued finance charges (whether or not these had been capitalised into Additional Bonds in the interim) was something that the Claimant should have taken up with parties such as the

³⁵ Claimant’s submissions at para 58.

³⁶ Marcus Teo Soon Kiat’s affidavit at para 18; Defendant’s submissions at para 10.

Issuer, Trustee or Guarantor.³⁷ The Defendant Bank highlights how it has not been disputed that its contractual role with respect to the Bonds was merely to execute the Claimant's instructions. In doing so, the Defendant Bank owed him no fiduciary obligations in respect of custodised assets³⁸ – this was expressly spelt out in cl 17 of Part D of the DBS Treasures Private Client Terms and Conditions which the Claimant signed.³⁹ The Defendant Bank also points to various clauses in these terms as conditions which emphasise that any grievance that the Claimant has with the issue of the Bonds should be taken up by him against the Issuer directly. I set these clauses out below for ease of reference:

(a) General Risk Disclosure Statement, cll 41 and 43:⁴⁰

41. We may not always be your contractual counterparty or the issuer of certain Investments or Transactions. Where we are not your contractual counterparty or the issuer, *your contractual counterparty or the third party issuer, and not us, will be liable to you under that Investment or Transaction.* Accordingly, in considering whether to enter into any Investment or Transaction, *you should take into account all risks associated with such counterparty or third party issuer, including the counterparty's or third party issuer's financial standing.*

...

43. ... any Investment or Transaction entered into on your behalf with any counterparty and/or broker ... is dependent on the performance, settlement, payment or delivery by such counterparty and/or broker (notwithstanding that between you and us, we act as principal in such Investment or Transaction). *You shall hold us ... harmless from any liability in connection with the failure of these parties to meet their obligations/*

³⁷ Defendant's submissions at para 15.

³⁸ Defendant's submissions at para 6.

³⁹ Ang Soon Kiat's affidavit at p 616.

⁴⁰ Ang Soon Kiat's affidavit at pp 600–601.

responsibilities and that of any other external parties involved in the said Investment or Transaction. ...

[emphasis added]

(b) Specific Terms and Conditions Governing Custodial and Nominee Services, cl 7(g):⁴¹

7. You understand and agree that we are under no obligation to

...

(g) attend or authorise you, as proxy, to attend any meeting or exercise any voting and other right attaching to or derived from such Assets or discharge any obligation conferred or imposed by reason by such holding (including rights or obligations in connection with any allotment, subscription, conversion, consolidation or reorganisation or any merger, receivership, bankruptcy, winding-up or other insolvency proceedings or any compromise or arrangement) or *investigate, participate or take any affirmative action in connection therewith*, provided always that we may, in our absolute discretion and subject to such terms and conditions as we may stipulate, accept and act in accordance with your Instructions in relation to any of the above-mentioned matters.

[emphasis added]

My Decision

20 The court’s power to grant declaratory relief is set out in s 18 of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) read with paragraph 14 of the First Schedule thereto. Order 4 r 7 of the Rules of Court 2021 (“ROC 2021”) further states that the court may make a declaratory judgment or order whether or not any other relief is sought. In *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 (“*Karaha Bodas*”), the Court of Appeal set out the following requirements to be satisfied

⁴¹ Ang Soon Kiat’s affidavit at p 614.

before the court grants declaratory relief (at [14]):

- (a) the court must have the jurisdiction and power to award the remedy;
- (b) the matter must be justiciable in the court;
- (c) as a declaration is a discretionary remedy, it must be justified by the circumstances of the case;
- (d) the plaintiff must have *locus standi* to bring the suit and there must be a real controversy for the court to resolve;
- (e) any person whose interests might be affected by the declaration should be before the court; and
- (f) there must be some ambiguity or uncertainty about the issue in respect of which the declaration is asked for so that the court's determination would have the effect of laying such doubts to rest.

I take the view that limb (c) is not satisfied in the present case, *ie*, the Claimant has failed to demonstrate why the declaration sought is justified in the circumstances. In *DNKH Logistics Pte Ltd v Liberty Insurance Pte Ltd* [2019] 4 SLR 1063, the High Court alluded to the rationale that “declarations should not be made in the absence of a factual substratum or in the inadequacy of facts where they are fact-sensitive” (at [28]). That very shortcoming exists here, where the Claimant has failed to sufficiently establish a critical facet of the factual substratum, *ie* that the Additional Bonds were ever issued. The loose language of the emails extracted at [14] and [15] above stops short of confirming that the Additional Bonds had *in fact* been issued. As for the factors relied on by the Claimant set out at [16] above, these merely indicate the accrual of finance charges which had the potential to eventually be transformed into shares

in the Guarantor. There is no direct evidence showing that the Issuer had indeed capitalised those charges into Additional Bonds (as a precursor to conversion into shares in the Guarantor), much less showing that the Defendant Bank currently holds any Bonds (Additional or Nominal) in the Claimant's name.

21 While the Defendant Bank does not dispute the Claimant's case that the finance charges concerned had accrued and are *still* owing to the Claimant, the Defendant Bank had never intimated to any Additional Bonds being issued in respect of these charges. The Investment Statements which the Defendant Bank sent the Claimant never reflected any Additional Bonds standing to the Claimant's name. The Claimant has failed to tender any documents emanating from the Issuer, Guarantor or Trustee confirming that the Additional Bonds due to him came into being. No suggestion has been offered as to exactly when the capitalisation might have taken place or just how many Additional Bonds were issued pursuant to the capitalisation process. In fact, the converse is true. After all the Nominal Bonds had been redeemed by way of conversion into shares in the Guarantor, the Defendant Bank (following exchanges with the Claimant) wrote to the Trustee, which replied:⁴²

... we note that *we have not received any notice* under Condition 7.2.2 that such Additional Bonds referenced in your client's email have been issued. As such, as far as we are aware, the principal amount of the bonds remains at USD 0.00 at this time
...

[emphasis added]

22 In the face of the ambiguity in the documentary records, one of the means to break the gridlock and establish that the Issuer had issued the Additional Bonds would have been for the Claimant to bring the Issuer (which is a Singaporean company) into this action. Such a course would cohere with

⁴² Ang Kian Tiong's affidavit at pp 869–870.

limb (e) of the *Karaha Bodas* requirements, set out at [20] above, *ie*, that any person whose interests might be affected by the declaration being sought should be before the court. Some guidance may be gleaned from the case of *The One Set Suites Pte Ltd v Pacific Motor Credit (Pte) Ltd* [2014] 4 SLR 806, involving an option to purchase a property. As the purchaser intended to use the property as a motor workshop, the option was subject to (*inter alia*) the condition that various regulatory approvals had to be obtained. When the National Environment Agency (“NEA”) refused to support the purchaser’s proposed use of the property, the purchaser sought to rescind the transaction. In a bid to salvage the deal, the vendor wrote to NEA without the purchaser’s knowledge, urging NEA to reconsider its refusal. Following the appeal by the vendor, NEA decided to grant approval. Critically, NEA’s approval was subject to a condition and it was unclear if that condition could be construed as permitting the full scope of motor workshop activities which the purchaser intended to conduct (at [88]). The purchaser refused to resile from its decision to rescind and sued the vendor for the return of the purchase deposit. The vendor counterclaimed for various reliefs, including a declaration that NEA’s approval (issued after the vendor’s appeal) should be construed as rendering the purchaser’s purported rescission ineffective (at [95]). In refusing to grant declaratory relief, Edmund Leow JC remarked (at [98]–[100]):

98 With respect to the 1st to 4th Declaratory Orders, it was accepted by the Court of Appeal in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* [2006] 1 SLR(R) 112 at [14] that “any person whose interests might be affected by the declaration should be before the court”. Undoubtedly, NEA was such an interested party. The Vendor could have joined NEA as a defendant in the counterclaim but it did not do so. The Vendor did not even call anyone from NEA as a witness.

...

100 Without any evidence from NEA, I could hardly have granted the declaratory orders sought. ...

23 Just as the declaration in the case above could not be granted without a proper appreciation of NEA’s position on the matter, there is similarly a crucial piece of the puzzle which remains unaccounted for in the present case, without which the declaration sought by the Claimant should not be granted. That relates to the *Issuer’s* confirmation as to whether the Additional Bonds were ever issued. If the Additional Bonds were never issued (and there is no evidence to confirm that they were), granting the declarations sought by the Claimant would mean declaring that the Defendant Bank holds, for the Claimant’s benefit, something that does not exist. This would put the Defendant Bank in an invidious position.

24 In effect, what the Claimant seeks to do in this case is to short circuit his quest for redress. Instead of pursuing the relevant parties such as the Issuer to ascertain whether the Additional Bonds were ever issued (and if so, their current status), the Claimant seeks to drive the spurs into the sides of the Defendant Bank, using the declarations that he now seeks, to propel the Defendant Bank into pursuing redress on the Claimant’s behalf. The Claimant hopes that by saddling the Defendant Bank with that onus, this will save the Claimant the trouble and expense of doing so himself. During the oral hearing, Claimant’s counsel said that this would serve as a “practical remedy” that would facilitate the Claimant’s enforcement of his rights. I find the Claimant’s motivation for seeking declaratory relief to be indefensible. In signing up as a client of the Defendant Bank, the Claimant was made aware that the Defendant Bank owed him no fiduciary obligations in respect of the custodised assets, and that it would be up to him to pursue his remedy against the underlying issuer of the securities being purchased (see the clauses cited at [19] above). At the very least, he should have made a good faith effort to resolve the matter with the Trustee.

25 The Claimant argues that the “no look-through” principle applies in this

case, in that a downstream investor such as himself investing through an intermediary such as the Defendant Bank holds no standing to pursue his claims against the key players in the bond issue. That, argues the Claimant, explains why he needs to prevail on the Defendant Bank to help him pursue his rights.⁴³ The Claimant seeks to illustrate the helplessness of his situation by pointing to what he perceives to be the cynical tenor in the Trustee’s response to his lawyer’s inquiries :⁴⁴

We understand that you act for [the Claimant] *who claims to be the owner* of approximately USD1,900,263, 6% guaranteed convertible bonds of Innovate Capital Pte Ltd due 2024 (the “Bonds”). Please be advised that at this time, the Trustee is considering what (if any) action might be taken with respect to the Bonds.

[emphasis in original omitted; emphasis added in italics]

The Claimant contends that by using the term “claims to be”, the Trustee showed scepticism over the Claimant’s claim to ownership of the Additional Bonds.⁴⁵ As regards the Issuer, the Claimant also says that his lack of standing means that his ability to file a proof of debt with the Issuer’s liquidator is “imperilled”.⁴⁶

26 I find the Claimant’s submission to be without merit.

27 In relation to the Claimant’s argument centring on the tenor of the Trustee’s reply, it is difficult to understand exactly what the Claimant’s submission is getting at. Any suggestion that the Trustee’s words mean that the Trustee is going to reject the Claimant’s claim to ownership of the Bonds is

⁴³ Claimant’s submissions at paras 6 and 61.

⁴⁴ Ang Kian Tiong’s affidavit at p 938.

⁴⁵ Claimant’s submissions at para 63.

⁴⁶ Claimant’s submissions at para 67.

tenuous at best. More importantly, during the hearing before me, the Claimant acknowledged that he did *not* follow up with the Trustee's reply:⁴⁷

Ct: Does the Claimant confirm that? That there was no follow up from the trustee's email reply exhibited at p 938 of Ang's affidavit?

Counsel: We had some WP communications with other bondholders, but there was no further communication between us and the trustee.

If the Claimant did not even bother to properly engage with the Trustee, I find it hard to see how it is open to him to come to court and suggest that the Trustee is going to be obstructive.

28 In relation to the Claimant's attempts at liaising with the Issuer's liquidator, it is noteworthy that the Claimant failed to produce *any* documentation to the liquidator as proof of his entitlement to the accrued finance charges, even though these documents were within his possession.⁴⁸ I note that in *Re Swiber Holdings Ltd* [2018] 5 SLR 1358 (this was an authority that was not expressly referred to by either party), it was observed that the "traditional position at common law appeared to be that a beneficial holder of notes that were constituted by a trust deed did not amount to a creditor of the issuer". Notwithstanding, the Issuer's liquidator had on 21 June 2024 expressly invited the Claimant to submit a proof of debt.⁴⁹ The Claimant similarly failed to follow up on this. When I asked the Claimant's counsel to explain the omission, he said that the Claimant will revert to the liquidator with the relevant documents only *after* the present application before me has been determined. With respect, this response says nothing to justify the Claimant's abject lack of

⁴⁷ Transcript, 1 October 2024 at p 6.

⁴⁸ Ang Kian Tiong's affidavit at pp 924–925.

⁴⁹ Ang Kian Tiong's affidavit at pp 927–928.

effort to engage the liquidator.

29 There is thus nothing in the Claimant's dealings with the trustee or liquidator which supports his application for the declaration which he seeks against the Defendant Bank.

Conclusion

30 For the above reasons, the Claimant's application is dismissed. I will now hear parties on costs.

Christopher Tan
Judicial Commissioner

Suang Wijaya and Hamza Zafar Malik (Eugene Thurasingm LLP) for
the claimant;
Vithiya d/o Rajendra and Manvindar Kaur Sethi d/o Sarwan Singh
(WongPartnership LLP) for the defendant.
