

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

[2024] SGHC 96

Originating Summons No 207 of 2022 (Summons No 245 of 2024)

Between

(1) Third Eye Capital Corporation

... Claimant

And

(1) Pretty View Shipping SA

(2) Pretty Urban Shipping SA

(3) Parakou Tankers Inc

... Defendants

GROUND OF DECISION

[Civil Procedure — Disclosure of documents — *Riddick* principle — Whether permission of court required to use documents]

[Civil Procedure — Disclosure of documents — *Riddick* principle — Whether balance of interest in favour of granting permission]

[Abuse of Process — *Riddick* principle — Whether proceedings for the enforcement of judgment debt were brought for a collateral purpose]

TABLE OF CONTENTS

BACKGROUND	1
THE LAW GOVERNING THE <i>RIDDICK</i> PRINCIPLE	4
THE PARTIES' RESPECTIVE CASES	6
ISSUES TO BE DETERMINED	7
ISSUE 1: WHETHER PERMISSION IS REQUIRED	8
THE LAW	8
THE RMI APPLICATION IS NOT A RELATED ENFORCEMENT PROCEEDING.....	9
ISSUE 2: WHETHER PERMISSION SHOULD BE GRANTED	11
THE LAW	11
MY DECISION TO GRANT PERMISSION	12
<i>Support of related proceedings</i>	13
(1) Relevance of merits.....	14
(A) <i>Third Eye's failure to adduce evidence of RMI law</i>	15
(B) <i>No need for Third Eye to establish an arguable case</i>	16
(2) The EJD Information will be meaningfully used to support a related proceeding	18
<i>No collateral or improper purpose</i>	21
<i>No countervailing considerations</i>	28
ISSUE 3: WHETHER THE SCOPE OF THE EJD INFORMATION IS TOO WIDE	29
CONCLUSION.....	30

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Third Eye Capital Corp
v
Pretty View Shipping SA and others

[2024] SGHC 96

General Division of the High Court — Originating Summons No 207 of 2022
(Summons No 245 of 2024)

Hri Kumar Nair J

20 March 2024

3 April 2024

Hri Kumar Nair J:

1 The Plaintiff (“Third Eye”) applied for permission to use in foreign proceedings, documents and information it had obtained from the Defendants under compulsion in enforcement proceedings here. I allowed the application and now provide my grounds of decision.

Background

2 Third Eye is a Canadian company providing financial capital and credit services.¹ The 3rd Defendant (“Parakou”) is incorporated in the Republic of the

¹ Mark Tristan George Horrox’s 2nd Affidavit dated 24 January 2024 (“Horrox’s 2nd Affidavit”) at para 6; Mark Tristan George Horrox’s 1st Affidavit dated 4 March 2022 (“Horrox’s 1st Affidavit”) at p 115.

Marshall Islands (“RMI”)² and is the holding company of the 1st and 2nd Defendants (“Pretty View” and “Pretty Urban” respectively).³ The Defendants were in the shipping business.⁴ At all material times, Parakou’s sole shareholder, director, and CEO was Liu Por (“Liu”), a Singapore citizen.⁵

3 On 15 October 2021, Third Eye obtained two arbitration awards against the Defendants (the “Awards”) for the sums of US\$5,300,740.05 jointly and severally against Parakou and Pretty View, and US\$5,351,325.48 jointly and severally against Parakou and Pretty Urban, respectively.⁶ The Awards against Parakou were made in its capacity as a guarantor of Pretty View and Pretty Urban’s respective obligations to Third Eye.⁷ The Awards remain wholly unsatisfied.⁸

4 On 6 April 2022, Third Eye obtained leave to enforce the Awards in Singapore.⁹ Third Eye thereafter entered judgment on 29 July 2022 against the Defendants (the “SG Judgment”).¹⁰

² Liu Por’s 1st Affidavit dated 18 November 2022 (“Liu’s 1st Affidavit”) at para 1; Horrox’s 2nd Affidavit at para 7.

³ Horrox’s 2nd Affidavit at para 8; Horrox’s 1st Affidavit at p 115.

⁴ Horrox’s 1st Affidavit at p 115.

⁵ Horrox’s 2nd Affidavit at para 8; Liu Por’s 6th Affidavit dated 27 February 2024 (“Liu’s 6th Affidavit”) at p 273, lines 7-10.

⁶ Horrox’s 1st Affidavit at paras 15-16; Horrox’s 2nd Affidavit at paras 9-11.

⁷ Horrox’s 2nd Affidavit at para 10.

⁸ Horrox’s 2nd Affidavit at para 12; Liu’s 6th Affidavit at p 115, lines 27-28.

⁹ Mark Tristan George Horrox’s 3rd Affidavit dated 5 March 2024 (“Horrox’s 2nd Affidavit”) at pp 289-290.

¹⁰ Horrox’s 3rd Affidavit at p 294.

5 On 21 September 2022, Third Eye obtained leave to enforce the Awards in the High Court of the Republic of the Marshall Islands (the “RMI Court”) and entered judgment against the Defendants (the “RMI Judgment”).¹¹ On 7 October 2022, Third Eye obtained an order in this action (the “EJD Order”) for Liu to: (a) attend before the Registrar to be orally examined on whether the Defendants have any property or means of satisfying the SG Judgment; and (b) provide by way of affidavit the answers and documents sought by Third Eye via questionnaires annexed to the EJD Order (the “EJD Proceedings”).¹² Liu filed five affidavits in the EJD Proceedings (collectively, the “EJD Affidavits”),¹³ and was orally examined on 19 December 2022,¹⁴ 23 March 2023,¹⁵ 18 May 2023,¹⁶ and 3 August 2023¹⁷ (the “EJD Hearing”).

6 By this application, Third Eye sought permission to use all the documents and information (collectively, the “EJD Information”) disclosed during the EJD Proceedings to support proceedings it intends to file in the RMI to seek an order piercing the corporate veil of Parakou and holding Liu

¹¹ Horrox’s 2nd Affidavit at pp 26-29.

¹² Horrox’s 2nd Affidavit at pp 39-40.

¹³ Liu’s 1st Affidavit; Liu Por’s 2nd Affidavit dated 24 February 2023 (“Liu’s 2nd Affidavit”); Liu Por’s 3rd Affidavit dated 27 April 2023 (“Liu’s 3rd Affidavit”); Liu Por’s 4th Affidavit dated 26 June 2023 (“Liu’s 4th Affidavit”); Liu Por’s 5th Affidavit dated 25 September 2023 (“Liu’s 5th Affidavit”).

¹⁴ The transcript for this hearing on 19 December 2022 (“19 December 2022 Transcript”) can be found in Liu Por’s 6th Affidavit pp 115-173.

¹⁵ The transcript for this hearing on 23 March 2023 (“23 March 2023 Transcript”) can be found in Liu’s 6th Affidavit at pp 174-222.

¹⁶ The transcript for this hearing on 18 May 2023 (“18 May 2023 Transcript”) can be found in Liu’s 6th Affidavit at pp 226-255.

¹⁷ The transcript for this hearing on 3 August 2023 (“3 August 2023 Transcript”) can be found in Liu’s 6th Affidavit at pp 259-287.

personally liable under the RMI Judgment (the “RMI Application”).¹⁸ The Defendants resisted the application. Liu filed an affidavit in support of the Defendants’ position,¹⁹ but did not apply to participate in the proceedings personally.

The law governing the *Riddick* principle

7 A party who discloses a document in an action under compulsion is entitled to the protection of the court against any use of the document otherwise than in that action. This rule – the “*Riddick* principle” – derives its name from the English Court of Appeal case of *Riddick v Thames Board Mills Ltd* [1977] 1 QB 881, where Lord Denning MR explained its rationale (at pp 895–896):

The reason for compelling discovery of documents in this way lies in the public interest in discovering the truth so that justice may be done between the parties. ... The balance comes down in the ordinary way in favour of the public interest of discovering the truth, i.e., in making full disclosure.

...

On the one hand discovery has been had in the first action. It enabled that action to be disposed of. The public interest there has served its purpose. Should it go further so as to enable the memorandum of April 16, 1969, to be used for this libel action? I think not. The memorandum was obtained by compulsion. Compulsion is an invasion of a private right to keep one’s documents to oneself. The public interest in privacy and confidence demands that this compulsion should not be pressed further than the course of justice requires. The courts should, therefore, not allow the other party — or anyone else —

¹⁸ Plaintiff’s Written Submissions dated 18 March 2024 (“PWS”) at para 1.

¹⁹ Liu’s 6th Affidavit. This affidavit was filed in his capacity as an officer of the Defendants and in his personal capacity insofar as the matters raised in HC/SUM 245/2024 were directed at him personally (at para 1).

to use the documents for any ulterior or alien purpose.
Otherwise the courts themselves would be doing injustice.

8 This ruling was later built on in *Prudential Assurance Co Ltd v Fountain Page Ltd and another* [1991] 1 WLR 756 (at p 765):

The rational basis for the rule is that where one party compels another, either by the enforcement of a rule of court or a specific order of the court, to disclose documents or information whether that other wishes to or not, the party obtaining the disclosure is given this power because the invasion of the other party's rights has to give way to the need to do justice between those parties in the pending litigation between them; it follows from this that the results of such compulsion should likewise be limited to the purpose for which the order was made, namely, the purposes of that litigation then before the court between those parties and not for any other litigation or matter or any collateral purpose.

9 In most cases, a party must apply for permission to use the said document or information. In *Ong Jane Rebecca v Lim Lie Hoa and other appeals and other matters* [2021] 2 SLR 584 ("*Ong Jane Rebecca*"), the Court of Appeal held (at [99]) that situations involving the *Riddick* principle may broadly be classified under three categories:

(a) First, it must be determined if a document is produced, or information furnished, out of compulsion. If so, it is covered by the *Riddick* undertaking. If not, the document or information may be used without the permission of the court.

(b) Second, if the *Riddick* undertaking applies, the question is whether the protected document or information may nonetheless be used without permission due to the nature of the related enforcement proceedings for which it is being used.

(c) Third, if neither of the above is satisfied, the party relying on the protected document or information to commence or sustain related proceedings must seek the court’s permission for the undertaking to be lifted.

The parties’ respective cases

10 There is no dispute that the EJD Information was obtained under compulsion, and therefore does not fall within the first category of cases described above (see [118] *Ong Jane Rebecca*).²⁰

11 Third Eye’s primary position was that the second category was engaged – permission was not required to use the EJD Information as the RMI Application is a related enforcement proceeding.²¹ It argued, in the alternative, that if permission is required, it should be given in the interests of justice – the purpose of the RMI Application was to satisfy the Awards, and the EJD Information was obtained to facilitate that objective.²²

12 The Defendants argued that permission to use the EJD Information is required as the RMI Application is not a related enforcement proceeding,²³ and urged that permission be refused because:

(a) Third Eye failed to establish an arguable case that Parakou’s corporate veil should be lifted as against Liu as (1) it led no evidence

²⁰ PWS at para 38; DWS at para 16.

²¹ PWS at paras 38-44.

²² PWS at paras 45-84.

²³ 1st-3rd Defendants’ Written Submissions dated 13 March 2024 (“DWS”) at paras 13-26.

that the concept of lifting the corporate veil was part of the law of the RMI; and (2) even if Singapore law was applied, the EJD Information does not assist Third Eye to pierce the corporate veil of Parakou;²⁴

(b) the EJD Proceedings were conducted for a collateral purpose, namely, to obtain information against Liu to support the RMI Application and not to ascertain whether the Defendants had the assets or means to satisfy the SG Judgment;²⁵ and

(c) Liu would be irretrievably and unfairly prejudiced if the EJD information was used in the RMI Application.²⁶

13 Even if permission were granted, the Defendants urged me to only allow the use of the transcripts of the EJD Hearing and not the EJD Affidavits.²⁷

Issues to be determined

14 The following issues arose for determination:

(a) Whether Third Eye requires permission to use the EJD Information for the RMI Application?

(b) Assuming permission is required, whether it should be given?

(c) Whether the permission should be limited to the transcripts of the EJD Hearing?

²⁴ DWS at paras 34-51.

²⁵ DWS at paras 53-59.

²⁶ DWS at paras 60-66.

²⁷ DWS at para 12.

Issue 1: Whether permission is required

The law

15 This issue hinges on whether the RMI Application is a “related enforcement proceeding” (*Ong Jane Rebecca* at [99(b)]). On this question, there are two key points of reference: (a) the nature of the proceedings in which the documents were *disclosed*; and (b) the nature of the proceedings in which the documents are being *used* (*Ong Jane Rebecca* at [112]).

16 With respect to the first point, the decision in *Ong Jane Rebecca* is relevant. In that case – as in this – the documents to which the *Riddick* undertaking applied were furnished pursuant to EJD proceedings. The Court of Appeal noted that (at [113]):

- (a) EJD proceedings are intended to aid the judgment creditor in obtaining information to assist in the enforcement of a judgment debt, which might result in the execution of the judgment concerned; and
- (b) therefore, the judgment debtor would know that information disclosed under EJD proceedings will be used for subsequent related proceedings.

17 With respect to the second point, the Court of Appeal highlighted several relevant factors, including the identity of the parties – if the defendant in the related proceeding is also the defendant in the original proceeding in which the protected document or information was obtained, a case may be made that the related proceeding constitutes enforcement against that defendant (*Ong Jane Rebecca* at [114]).

The RMI Application is not a related enforcement proceeding

18 In relation to the first point of reference, the Defendants would know that information disclosed during the EJD Proceedings will be used to satisfy the Awards. However, the second point of reference (*viz.* the nature of the RMI Application) suggests that it is not a related enforcement proceeding.

19 Importantly, there is no identity of parties. The true or substantive defendant in the RMI Application will be Liu. Liu was not a party to the arbitrations that resulted in the Awards or the EJD Proceedings – he only appeared and furnished the EJD information in his capacity as an officer of Parakou. Third Eye argues that there is identity of parties because Liu is the *alter ego* of Parakou and should be held personally liable for the judgment debt.²⁸ I reject that argument as it places the cart before the horse – it assumes that Third Eye will succeed in the RMI Application but that decision rests with the RMI Court and has yet to be determined. As things stand, Liu is not, and cannot be regarded as, the same as the Defendants. It also cannot be said that the Defendants and Liu furnished the EJD Information knowing or expecting that it may be used to support proceedings to make Liu personally liable for the judgment debt.

20 Third Eye relied on the case of *Timing Ltd v Tay Toh Hin and another* [2020] 5 SLR 974 (“*Tay Toh Hin*”) to argue that there can be identity of parties, even if the information is used to execute against the assets of the debtor’s wife (who is a “third-party”).²⁹ However, that case involved the use of information

²⁸ PWS at para 43(a).

²⁹ Transcript of Originating Summons No 207 of 2022 (Summons No 245 of 2024) heard on 20 March 2024 (“20 March 2024 Transcript”) at p 10.

for the garnishing of *joint* bank accounts held by the judgment debtor *and* his wife – in other words, the enforcement was against *the debtor’s* asset. The Court of Appeal in *Ong Jane Rebecca* therefore considered that *Tay Toh Hin* fell within the second category of cases where permission was not required (at [109]). In the present case, the purpose of the RMI Application is to take enforcement proceedings against Liu’s *personal* assets (or those in his name). Indeed, the Court of Appeal observed that “the situation in [*Tay Toh Hin*] would have been different if the documents obtained from the relevant EJD proceedings had been used to commence a *fresh action*” (at [110]).

21 With respect to the nature of the related proceedings, the Court of Appeal observed in *Ong Jane Rebecca* (at [114(c)]):

The question under this factor is whether the related proceedings can be considered “enforcement” in the ordinary sense, *ie*, modes of execution or proceedings that facilitate the payment of judgment debts owing to a plaintiff. This is to be determined in the context of the particular case, albeit we note that “traditional” enforcement actions recognised under the Rules of Court (*eg*, garnishee proceedings) would most likely satisfy this requirement: see also the discussion of this court in *PT Bakrie* at [14] on the various modes of execution under O 45 of the Rules of Court.

22 By the RMI Application, Third Eye is not levying any “traditional” mode of execution, and certainly not in respect of the *SG Judgment*. More importantly, the RMI Application does not in and of itself compel payment. Although the ultimate objective of the RMI Application is to enable Third Eye to satisfy the Awards, and therefore also the *SG Judgment*, it is not a proceeding to “enforce” the judgment debt but one to establish whether Liu is an appropriate party against whom enforcement proceedings may be brought. The RMI Application is in effect a “*fresh action*” (*Ong Jane Rebecca* at [110]).

23 There is one additional consideration. The RMI Application, if successful, may expose Liu personally to claims by Parakou’s other creditors. This is particularly relevant as Parakou is under administration.³⁰ The RMI Application may therefore have implications beyond the enforcement of the judgment debt and cannot therefore simply be considered a “related enforcement proceeding” as intended or understood in *Ong Jane Rebecca*.

24 I therefore find that this case falls within the third category in *Ong Jane Rebecca* and permission is required for Third Eye to use the EJD Information for the RMI Application.

Issue 2: Whether permission should be granted

The law

25 In determining whether permission should be granted, the Court embarks on a balancing exercise to assess “whether the circumstances are such as to justify the lifting of the *Riddick* undertaking” (*Lim Suk Ling Priscilla and another v Amber Compounding Pharmacy Pte Ltd and another and another appeal and another matter* [2020] 2 SLR 912 (“*Amber Compounding*”) at [69]).

26 The Court of Appeal in *Amber Compounding* highlighted five (non-exhaustive) factors which may be raised in favour of lifting the *Riddick* undertaking (at [71]), of which the only relevant one here is that the EJD Information is to be used to support related foreign civil proceedings.

27 The factors in favour of granting permission are then to be balanced against the interests sought to be protected by the *Riddick* undertaking, namely

³⁰ Liu’s 6th Affidavit at p 145, lines 2-6; Horrox’s 2nd Affidavit at p 22.

the public interest in encouraging full disclosure and the disclosing party's privacy interests. Factors which militate against the grant of permission include (*Amber Compounding* at [72]):

- (a) injustice or prejudice to the disclosing party – however, where no irremediable prejudice is demonstrated, this factor may be accorded little weight;
- (b) improper purpose for which permission is sought – the court has a general concern to control the collateral use of disclosed documents; and
- (c) privilege against self-incrimination – which is not engaged in the present case.

28 Ultimately, the test is whether “if, in all the circumstances of the case, the interests advanced for the extraneous use of the disclosed documents outweigh the interests that are protected by the *Riddick* undertaking” (*Amber Compounding* at [46]).

My decision to grant permission

29 I find that the interests in allowing Third Eye to use the EJD Information for the RMI Application outweigh the interests protected by the *Riddick* undertaking for the following reasons:

- (a) The EJD Information is to be meaningfully used to support Third Eye's attempt to recover the amounts due under the RMI Judgment, and therefore, the SG Judgment.

(b) Third Eye did not commence or pursue the EJD Proceedings with a collateral purpose.

(c) There are no countervailing considerations against lifting the *Riddick* undertaking.

Support of related proceedings

30 As explained earlier, a relevant factor is that the subject information is to be used to support related proceedings (*Amber Compounding* at [71(b)]). This is justified on the basis that there is a “strong countervailing public interest in ensuring that all relevant evidence which may be required ... [is] before the court” (*Microsoft Corp and others v SM Summit Holdings Ltd and another* [1999] 3 SLR(R) 1017 at [35]). In this respect, the nature of the related proceedings is relevant (*Amber Compounding* at [71(b)]).

31 I find that the nature of the RMI Application is a strong factor in favour of granting permission to use the EJD Information.

32 First, it is highly relevant that the *objective* of the RMI Application is to enable Third Eye to enforce and satisfy the RMI Judgment, and therefore, also the SG Judgment. This is consistent with the purpose of the EJD Proceedings, through which the EJD Information was obtained. As the Court of Appeal in *Ong Jane Rebecca* noted (at [113]):

EJD proceedings involve an exercise in obtaining information to assist in the enforcement of a judgment debt. Indeed, such proceedings are “intended to aid the judgment creditor ... in garnering additional *information* which might – or might not – result in the implementation of actual *execution* of the judgment concerned” [emphasis in original]; *PT Bakrie Investindo v Global Distressed Alpha Fund 1 Ltd Partnership* [2013] 4 SLR 1116 (“*PT Bakrie*”) at [16]. Therefore,

there is no question that the judgment debtor would know that information disclosed in the course of such EJD proceedings *will be used for subsequent related proceedings*. This is to be contrasted with, for example, specific discovery in the course of an action. The party producing documents pursuant to such discovery applications would have the expectation that the said documents would only be used for the purposes of *that action*.

33 While I have found that the RMI Application is strictly not an “enforcement” of the SG Judgment, it is nonetheless “a means to pursue a legitimate interest in” satisfying the Awards, and therefore the SG Judgment (see *Ong Jane Rebecca* at [159]).

34 Second, the SG Judgment and the RMI Application are closely connected. Given that the Defendants are no longer operating, and that Liu has apparently caused some of Parakou’s assets to be transferred to himself and third parties (see below at [47(c)]), Third Eye’s ability to proceed against Liu personally may be the difference between recovery of the amounts due to Third Eye and a paper judgment. Indeed, the EJD Information suggests that Liu had transferred assets out of Parakou to frustrate the enforcement of the Awards.

(1) Relevance of merits

35 The Defendants assert that Third Eye has to establish an arguable case that it is able to pierce Parakou’s corporate veil in the RMI.³¹ In this respect, the Defendants argue that Third Eye has failed because: (a) it led no evidence that the concept of lifting the corporate veil is part of the law of the RMI;³² and (b) even if Singapore law is applied, the EJD Information does not assist Third Eye

³¹ DWS at paras 36-37.

³² DWS at paras 34-41.

as Liu's answers only relate to him being the controlling mind and will of Parakou, which is insufficient by itself to justify piercing the corporate veil.³³

36 I reject these arguments.

(A) THIRD EYE'S FAILURE TO ADDUCE EVIDENCE OF RMI LAW

37 No evidence was adduced by either party on RMI law in respect of the concept of piercing the corporate veil. I am therefore entitled to adopt the presumption of similarity and assume that the law in the RMI is the same as Singapore law (*Ollech David v Horizon Capital Fund* [2024] SGHC(A) 8 at [54]).

38 The Defendants relied on *Global Multimedia International Ltd v Ara Media Services* [2006] EWHC 3107 (Ch) for the proposition that a claimant's failure to adduce evidence of the foreign law is fatal and can serve as a basis to strike out its claim. However, that case involved a cause of action brought before the English courts that was based on foreign law, but the content of that foreign law was not pleaded. The Court found the pleading deficient as well as unfair to the opposing party as it would not know the case it has to meet (at [38]). Here, Third Eye is not pursuing any cause of action based on RMI law in Singapore – it is simply asking for permission to use information obtained in Singapore proceedings to *enable* an action to be pursued in the RMI. It is for the Defendants (and Liu) to meet that case in the RMI. If Third Eye is ultimately unable to plead or prove its case in the RMI, the RMI Application will presumably be dismissed by the RMI Court.

³³ DWS at paras 42-51.

(B) NO NEED FOR THIRD EYE TO ESTABLISH AN ARGUABLE CASE

39 The Defendants rely on *Ong Jane Rebecca* as suggesting that the burden falls on Third Eye to establish an arguable case for the RMI Application.³⁴ The Court of Appeal in *Ong Jane Rebecca* did not impose any such requirement.

40 In that case, the applicant had secured a judgment for a sum against an estate. She then used, without permission, information she had obtained from the executor of the estate in EJD proceedings to commence a claim (“Suit 47”) against the executor personally for dissipating assets of the estate to the detriment of its creditors. It was in that context that the Court of Appeal was able to examine the pleadings in Suit 47, and the executor’s admissions therein, and found that it was “*plainly arguable*” that the executor had wrongfully dissipated the estate’s assets, and that these raised “*serious questions over a potentially egregious wrongdoing by [the executor]*” (*Ong Jane Rebecca* at [155] and [157]). The Court of Appeal also noted that the alleged dissipation occurred when it was clear that the estate owed an outstanding judgment debt to the applicant (at [157]). However, it is clear from the decision that the strength of the applicant’s case in Suit 47 was just one (albeit important) factor the Court of Appeal considered as part of the balancing exercise whether to lift the *Riddick* undertaking – it did not impose a threshold requirement that the applicant had to demonstrate an arguable case in Suit 47 before the *Riddick* undertaking would be lifted. Logically, the stronger an applicant’s case in the related proceedings in which it intends to use the restricted information, the more the balance will shift in the applicant’s favour for permission to use that information.

³⁴ DWS at paras 36-37.

41 That there is no requirement for the applicant to establish an arguable case on the merits of the related proceeding(s) is made clear by [159] of *Ong Jane Rebecca*. In deciding to ultimately lift the *Riddick* undertaking, the Court of Appeal noted:

... while Suit 47 is not an enforcement of BC 118, it is nonetheless a means to pursue a *legitimate* interest in BC 118. **It was therefore not the case that the EJD documents were being used to pursue a frivolous or entirely unrelated action in furtherance of the appellant's personal interests, which would be viewed with greater circumspection.** The documents that emanated from BC 118 were being used to pursue a legitimate interest in BC 118.

[emphasis added in bold]

42 It is apparent from the above extract that the Court of Appeal was concerned that the information would not be used to mount a frivolous or unrelated action, and not that the applicant must demonstrate an arguable action.

43 There are two further reasons why it would be inappropriate to impose such a requirement. First, to do so would be to usurp the function of the RMI court and to conduct an exercise for which this Court is less well equipped than the RMI Court (see *Vitol SA v Capri Marine Limited & Others (No.2)* [2010] EWHC 458 (Comm) at [28]; *Sybron Corporation v Barclays Bank plc* [1985] Ch 299). Indeed, it is undisputed that whether Third Eye succeeds in lifting Parakou's corporate veil in the RMI Application is a matter for the RMI Court to determine applying the law of the RMI.

44 Second, the application before me was only to seek permission to use the EJD Information for the RMI Application. To determine whether Third Eye can establish an arguable case, assuming this Court can or should do so, would

require Third Eye to produce before me all the evidence it intends to rely on in the RMI Application. That would be untenable.

45 Nonetheless, I accept that permission to use the EJD Information should not be granted if the Defendants can demonstrate that the related proceedings (*viz.* the RMI Application) are bound to fail or ought to be struck out (*Sybron Corporation v Barclays Bank plc* [1985] Ch 299 at 326). That is because the application would be futile, and the balance of interests would therefore lie against giving permission. But the Defendants did not advance any such argument.

(2) The EJD Information will be meaningfully used to support a related proceeding

46 In my view, all that is necessary is for Third Eye to establish that the EJD Information will be meaningfully used in the related proceedings. That will usually be satisfied by showing that the EJD Information, on its face, is relevant to the RMI Application. Here, as the Defendants' counsel quite properly conceded, the EJD Information is plainly relevant to the lifting of Parakou's corporate veil and the recovery of the judgment debt against Liu personally.³⁵ The EJD Information suggests that Liu had engaged in deliberate conduct to place the assets of Parakou out of the hands of its creditors, and had done so in a manner which evidences his complete control of Parakou and that he regards and treats Parakou's assets as his own.

47 For example, the EJD Information suggests, *inter alia*, that:

³⁵ 20 March 2024 Transcript at p 69, lines 15-25.

(a) Liu alone exercised complete control over Parakou’s business. He confirmed during the EJD Hearing on 18 May 2023 that he is the sole decision-maker with respect to Parakou’s operations.³⁶ He also confirmed that “insofar as there were assets transfers or business decisions made on behalf of [the Defendants], [he] w[as] the one that would have been directing these matters”.³⁷

(b) Liu appears to have operated Parakou in a manner which did not observe corporate formalities. During the EJD Hearing on 18 May 2023, Liu testified that he either personally signed, or directed someone else to sign on behalf of the relevant parties, various contracts between Parakou’s subsidiaries and other Parakou entities.³⁸ Liu admitted that he alone was the decision-maker on both sides of these transactions.³⁹ Liu admitted that it did not matter which entity he signed on behalf of – whether Parakou or an affiliate.⁴⁰

(c) After the issuance of the Awards, Liu transferred some of Parakou’s assets to himself just before dissolving Parakou. On 5 November 2021, just three weeks after the Awards, Liu transferred the shares of Parakou’s wholly-owned subsidiaries, Parakou Shipmanagement Pte Ltd (“PSM”) and Parakou Tankers Singapore Pte Ltd (“PTS”), to himself for a consideration of S\$10,000 per entity.⁴¹

³⁶ Liu’s 6th Affidavit at p 237 (18 May 2023 Transcript at p 12), lines 23-25.

³⁷ Liu’s 6th Affidavit at p 122 (19 December 2022 Transcript at p 8), lines 5-8.

³⁸ Liu’s 6th Affidavit at pp 231-233 (18 May 2023 Transcript at pp 6-8).

³⁹ Liu’s 6th Affidavit at p 232 (18 May 2023 Transcript at p 7), lines 7-18.

⁴⁰ Liu’s 6th Affidavit at p 234 (18 May 2023 Transcript at p 9), lines 3-16.

⁴¹ Liu’s 6th Affidavit at p 277 (3 August 2023 Transcript at p 19), lines 23-29.

Third Eye highlighted that this was notwithstanding that in recent years, those two entities together were generating millions in revenue from their businesses.⁴² During the EJD Hearing on 18 May 2023, Liu testified that he alone directed these transfers to himself, without observing any corporate formalities such as calling a board meeting.⁴³ In fact, it appears that he ordered one Mr Chris Chagabuli to sign the share transfer forms “on behalf of” Parakou even though Mr Chagabuli was not a director of Parakou.⁴⁴

(d) When questioned about the transfer of the shares in PSM and PTS during the EJD Hearing on 19 December 2022, Liu admitted that he had transferred them because he was “worried that [Third Eye] would take control over th[ese] companies”.⁴⁵ On 8 November 2021, three days after Mr Liu transferred the shares of PSM and PTS to himself, Liu caused Parakou to file for dissolution in the RMI.⁴⁶

(e) Liu also confirmed at the EJD hearing on 19 December 2022 that he caused or decided that Pretty View and Pretty Urban should cease doing business in 2020.⁴⁷

⁴² PWS at para 23.

⁴³ Liu’s 6th Affidavit at p 228 (18 May 2023 Transcript at p 3), lines 8-16.

⁴⁴ Liu’s 6th Affidavit at p 227 (18 May 2023 Transcript at p 2), lines 9-29.

⁴⁵ Liu’s 6th Affidavit at p 132 (19 December 2022 Transcript at p 18), lines 6-10. However, Liu went back on this statement on 3 August 2023, where he said it was “incorrect” that “[he] made [the] transfers to [himself] because [he was] concerned that Third Eye Capital as a creditor would take control over these companies”: Liu’s 6th Affidavit at p 278 (3 August 2023 Transcript at p 20), lines 2-5.

⁴⁶ Kenny Lau’s Affidavit dated 7 October 2022, at para 8(c); pp 286-287.

⁴⁷ Liu’s 6th Affidavit at p 122 (19 December 2022 Transcript at p 8), lines 13-21.

No collateral or improper purpose

48 It is trite that the Court will not permit an improper use of its machinery or processes (see *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2018] 2 SLR 159 at [99]). In particular, the Court will not lift the *Riddick* undertaking where there is a collateral or improper purpose in commencing disclosure or discovery proceedings. In this regard, the Court of Appeal in *ED&F Man Capital Markets Ltd v Straits (Singapore) Pte Ltd* [2020] 2 SLR 695 stated that “[a] party who commences proceedings for the predominant purpose of achieving something other than what the legal process was designed to achieve ... is someone who has abused the process of the court” (at [39]).

49 As explained above (at [33]), the EJD Information is intended to be used to support the RMI Application, which is for the ultimate purpose of satisfying the Awards, and therefore the SG Judgment. This is consistent with the *objective* of the EJD Proceedings. The EJD Information is therefore not intended to be *used* for a collateral or alien purpose.

50 The Defendants’ real complaint is that the EJD *Proceedings* were pursued on a false pretence *ie*, to obtain information to mount an action against Liu personally. They argued that at least from the third day of examination, the line of questions pursued by Third Eye was focused solely or predominantly on mapping out Liu’s decision-making authority with respect to the Defendants and other related entities and was aimed at gathering evidence for a potential action premised on arguing that Liu is Parakou’s *alter ego*. These questions had nothing to do with ascertaining what and where the Defendants’ assets were,

and that Third Eye therefore embarked on a course of action that was “completely collateral and alien to the EJD process and is an abuse of process”.⁴⁸

51 The EJD Proceedings were brought under O. 48, r. 1 of the Rules of Court 2014, which provides:

Where a person has obtained a judgment or order for the payment by some other person (referred to in this Order as the judgment debtor) of money, the Court may ... order the judgment debtor, or, if the judgment debtor is a body corporate, an officer thereof, to attend before the Registrar, *and be orally examined on whatever property the judgment debtor has and wheresoever situated*, and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

[emphasis added]

52 The examination is intended to ascertain the property of the judgment debtor. It would therefore be an abuse of the EJD Proceedings if it were used for the predominant purpose of obtaining information to determine if an action may be brought to pierce the corporate veil of Parakou and bring a claim personally against Liu. The EJD Proceedings should not be used as a form of pre-action discovery to bring such a claim (see *McCormack v National Australia Bank Ltd* (1992) 106 ALR 647; *Bloomsbury International Ltd v Nouvelle Foods (Hong Kong) Ltd* [2005] 1 HKC 337 (“*Bloomsbury*”) at [92]).

53 However, it would not be an abuse if information relevant to such a claim should emerge during a legitimate exercise of the judgment creditor’s right to examine the corporate judgment debtor’s officer(s). If the EJD

⁴⁸ DWS at para 59.

Information, in particular, Liu’s own admissions and statements, suggest that he is the *alter ego* of the Defendants, then it cannot be objectionable for Third Eye to ask for permission to use that information to pursue and hold Liu personally liable for the amount owed by the Defendants (*Ong Jane Rebecca* at [142]).

54 The key question therefore is whether Third Eye had wrongfully exploited the EJD Proceedings. I do not find any, or any sufficient, evidence of such an abuse.

55 First, a judgment creditor who conducts an EJD will rarely know what means are available to him to enforce a judgment debt – that is the very reason to initiate the EJD process: to enable him to obtain information to decide what to do (*Bloomsbury* at [121]; *PT Bakrie Investindo v Global Distressed Alpha Fund 1 Ltd Partnership* [2013] 4 SLR 1116 at [16]). This would include obtaining information about the debtor’s operations and how it was conducted, dealings and transactions with third parties, the transfer of the debtor’s assets to third parties and whether any action to recover such assets would be viable (see *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2020] 2 SLR 725 at [12]; *Pacific Harbor Advisors Pte Ltd and another v Tiny Tantonio (representative of the estate of Lim Susanto, deceased) and another suit* [2015] SGHCR 3 at [31]). Reasonable latitude should therefore be afforded the judgment creditor in seeking such information.

56 Second, the EJD Hearing lasted four days and most of the questions posed were relevant to the assets of the Defendants. Insofar as questions on the transfer of the Defendant’s assets to third parties (including Liu) were concerned, these may also be relevant to the issue of enforcement. Third Eye was entitled to ascertain the basis for these transfers, who authorised them and

how they came about, to determine if they were intended to place the Defendants' assets out of the reach of their creditors. That is a legitimate purpose of the EJD process.

57 Third, it is not the Defendants' case that the EJD proceedings were *commenced* for a collateral purpose. Instead, they argued that Third Eye's purpose morphed, at least from the 3rd day of the EJD Hearing.⁴⁹

58 Turning to the questions which the Defendants highlighted as objectionable,⁵⁰ I make the following observations:

(a) There is nothing improper about asking Liu whether it was his decision to dissolve Parakou and to cause Pretty Urban and Pretty View to cease business.

(b) Questions relating to Liu's role and his authority to make decisions are not, on their face, objectionable. It is legitimate for Third Eye to question Liu on the scope of his authority and his involvement in relation to the transfer of the Defendant's assets both for background and in relation to the propriety of those transfers.

(c) Questions relating to the transfers of Parakou's shares in PTS and PSM, and Parakou's business to Husky, are plainly relevant as they (potentially) relate to the dissipation of Parakou's assets.

⁴⁹ 20 March 2024 Transcript at p 29, lines 12-13; p 43, lines 10-13.

⁵⁰ Liu's 6th Affidavit at para 13.

(d) Questions related to the creditors of the Defendants, and the basis of those liabilities, are relevant as they concern the Defendants’ financial position.

59 The Defendants highlighted a series of questions asked of Liu on 3 August 2023 in relation to how Parakou’s bankers regarded him – they argued that this was only relevant to establishing whether Liu was the *alter ego* of Parakou and was the “smoking gun” pointing to the real motive of the EJD Proceedings.⁵¹ But as Third Eye’s Counsel rightly pointed out, the context of those questions made it clear why they were asked:⁵²

Q: Mr Liu, are you able to see this document?

A: Yes.

Q: It is basic---this is the transcript of your examination from December last year.

A: Mm-hm.

Q: So, I have---I am looking at page 16 of the document at the bottom where I asked you why the shareholdings in Parakou Ship Management had to be transferred to you--

A: Mm-hm.

Q: ---on Parakou Tankers, Inc. in order for Parakou Ship Management to continue providing its services. **And your response was: “Because to the bank, we are familiar with the bank and they still want me to be managing the ships.”**

A: Mm-hm.

Q: **Now, could I understand, so is it therefore the case that even though the bank’s formal contractual arrangements may have been with the Parakou**

⁵¹ 20 March 2024 Transcript at pp 45-46.

⁵² Liu’s 6th Affidavit at p 266, line 4 – p 267, line 5 (3 August 2023 Transcript at p 8, line 4 – p 9, line 5).

entities, you considered that the bank viewed its relationship as being with you?

- A: I don't think so. The relationship were actually with the company. Why would it be with me?
- Q: So if it is with the company, then why is it the case that you would have to transfer the shareholdings in the company to yourself in order for Parakou Ship Management to continue providing its services?
- A: The Parakou Ship Management is a management company. Parakou Tankers, Inc does the management of ships. So, it---the ships need a manager, which is the Parakou Ship Management. Right. So, if PTI, on this case, Parakou Tankers, Inc has to go down, that means creditors can come in and take over. And also, they can take over the ship management, disturb(?) the ship management business. And at the time, the four ships company, the shares were charged to the bank, and bank also still the largest of creditor until today to PTI. So in order to minimise that exposure 1 to the bank, we have to take out the ship management to manage the ships, technically, on behalf of the bank. That's how it came about.
- Q: And "the bank" you are referring to is Minsheng Bank?
- A: Min---yah, it's---it's a leasing company. But we often refer them as "the bank".

[emphasis added]

60 It is evident that the question on how the banks perceived Liu was a follow-up to Liu's *own* statement that "to the bank, we are familiar with the bank and they still want me to be managing the ships". In the circumstances, there was nothing improper about the question, and it is not evident that it was asked to pursue a claim against Liu personally. The so-called "smoking gun" was a damp squib.

61 The Defendants also highlighted that Third Eye's Counsel repeatedly asked Liu to confirm that he was fully in control of Parakou and its related entities and closed off the EJD hearings on 3 August 2023 with a series of

questions to confirm his answers about that control. I found nothing suspicious about this:

- (a) The EJD Hearings were held across 4 days, over a period of eight months (see above at [5]). Further, they were held before three different Assistant Registrars.⁵³ It is therefore not unusual for Third Eye to repeat its questions or remind Liu of his earlier answers.
- (b) The confirmatory questions at the end did nothing more than repeat what had earlier been asked (and answered) which the Defendants did not appear to take issue with.
- (c) Significantly, no questions were asked of Liu as to *why* he had established or operated Parakou, the Defendants, and the other related entities in the manner that he did or even hinted that Liu had established Parakou to abuse its corporate form. Indeed, it is the Defendants' own argument that Liu's answers do not establish a *prima facie* case to lift Parakou's corporate veil as the fact he is the controlling mind and will of Parakou is insufficient by itself to justify piercing the corporate veil (see [35] above). This somewhat contradicts the Defendants' argument that Third Eye had pursued that line of questions (at least from the 3rd day) for a collateral purpose.

62 I also note that the Defendants and Liu were represented by counsel at the EJD Proceedings, who did not object to the questions posed. The inference is that they considered Third Eye's questions unobjectionable at the time.

⁵³ Namely, AR Wong Hee Jinn for the 19 December 2022 hearing; AR Beverly Lim Kai Li for the 23 March 2023 and 18 May 2023 hearing; and AR Choy Wai Kit Victor for the 3 August 2023 hearing.

No countervailing considerations

63 I find that there are no countervailing considerations as set out in *Amber Compounding* against the lifting of the *Riddick* undertaking.

64 First, in the EJD proceedings, there was no express preservation of Liu’s right to not incriminate himself. Third Eye also did not give any express undertaking not to use the EJD information, unlike in *Amber Compounding* (at [12] and [93]–[96]). In any event, Liu was obliged to give honest answers and the Defendants did not argue that any privilege against self-incrimination is engaged in this case.

65 Second, any concern about Liu’s right to privacy should not be given significant weight. As a director, Liu owed fiduciary duties to Parakou which required him to act honestly in his dealings with its assets and operations. If Liu had transferred Parakou’s assets to himself or to third parties to avoid execution, and in a manner which suggests he treated those assets as his own, his right of privacy should not be used to prevent the lifting of the *Riddick* undertaking.

66 The Defendants argue that Liu has suffered “irremediable prejudice” because Third Eye intends to rely on (alleged) admissions by him in support of its case that he is the *alter ego* of Parakou, even though this was never put to him during the EJD Hearings.⁵⁴ But Third Eye was not required to “put” such a case to Liu simply because it was not advancing, and did not need to advance, that proposition at the EJD Hearings.

⁵⁴ DWS at paras 62-63; 20 March 2024 Transcript at pp 46-47.

67 The Defendants then argue that the prejudice lies because any response or clarification from Liu in response to the RMI Application would face the immediate objection that it was not given during the EJD Proceedings and Liu would be prevented from explaining his answers without being accused of tailoring his evidence.⁵⁵ This is misconceived. The meaning and weight to be placed on Liu's answers during the EJD Proceedings is a matter for the RMI Court in determining the RMI Application. No evidence was adduced that Liu would, under the law of the RMI, be prevented from explaining or clarifying his answers. It would be surprising if that were the case. Further, if the RMI Court possesses the entire record of the EJD Proceedings, including the transcript of Liu's examination, it would have the entire context of the questions and his answers. The RMI Court would no doubt also be informed of the purposes of the EJD Proceedings and that it is not to determine the issue of whether Parakou's corporate veil should be lifted as against Liu.

Issue 3: Whether the scope of the EJD Information is too wide

68 The Defendants objected to the scope of the EJD Information which Third Eye was asking for permission to use.⁵⁶ In particular, they point out that Third Eye has not explained why it requires the EJD Affidavits and urged that, if permission is given, it should be limited to the transcript of Liu's oral evidence.

69 I declined to impose such a limit. It is important that the RMI Court is given the full context of the answers provided by Liu in the EJD proceedings and should therefore be allowed to refer to the EJD Affidavits (see [5] above).

⁵⁵ DWS at para 64; 20 March 2024 Transcript at pp 47-48.

⁵⁶ DWS at para 12.

Liu was also asked about the content of the EJD affidavits and its exhibits, and it would hamper the RMI Court in its review of the transcript if it did not also have access to the EJD Affidavits. The Defendants have not highlighted why granting permission with respect to the EJD Affidavits would be prejudicial to them or Liu.

Conclusion

70 In summary:

- (a) permission is required for Third Eye to use the EJD Information in the RMI Application, as the RMI Application is not a related enforcement proceeding;
- (b) on balance, the interests in allowing Third Eye to use the EJD Information for the RMI Application outweigh the interests protected by the *Riddick* undertaking; and
- (c) I decline to limit the scope of the EJD Information to the transcripts of Liu's oral evidence, as it would unnecessarily hamper the RMI Court in its review of the transcripts.

71 I therefore allowed Third Eye’s application to use the EJD Information in the RMI Application. I also ordered the Defendants to pay costs fixed at S\$15,000 in costs, with disbursements to be agreed by the parties.

Hri Kumar Nair
Judge of the High Court

Koh Swee Yen SC, Lin Chunlong, Tian Keyun, and Wong Jun Hao,
Lucas (WongPartnership LLP) for the claimant;
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