

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

[2022] SGHC(A) 7

Civil Appeal No 26 of 2021

Between

POA Recovery Pte Ltd

... Appellant

And

- (1) Yau Kwok Seng
- (2) Capital Asia Group Pte Ltd
- (3) Capital Asia Group Oil
Management Pte Ltd

... Respondents

Civil Appeal No 34 of 2021

Between

- (1) Joseph Jeremy Kachu Li
- (2) Thomas C C Luong

... Appellants

And

- (1) Yau Kwok Seng
- (2) Capital Asia Group Pte Ltd
- (3) Capital Asia Group Oil
Management Pte Ltd

... Respondents

In the matter of Suit No 578 of 2018

Between

POA Recovery Pte Ltd

... Plaintiff

And

- (1) Yau Kwok Seng
- (2) Capital Asia Group Pte Ltd
- (3) Capital Asia Group Oil
Management Pte Ltd

... Defendants

And

- (1) Joseph Jeremy Kachu Li
- (2) Thomas C C Luong
- (3) Lee Hwee Zie Candice
- (4) Ngo Chung Hoon
- (5) Low Choon Seng
- (6) Gunasekaran Santhosh
- (7) Yap Kian Ooi Kelvin
- (8) Poon Chwin Keng
- (9) Gurpreet Kaur
- (10) Chan Tai Suan
- (11) Lim Chui Teng
- (12) Tan Ley Hoon
- (13) Choong Su Lin
- (14) Tham Yew Cheong
- (15) Wong Puie Kuan
- (16) Yan Ying Chieh
- (17) Loke Yiing Tsen
- (18) Heng Yang Teck
- (19) Lim Wei Bee
- (20) Tan Chee Huat
- (21) Jenny Chan May Fong
- (22) Foo Peck Lee
- (23) Lim Kar Choon
- (24) Wong Kok Seng
- (25) Kamalavathani a/p Nadarajah

- (26) Teoh Su Lim
- (27) Lee Pei Yee
- (28) Teoh Yeong Sheng
- (29) Gai Sik Mei
- (30) Thor Mei Ling
- (31) Goh Saw Lan
- (32) Onn Chok Chiang
- (33) Chew Tee Mun
- (34) Lim Kai Ying
- (35) Ho Swee Yenn
- (36) Hoi Yoke Ping
- (37) Ong Yuan Siew
- (38) Lee Wan Tze
- (39) Liew Jer Wey
- (40) Gemma Thadeus
- (41) Lee Yee Min
- (42) Boon Doon Eng
- (43) Ding Sing Leong
- (44) Ding Sue Yue
- (45) Ooi Sau Mei
- (46) Ling Peng Min
- (47) Jonathan Quek Chin Wei
- (48) Tan Siew Lee
- (49) Tan Soh Peng
- (50) Tan Kien Chee
- (51) Ho Jong Yoong
- (52) Yeoh Phing Teck
- (53) Lee Teng Hau
- (54) Yeo Kok Yee
- (55) Ng Kai Yun
- (56) Chong Yik Ling
- (57) Tan Soo Siong
- (58) Steve Kwon
- (59) Ho Mei Ngor Sandy
- (60) Lau Hoi Po
- (61) Ng Wai Kwan
- (62) Wong Shu Fat
- (63) Tsang Chi Chiu
- (64) Keiko Suzuki
- (65) Siow Chun Weng
- (66) Cheang Choon Thoe

(67) Joyce Cheng Ee Teng
(68) How Hock Ann

...*Third Parties*

SUPPLEMENTAL JUDGMENT

[Contract] — [Illegality and public policy]— [Maintenance and champerty]
[Tort] — [Misrepresentation] — [Fraud and deceit]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

POA Recovery Pte Ltd
v
Yau Kwok Seng and others and another appeal

[2022] SGHC(A) 7

Appellate Division of the High Court — Civil Appeals Nos 26 and 34 of 2021
Belinda Ang Saw Ean JAD, Woo Bih Li JAD and Quentin Loh JAD
10 February 2022

18 February 2022

Judgment reserved.

Belinda Ang Saw Ean JAD (delivering the judgment of the court):

Introduction

1 We issue this supplemental judgment to our earlier decision in *POA Recovery Pte Ltd v Yau Kwok Seng and others and another appeal* [2022] SGHC(A) 2 (“the Judgment”). We adopt all abbreviations and terms of reference used in the Judgment. This court recently received information on the total amount of security for costs (“SFC”) that POA Recovery had furnished up to the end of trial. This supplemental judgment deals with the information received and [92] and [93] of the Judgment.

Parties’ clarifications on security for costs

2 The Judgment was delivered on 3 February 2022. On 4 February 2022, counsel for the respondents, WongPartnership LLP (“WongPartnership”), wrote a letter to the court to draw the court’s attention to the following:

- (a) POA Recovery had furnished S\$500,000, not S\$430,000, in SFC, contrary to what was stated in [92] of the Judgment; and
- (b) such SFC had been provided up to the end of trial, and not up to the stage of the exchange of affidavits of evidence-in-chief (“AEICs”).

To be specific, it appears that SFC provided up to exchange of AEICs was only S\$250,000, and that an additional sum of S\$250,000 was by agreement furnished by POA Recovery for the period after exchange of AEICs up to the end of trial (“the additional SFC”).

3 On 10 February 2022, counsel for POA Recovery, Rajah & Tann Singapore LLP, confirmed WongPartnership’s position as stated above.

The court’s clarification

4 The total quantum of SFC provided by POA Recovery up to the exchange of AEICs was in fact S\$250,000 and not S\$430,000 as incorrectly stated at [92] of the Judgment. The total sum of S\$250,000 was furnished pursuant to orders of court, namely HC/ORC 1005/2019 and HC/ORC 7798/2019.

5 The Judge referred to SFC up to exchange of AEICs (see the Judgment at [35]). Like the Judge, this court was not apprised of the additional SFC. Parties did not point to any supporting documentation evidencing that POA Recovery had in fact furnished additional SFC. While POA Recovery did refer to S\$500,000 as the total amount of SFC that was furnished (see POA Recovery’s Appellant’s Case at para 178), the documents referred to did not in fact substantiate such a position; nor did POA Recovery provide in the Appellant’s Case a breakdown of how much SFC could be attributed to each

stage of proceedings (*ie*, how much had been furnished up to the exchange of AEICs, and how much had been furnished thereafter, *etc*).

6 As parties have since agreed (via their respective counsel's letters) that the additional SFC was indeed furnished to cover the period until the end of the trial, this court has taken cognisance of this fact.

7 The recent revelation on SFC does not improve the respondents' argument that POA Recovery's use of a special purpose vehicle was designed to cost-proof itself. The additional SFC that was provided was not an insignificant sum, and that sum was *agreed between the parties*, as confirmed by the parties' solicitors in their respective letters to court. The respondents' complaint (contained at paras 62 to 66 of their Respondents' Case in AD 26) that the total amount of SFC that POA Recovery had in fact provided was inadequate is not valid. We continue to agree with Mr Ong that the substantial sum furnished as SFC, totalling S\$500,000, militated against the suggestion of cost-proofing (at [92] of Judgment). Furthermore, in so far as the respondents' argument on cost-proofing is underpinned by the fact that actual SFC fell short of S\$1m, that submission is completely undercut by the fact that the additional SFC of a further S\$250,000 was an amount that they had agreed to.

8 Accordingly, the outcome of the Judgment under the sub-heading of “Champerty and maintenance” (*ie*, Judgment at [84]–[100]) remains despite our acknowledgment of the position on SFC recently raised by parties.

Belinda Ang Saw Ean
Judge of the Appellate Division

Woo Bih Li
Judge of the Appellate Division

Quentin Loh
Judge of the Appellate Division

Ong Tun Wei Danny, Chow Chao Wu Jansen, Teo Jason, Chan Kit
Munn Claudia and Chen Lixin (Rajah & Tann Singapore LLP) for
the appellant in Civil Appeal No 26 of 2021;
Ho Pei Shien Melanie, Lim Xian Yong, Alvin, Gavin Neo Jia Cheng
and Khoo Kiah Min, Jolyn (WongPartnership LLP) for the
respondents in Civil Appeals Nos 26 and 34 of 2021;
Zhuo Jiaxiang and Loo Yinglin Bestlyn (Providence Law Asia LLC)
for the appellants in Civil Appeal No 34 of 2021.
