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

[2025] SGHC 47

Originating Claim No 48 of 2022 (Registrar's Appeal No 11 of 2024)

Between

(1) SUN YONGJIAN
(2) FU SHANPING

… *Claimants*

And

GOH SENG HENG

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Judgments and orders — Setting aside of default judgment]

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v
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Pang Khang Chau J
2, 16 July, 23 August, 28 October, 4 November 2024

21 March 2025

Pang Khang Chau J:

Introduction

1 Registrar's Appeal No 11 of 2024 ("RA 11") is an appeal by the defendant, Dr Goh Seng Heng ("Dr Goh"), against the decision of the learned assistant registrar ("AR") in High Court Summons No 3158 of 2023 ("SUM 3158") declining to set aside a judgment in default of notice of intention to contest or not contest which had been entered against Dr Goh (the "Default Judgment"). I dismissed Dr Goh's appeal in RA 11, and Dr Goh has appealed against my decision.

Background to the dispute

2 In these proceedings, the claimants, Mr Sun Yongjian ("Mr Sun") and Ms Fu Shanping ("Ms Fu") (collectively the "Claimants"), made a claim of fraudulent misrepresentation against Dr Goh in respect of investments they had allegedly made in the shares of Aesthetic Medical Partners Pte Ltd ("AMP") through an investment company known as Liberty Sky Investment Ltd ("LSI").[1] Dr Goh was a director and shareholder of AMP at the material time.

3 Specifically, the Claimants claimed to have each concluded separate share investment agreements ("Investment Agreements") with LSI through which they "indirectly purchased" 30,549 shares in AMP ("AMP shares") at the price of $450 per share.[2] Mr Sun claimed to have concluded two Investment Agreements with LSI pursuant to which he remitted a total of S$9,697,050 to LSI to invest in 21,549 AMP shares while Ms Fu claimed to have remitted S$6,772,050 to LSI pursuant to the Investment Agreement she concluded with LSI to invest in 9,000 AMP shares.[3] One of Mr Sun's Investment Agreements was dated 15 December 2014 while the other was undated, although Mr Sun's evidence was that this undated agreement would have been signed after the first Investment Agreement but before 26 January 2015.[4] Ms Fu's Investment Agreement was dated 11 January 2015.[5]

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1 Statement of Claim ("SOC") at para 7.

2 SOC at para 7.b.

3 SOC at paras 7.c. and 7.d.

4 Affidavit of Sun Yongjian filed on 27 August 2024 ("Sun's Affidavit") at paras 13 to 17.

5 Affidavit of Fu Shanping filed on 13 August 2024 ("Fu's Affidavit") at para 14.

4 Prior to concluding the Investment Agreements with the Claimants, LSI had on 25 November 2014 concluded a share sale and purchase agreement ("SPA") with Dr Goh to purchase 32,049 AMP shares from Dr Goh also at the price of S$450 per share.[6]

5 On 31 December 2015, LSI commenced High Court Suit No 1311 of 2015 ("S 1311") against Dr Goh for, among other things, fraudulent misrepresentation. On 20 February 2019, Audrey Lim JC (as she then was) ("Lim JC") allowed LSI's claim. Specifically, Lim JC found that Dr Goh had made certain fraudulent misrepresentations to LSI's representatives, Mr Lin Lijun ("Andy Lin") and Ms Gong Ruilin, Florence ("Florence Goh"), namely:

(a) There would be a trade sale of all of AMP's shares to an important person (*ie*, Mr Peter Lim, a billionaire who owned a medical group). The trade sale had a 99% chance of being concluded, it was a likely deal, it was imminent, and it would likely take place within a month or very soon (the "Trade Sale Representations").

(b) AMP had been working towards a trade sale or an initial public offering ("IPO") for more than a year, and if the trade sale did not materialise, there was an intention to list AMP on the Singapore Exchange and this was targeted for completion around March to June 2015 (the "IPO Representations").

6 On remedies, Lim JC held that, as there was evidence of LSI having divested its beneficial interest in some of the AMP shares to two "Chinese investors" by way of the Investment Agreements, recission of the SPA was not available as a remedy. This is because third party rights have intervened such

[6] SOC at para 6.

that *restitutio in integrum* was no longer possible: *Liberty Sky Investments Ltd v Goh Seng Heng and another* [2020] 3 SLR 335 ("*Liberty Sky (HC)*") at [98]–[104]. On damages, Lim JC allowed LSI to claim damages only in respect of the 1,500 AMP shares which it had retained beneficial interest in. Lim JC reasoned that LSI had suffered no loss in respect of the 30,549 AMP shares it had sold to the Chinese investors as (a) according to the terms of the Investment Agreements, LSI had sold the AMP shares to the Chinese investors at the same price at which LSI had purchased them from Dr Goh, and (b) there was no evidence that the Chinese investors had made any claims against LSI in respect of those shares: *Liberty Sky (HC)* at [106]. Lim JC then gave directions for damages to be assessed, with the measure of damages being the difference between LSI's purchase price for the 1,500 AMP shares and the current value of those shares as at the date of assessment of damages: *Liberty Sky (HC)* at [107].

7 Lim JC's decision was upheld by the Court of Appeal on 10 February 2020 – see *Liberty Sky Investments Ltd v Aesthetic Medical Partners Pte Ltd and other appeals and another mater* [2020] 1 SLR 606 ("*Liberty Sky (CA)*"). On 4 March 2020, LSI filed an application to seek directions for the assessment of damages in respect of the 1,500 AMP shares. On 6 March 2020, Dr Goh filed an application for a bankruptcy order to be made against himself.[7] Dr Goh's application was allowed by the court and he was adjudged a bankrupt on 19 March 2020.

8 One consequence of Dr Goh's bankruptcy was that the assessment of damages proceedings could not continue without the leave of court. LSI's solicitors thus proposed to the Official Assignee that the Official Assignee

[7] HC/B 940/2020.

proceed to admit LSI's proof of debt on the basis that the current value of the AMP shares was zero, instead of requiring LSI to seek the leave of court to continue with the assessment of damages proceedings. This proposal was accepted by the Official Assignee and LSI's proof of debt was admitted (with Dr Goh's agreement) on this basis.[8]

9 Following the admission of LSI's proof of debt by the Official Assignee, the Claimants also filed their proofs of debts on the same basis as LSI's proof of debt (*ie*, claiming damages on the basis that the current value of the AMP shares was zero). On 5 July 2020, the Official Assignee responded that Dr Goh had disputed the proofs of debt filed by the Claimants. The Official Assignee also added that "in light of the quantum of claims in the two proofs of debt, please obtain court judgments in favour of [the Claimants] in respect of these claims against [Dr Goh] so as to facilitate the adjudication of these proofs of debt". To give context to the Official Assignee's reference to "quantum of claims", Mr Sun filed a proof of debt for S$12,656,336.61 while Ms Fu filed a proof of debt for S$5,285,964.32.[9]

10 The Claimants obtained leave of court to commence proceedings against Dr Goh on 29 April 2022 and issued the present proceedings on 18 May 2022. In essence, the Claimants claimed that:

(a) they were the "Chinese investors" referred to in *Liberty Sky (HC)* at [98]–[104];

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8 Affidavit of Evidence in Chief of Li Lijun filed on 21 September 2023 in HC/AD 11/2022 ("Andy Lin's AEIC") at paras 17 to 19.

9 Andy Lin's AEIC at paras 23 to 24.

(b) the fraudulent misrepresentations made by Dr Goh to LSI (for which he was found liable to LSI in *Liberty Sky (HC)*) were repeated by LSI to the Claimants;

(c) Dr Goh knew and intended that these fraudulent misrepresentations would be on-communicated by LSI to the Claimants to induce them to invest in AMP shares; and

(d) the Claimants relied on these fraudulent misrepresentations and were thereby induced into making the investments in the AMP shares.

Procedural history

11 Between 19 May and 11 June 2022, the Claimants' solicitors made various attempts at effecting personal service of the originating process and Statement of Claim on Dr Goh without success.

12 On 19 May 2022, service was attempted at Dr Goh's residential address found in Dr Goh's "People Profile" maintained by the Accounting and Corporate Regulatory Authority ("ACRA"). When the process server arrived at that address, it turned out to be the address of the Republic of Singapore Yacht Club ("RSYC"). The receptionist at the RSYC confirmed that Dr Goh was a member of the club but had not checked in at the club that day. The receptionist then assisted to call Dr Goh's home telephone number on the club's record and managed to speak to Dr Goh's wife, who said she could not reach Dr Goh on his mobile phone. Dr Goh's wife suggested that the Claimants' solicitors should contact Dr Goh's lawyer, NLC Law Asia ("NLC"). On 22 May 20222, the

process server attempted service at RSYC again, but was told by the receptionist that Dr Goh "never comes" to the club.[10]

13 On 25 May 2022, the Claimants' solicitors wrote to NLC, who responded that they were instructed counsel for Dr Goh but they had no instructions to accept service.[11]

14 The Claimants' solicitors than sought the Official Assignee's assistance on other ways of contacting Dr Goh. The Official Assignee responded with two additional addresses, as well as Dr Goh's mobile phone number and email address. On 30 May 2022, the process server attempted service on Dr Goh at the first of these two addresses but was informed by a domestic helper that there was "no such person". On 31 May 2022, he attempted service at the second address and was informed by Dr Goh's wife that Dr Goh was not staying there.[12]

15 On 1 June 2022, the Claimants' solicitors sent an email to the email address provided by the Official Assignee. On 3 June 2022, Dr Goh replied that his residential address was "on LQG1, berth at RSYC when not out at seas (sic)". Dr Goh also stated in the email that he was "currently out at sea in St John Bay at location attached". The attachment referred to is a GPS screenshot showing the location of a yacht named "Lady Quikglow 1" somewhere between Lazarus Island and St John Island. He added that he was "mostly out in the islands n not at LQ G1 (sic)". He further indicated that he would provide a suitable time and GPS location where service could be effected.[13] It could be

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10 Affidavit of Kiran Jessica Makwana filed on 1 July 2022 in HC/SUM 2417/2022 ("Substituted Service Affidavit") at paras 11 to 12.

11 Substituted Service Affidavit at para 14.

12 Substituted Service Affidavit at paras 15 to 17.

13 Substituted Service Affidavit at paras 20 to 21, pp 58 to 59.

gathered from this email that Dr Goh had put his residential address on official government records as the address of the RSYC because he was living on the yacht "Lady Quikglow 1", which would be berthed at the RSYC when not out at sea.

16 On 9 June 2022, Dr Goh sent an email informing the Claimants' solicitors that he was "ready for service in LQG1 within Eagle Bay/St John Bay". He added that his preferred "service times **TODAY OR FRIDAY, IS ABOUT 6PM** if weather permit at the location attached" (emphasis in original). The attachment is, again, a GPS screenshot showing the location of the yacht "Lady Quikglow 1" somewhere between Lazarus Island and St John Island.[14]

17 On 10 June 2022, the Claimants' solicitors replied that it was not practicable to arrange for service at moving locations and at timings only "if weather permits", and counter-proposed that Dr Goh attend at the Claimants' solicitors' office instead. Dr Goh then replied that he could fix his location "rain or shine" at St John Island at 6.00pm that day. The Claimants' solicitors then replied that it was neither practicable nor reasonable for the Claimants to arrange for service at the location proposed by Dr Goh, and counter-proposed that Dr Goh could (a) attend at the Claimants' solicitors office, (b) agree to accept service by way of email, or (c) provide a location on the mainland where service could be effected. Dr Goh replied that his location was only 15 minutes away from the mainland, accessible by "cheap ferry" or a charter yacht, and getting there was "simpler than going to Pulau Tekong n Pulau Ubin".[15]

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14 Substituted Service Affidavit at para 22.

15 Substituted Service Affidavit at paras 23 to 24.

18 On 1 July 2022, Claimants applied for an order for substituted service, which application was granted on 4 July 2022. On 8 July 2022, service on Dr Goh was effected by email pursuant to the order for substituted service.[16]

19 On 21 July 2022, which was one day before the deadline for filing of the notice of intention to contest or not contest, Dr Goh sent an email to the Claimants' solicitors to inform that he had been adjudged a bankrupt and had no assets to satisfy the Claimants' claim. In the same email, Dr Goh also denied the Claimant's claim and added that he had never met the Claimants or made any representations to them. However, Dr Goh did not file a notice of intention to contest or not contest by the deadline of 22 July 2022 nor did he file a Defence by the deadline of 29 July 2022.[17]

20 On 1 August 2022, NLC informed the Claimants' solicitors that they had been instructed by Dr Goh to act for him and were in the process of seeking approval from the Official Assignee to represent Dr Goh in these proceedings. On 2 August 2022, the Official Assignee informed NLC that they had no objection to NLC acting for Dr Goh. In that letter, the Official Assignee also noted that Dr Michelle Goh (*ie*, Dr Goh's daughter) would be indemnifying NLC's legal fees and disbursements. On 8 August 2022, NLC informed the Claimants' solicitors that, even though they had obtained the Official Assignee's approval to represent Dr Goh, they were unable to continue

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16 Affidavit of Li Lijun filed on 17 November 2023 in HC/SUM 3158/2023 ("Andy Lin's SUM 3158 Affidavit") at para 11.

17 Andy Lin's SUM 3158 Affidavit at paras 13 to 16.

representing Dr Goh as he was not able to raise the required funding for NLC's representation.[18]

21 On 10 August 2022, the Claimants' solicitors sent an email to inform Dr Goh that they would be applying for default judgment. Although Dr Goh did not reply to this email, he had forwarded it to the Official Assignee with the comment that he did not know who the Claimants were, that they had no rightful or legitimate claim on Dr Goh's bankruptcy estate, and that he hoped the Official Assignee would not allow the Claimants to "shortchange the rest of the legitimate creditors".[19]

22 On 12 August 2022, the Claimants applied to enter default judgment against Dr Goh. On 17 August 2022, the Default Judgment was granted. As the Default Judgment was not for a liquidated sum but was for damages to be assessed, the Claimants' solicitors wrote to the Official Assignee to seek the latter's agreement to quantify damages on the basis that the current value of the AMP shares was zero, so as to obviate the need to commence assessment of damages proceedings. The Official Assignee replied that Dr Goh continued to dispute the Claimants' claim, and that the Claimants' solicitors should "proceed as they saw fit" to further the Claimants' claim.

23 On 9 December 2022, the Claimants filed a notice of appointment for assessment of damages in these proceedings. The assessment of damages

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18 Andy Lin's SUM 3158 Affidavit at paras 17 to 18; Affidavit of Jonathan Chua Beng Beng filed on 15 November 2023 in HC/SUM 3158/2023 ("Official Assignee's Affidavit") at para 5, p 15.

19 Andy Lin's SUM 3158 Affidavit at paras 17 to 19; Official Assignee's Affidavit at para 7.

proceedings came up for hearing before me on 25 September 2023 (the "AD Hearing"). The Claimants' only witness at the AD Hearing was Andy Lin.

24 At the AD Hearing, Dr Goh represented himself and submitted that he was not liable to the Claimants for two reasons. First, Dr Goh never dealt with the Claimants and in fact did not even know who the Claimants were. Therefore, the Claimants should look to LSI or its officers for any loss which the Claimants may have suffered. Second, the Court of Appeal had already ruled in *Liberty Sky (CA)* that Dr Goh bore no liability for the Chinese investors' investments. I pointed out to Dr Goh that the AD Hearing was not the correct forum to raise questions of liability as it was convened solely for the purpose of assessing damages. I also pointed out that, so long as the Default Judgment remained in force and had not been set aside, the court was not in a position to consider any submissions from Dr Goh on issues of liability. Dr Goh then sought an adjournment so that he could be given time to file an affidavit in response to Andy Lin's affidavit of evidence-in-chief ("AEIC"), on the grounds that Andy Lin's AEIC was served on Dr Goh only a few days before the AD Hearing. (By way of background, the Claimants filed a draft of Andy Lin's AEIC under cover of a solicitor's affidavit on 31 March 2023, but Andy Lin's actual AEIC was only signed and filed on 21 September 2023, four days before the AD Hearing. Further, as Dr Goh had not filed a notice of intention to contest or not contest, Dr Goh was not given any timelines or directions by the Registry for the filing of his own AEIC for the AD Hearing.) Dr Goh also indicated that, if an adjournment was granted, he would also use the time to explore the possibility of filing an application to set aside the Default Judgment.

25 In interest of saving time and costs, and having regard in particular to the fact that Claimants had to fly Andy Lin in from overseas to give evidence at the AD Hearing, I did not grant an adjournment immediately but proceeded to

hear the Claimants' opening statement and Andy Lin's testimony. It was only after the completion of Andy Lin's testimony, including cross-examination, that I adjourned the AD Hearing for the purpose of allowing Dr Goh to file his AEIC by 24 November 2024. Mindful that Dr Goh might apply to set aside the Default Judgment during the adjournment, I also directed that, if Dr Goh were to file an application for setting aside the Default Judgment in the meantime, the timeline for Dr Goh to file his AEIC would *not* be held in abeyance.

26 On 12 October 2023, Dr Goh filed SUM 3158 to apply for setting aside of the Default Judgment. On 5 January 2024, the AR dismissed Dr Goh's application. On 19 January 2024, Dr Goh filed RA 11. Although RA 11 was initially fixed for hearing on 6 March 2024, that hearing was vacated as Dr Goh indicated that he wished to be given time to apply for legal aid. On 17 May 2024, legal aid was granted to Dr Goh. On 10 June 2024, the Legal Aid Bureau filed a set of written submissions for RA 11 on behalf of Dr Goh. On 21 June 2024, the court was notified that the grant of aid to Dr Goh was cancelled and that the Legal Aid Bureau had ceased to act for Dr Goh. Notwithstanding that the Legal Aid Bureau had ceased acting for Dr Goh, he subsequently informed that court that he wished to adopt the Legal Aid Bureau's submissions filed on 10 June 2024 as his own.[20] (This was in addition to several other written submissions which Dr Goh filed as a self-represented person on 29 May 2024, 15 July 2024, 11 September 2024 and 15 October 2024.) Further, having regard to the fact that Dr Goh was self-represented in SUM 3158 and he may not have been familiar with the requirements to be met for setting aside a default judgment when he filed his affidavits in SUM 3158, I allowed Dr Goh to file

[20] Letter from Dr Goh to Court dated 16 July 2024, at Section D, para 3.

further affidavits in RA 11 to supplement his case, which he did on 25 July and 11 September 2024.

27 After hearing parties, I dismissed RA 11 on 4 November 2024.

Applicable legal principles

28 The leading case in Singapore on the setting aside of default judgments is *Merucrine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 ("*Mercurine*"). In that case, after reviewing the authorities extensively, the Court of Appeal summarised the applicable principles in the following terms (*Mercurine* at [95]–[99]):

> (a) Where the default judgment sought to be set aside is a regular one, the test laid down in *Evans v Bertlam* [1937] AC 473 ("*Evans v Bertlam*") (*ie*, whether the defendant can show a *prima facie* defence that raises triable or arguable issues) is preferable to the test laid down in *The Saudi Eagle* [1986] 2 Lloyd's Rep 221 ("*Saudi Eagle*").
>
> (b) Where the default judgment sought to be set aside is an irregular one, setting aside as of right (viz, the *ex debito justitiae* rule) remains the starting point. This starting point may be departed from where there are proper grounds for doing so.
>
> (c) In both types of setting-aside applications – ie, relating to regular and irregular default judgments respectively – the defendant's delay in making the application is a relevant consideration and may be determinative where there has been undue delay. As a rule of thumb, the longer the delay, the more cogent the merits of the setting-aside application have to be.

(d) At the end of the day, given the court's wide discretion as to whether to set aside, uphold or vary a default judgment, the list of factors which the court may take into account when ruling on a setting-aside application is open-ended.

29 As for why the test laid down in *Evans v Bertlam* should be preferred to the test laid down in *Saudi Eagle*, the Court of Appeal gave the following explanation (*Mercurine* at [60]):

> It is, in our view, rather illogical to hold that the test for setting aside a regular default judgment should be any stricter than that for obtaining leave to defend in an O 14 application. In both instances, there has been no hearing on the merits. This is not to say that the position in both instances is completely identical or symmetrical. When a regular default judgment has been entered, there would have been a prior default or lapse on the part of the defendant. There are, however, other means of dealing with such procedural default or lapses, including the imposition of adverse costs orders or the making of a setting-aside order which is conditional on appropriate terms being met …

30 The Court of Appeal then went on to cite with approval (at [64]) the following passage from *Evans v Bartlam* (described by the Court of Appeal as encapsulating "the essence of when, how and why the discretion to set aside a regularly-obtained default judgment ought to be exercised"):

> The Courts … have laid down for themselves rules to guide them in the normal exercise of their discretion. One is that where the judgment was obtained regularly there must be an affidavit of merits, meaning that the applicant must produce to the Court evidence that he has a prima facie defence. It was suggested in argument that there is another rule that the applicant must satisfy the Court that there is a reasonable explanation why judgment was allowed to go by default, such as mistake, accident, fraud or the like. I do not think that any such rule exists, though obviously the reason, if any, for allowing judgment [to be entered] and thereafter applying to set it aside is one of the matters to which the Court will have regard in exercising its discretion. If there were a rigid rule that no one could have a default judgment set aside who knew at the time

> and intended that there should be a judgment signed, the [court's setting aside jurisdiction] would be deprived of the Court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has only been obtained by a failure to follow any of the rules of procedure.
>
> [*Evans v Bartlam* at 480]

31 In *U Myo Nyunt (alias Michael Nyunt) v First Property Holdings Pte Ltd* [2021] 2 SLR 816 ("*First Property*"), the Court of Appeal gave further guidance on the application of the principles laid down in *Mercurine* in the following passage (at [64]):

> … the test for a *prima facie* defence (which is the same as an application to obtain leave to defend in an application for summary judgment) is only a *threshold* requirement that needs to be taken in consideration alongside other factors. More importantly, the assessment of whether there is a *prima facie* defence is not an exercise of discretion, but rather an evaluative assessment of the merits of the defence based on the evidence, albeit on a preliminary basis. If the answer is that a *prima facie* defence exists, there then arises a question of discretion. In exercising this discretion, the court will balance the existence of a *prima facie* defence against other factors such as period of and reason for any delay in applying to set aside including the prejudice that the plaintiff would suffer if judgment were to be set aside (see *Mercurine* at [65]).

32 In the light of the foregoing, I would summarise the principles applicable to the setting aside of a *regularly* obtained default judgment as follows:

> (a) To set aside a regular default judgment, the threshold requirement is for the defendant to establish that it has a *prima facie* defence (which is the same test as that for obtaining leave to defend in an application for summary judgment).
>
> (b) Where a *prima facie* defence exists, the court will need to exercise its discretion whether to set aside the default judgment. The list of factors which the court may take into account in the exercise of this

discretion is open-ended, but would usually include the period of and reason for any delay in applying to set aside, the prejudice that the claimant would suffer if the judgment were to be set aside as well as the reason (if any) for the defendant allowing judgment to be entered by default.

(c) The exercise of this discretion involves a balancing exercise such that, *eg,* the longer the delay, the more cogent the merits of the setting-aside application have to be.

Issues to be determined

33 In the light of the foregoing, the issues to be determined in the present case are:

(a) whether the Default Judgment was regularly obtained;

(b) assuming the Default Judgement was regularly obtained, whether Dr Goh has established a *prima facie* defence; and

(c) assuming a *prima facie* defence exists, whether the court should exercise its discretion to set aside the Default Judgment, having regard to factors such as the length of the delay in applying to set aside, the reasons for the delay and possible prejudice to the Claimants, etc.

Whether the Default Judgment was regularly obtained

34 As noted above, the Claimants served the originating process and Statement of Claim on Dr Goh by email on 8 July 2022 in accordance with the order of court for substituted service. As there was no attempt by Dr Goh to set aside the order for substituted service, the service by email remained a valid

service. In any event, it is clear that the service by email was effective to bring the present proceedings to Dr Goh's notice, as he had responded to the Claimants' solicitors by email on 21 July 2022.

35 Having established that there was no irregularity with service, the next question to be considered is whether there was any irregularity in the process of applying for entry of default judgment. In the present case, I am satisfied that the Claimants did not apply for entry of default judgment prematurely or in a manner which was otherwise in breach of any applicable rules. In fact, the Claimants waited till 12 August 2022, which was well past both the deadline for filing of notice of intention to contest or not contest and the deadline for filing of the Defence, before applying for entry of default judgment.

36 In the light of the foregoing, I found that the Default Judgment was regularly obtained.

Whether Dr Goh has established a *prima facie* defence

37 To evaluate whether Dr Goh has established a *prima facie* defence, it will be useful to first recall the elements which the Claimants need to establish in order succeed in a claim for fraudulent misrepresentation against Dr Goh, before considering the evidence and submissions put forth by Dr Goh.

38 As explained in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*"), the elements which must be satisfied to establish a claim in fraudulent misrepresentation are (at [14]):

(a) there must be a representation of fact made by words or conduct;

(b) the representation must be made with the intention that it should be acted upon by the plaintiff;

(c) it must be proved that the plaintiff had acted upon the false statement;

(d) it must be proved that the plaintiff suffered damage by so doing; and

(e) the representation must be made with knowledge that it is false – it must be wilfully false, or at least made in the absence of any genuine belief of its truth.

39 In addition, in a case like the present where it was undisputed that the Claimants and Dr Goh never dealt with each other directly, it is also relevant to have regard to the principle, recognised in *Thode Gerg Walter v Mintwell Industry Pte Ltd* [2009] SGHC 44 at [32] ("*Mintwell Industry*"), that the law does not require the representation to be made directly to the plaintiff, and that it is sufficient if the representation is made to a third person to be communicated to the plaintiff or a class of persons of whom the plaintiff is one. *Mintwell Industry* was subsequently cited with approval in *Goldrich Venture Pte Ltd v Halcyon Offshore Pte Ltd* [2015] 3 SLR 990 ("*Goldrich*"), where the same principle was expressed in the following terms (at [43]):

> … if a representation is made to A in the contemplation that the representation will continue in force and be acted on by a third party ("B") then that representation will be of continuing effect and will, when made know to B through A, become a direct representation to B. If B subsequently relies on the representation which proves to be false and suffers a loss, he has a cause of action against the representor.

40 The arguments which Dr Goh raised in his attempt to establish a *prima facie* defence are:

(a) First, the Court of Appeal had, in *Libery Sky (CA)*, already found Dr Goh not liable in respect of the 30,549 AMP shares which LSI had sold to the Chinese investors.

(b) Second, the Claimants have no *locus standi* as they have not been registered as shareholders of the AMP.

(c) Third, there are doubts about the authenticity of the Investment Agreements.

(d) Fourth, there was no privity of contract between the Claimants and Dr Goh.

(e) Fifth, there was no direct communication between Dr Goh and the Claimants.

(f) Sixth, there was no agency relationship between Dr Goh on the one hand and LSI, Andy Lin or Florence Goh on the other hand for the transmission of Dr Goh's representations to the Claimants.

(g) Seventh, the misrepresentation originated from Nelson Loh and not Dr Goh.

(h) Eighth, the Claimants exercised their own independent judgment and did not rely on any of Dr Goh's representations which might have been on-communicated by LSI to the Claimants.

Dr Goh's first argument: The Court of Appeal had already held in* Liberty Sky *that Dr Goh is not liable

41 The first argument is based on a misreading of the judgment in *Liberty Sky (CA)*. In *Liberty Sky (HC)*, the High Court only decided that Dr Goh was not liable *to LSI in damages* for the 30,549 AMP shares which had been sold to the Chinese investors. The High Court did not go on to decide that Dr Goh would not be liable to the Chinese investors for the 30,549 AMP shares, as that was not an issue canvassed before the court. This particular aspect of the *Liberty Sky (HC)* decision was not discussed or disturbed in *Liberty Sky (CA)*. In other words, there was similarly no pronouncement in *Liberty Sky (CA)* to the effect that Dr Goh was not liable *at all* for the 30,549 AMP shares. The focus of *Liberty Sky (CA)*, in so far as it relates to LSI's appeal, was on LSI's argument that it was entitled to effect recission of the SPA in respect of all 32,049 AMP shares (either because it could do so trustee for the Chinese investors or because it could do so in its own right as it had retained possession of all 32,049 AMP shares).

42 For completeness, I should add that, even though the Court of Appeal commented in *Liberty Sky (CA)* at [13] that Dr Goh's fraudulent misrepresentations were directed only at Florence Goh and Andy Lin, this does not contradict the Claimant's case. The Claimants did not allege that Dr Goh had made the misrepresentations directly to them. Instead, the Claimants' case was that Dr Goh made the misrepresentations to Florence Goh and Andy Lin who then on-communicated those misrepresentations to the Claimants.

Dr Goh's second argument: Claimants are not registered owners of the AMP shares

43 The second argument does not raise any triable issues. The Claimants' complaint is that they were induced by the misrepresentations to pay money over to LSI for the purpose of investing in AMP shares. To establish this, it is not necessary for the Claimants to prove that they had successfully acquired legal title to the shares. In other words, the validity of the Claimants' case does not turn on whether they are legal owners of AMP shares. All that is required from the Claimants is evidence that they had suffered loss by parting with money for this purpose. This evidence had been furnished in the form of exhibits to Andy Lin's affidavit showing funds being transferred from the Claimants to LSI and the same amounts being transferred by LSI to Dr Goh a few days later.[21]

Dr Goh's third argument: Doubtful authenticity of the Investment Agreements

44 As for the third argument, the exact way this was phrased in Dr Goh's written submissions is:

> The [Investment Agreements] lack essential legal formalities, such as signatures and clear party identifications, which suggests possible fraud or invalidity.[22]
>
> and
>
> Procedural irregularities, such as missing signatures and unclear party identification in the [Investment Agreements], raise serious concerns about their authenticity and enforceability, requiring thorough judicial examination.[23]

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21 Andy Lin's AEIC at para 31, Tabs 16 to 20.

22 Dr Goh's Written Submissions filed on 15 October 2024 (but dated 16 October 2024) ("DWS-4") at p 6, heading 1.6, para 1.

23 DWS-4 at p 17, heading 3.1, para 3.

45 The reference to lack of clear party identification is a reference to the fact that Ms Fu's Investment Agreement did not identify her by name in the preambular part of the agreement where the names of the parties should appear. In my view, nothing really turns on this as Ms Fu had signed her name in the signature column of the Investment Agreement, thus identifying her as a party to the agreement. In any event, bearing in mind that it was Dr Goh himself who relied on the existence of the Investment Agreements in *Liberty Sky (HC)* and *Liberty Sky (CA)* (hereafter referred to collectively as "*Liberty Sky*") to successfully resist recission of the SPA and consequently limited his liability in damages to LSI to only in respect of the 1,500 AMP shares not sold to the Chinese investors, Dr Goh should not be heard to be taking a contrary position in these proceedings. Had Dr Goh taken the position in *Liberty Sky* that the Investment Agreements were not in existence or not valid, the court in *Liberty Sky* would have granted rescission of the SPA and held Dr Goh liable for all 32,049 AMP shares, and the present proceedings would not have been necessary.

46 The reference to missing signatures initially puzzled me as the Investment Agreements were clearly signed by the relevant Claimant on the one hand and by Florence Goh on behalf of LSI on the other hand.[24] However, it would appear from another passage in Dr Goh's submissions that the missing signatures he referred to were signatures from him and AMP.[25] In essence, Dr Goh was arguing that he should not be made liable to the Claimants because neither he nor AMP signed the Investment Agreements. This segues into the fourth argument, concerning privity of contract.

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[24] Andy Lin's AEIC at pp 105 to 116 and pp 118 to 122.

[25] DWS-4 at p 26, heading 4.3, para 1.

Dr Goh's fourth argument: Lack of privity of contract

47 The simple answer to the fourth argument is that, as a claim for fraudulent misrepresentation is a claim in tort and not in contract, the lack of privity of contract is not a defence to a claim for fraudulent misrepresentation.

Dr Goh's fifth and sixth arguments: No direct communications with Claimants and no agency relationship with LSI

48 The answer to the fifth and sixth arguments lie in the principles set out in *Mintwell Industry* and *Goldrich*, as explained at [39] above. For the Claimants to be able to rely on a misrepresentation, it is sufficient that the representation was made to LSI to be communicated to the Claimants or made to LSI in the contemplation that it would be communicated to the Claimants. There was no need for Dr Goh to communicate directly with the Claimants or for Dr Goh to authorise LSI to communicate the representations as Dr Goh's agent. In this regard, the Claimants had adduced the following evidence to prove that Dr Goh knew that LSI was soliciting some Chinese investors to invest in AMP shares:

(a) An email dated 16 November 2014 in which Andy Lin informed Dr Goh that Andy Lin and Florence Goh would be "investing with some close friends who will be very helpful for PPP's business in China in the future" and that "they will hide below us. We will invest through a company which information will be given to you soon". ("PPP" is a chain of aeasthetic clinics operated by one of AMP's subsidiaries.)

(b) An email dated 22 November 2014 in which Andy Lin informed Dr Goh that Andy Lin and Florence Goh would be "investing with some close friends who will be very helpful for PPP's business in China" and that "we need to make the clauses transparent to them".

(c) A WhatsApp message from Florence Goh to Dr Goh on 23 November 2014 stating that Andy Lin and Florence Goh "need to convey correct info to our friends who are investing".

(d) A WhatsApp message from Florence Goh to Dr Goh on 24 November 2014 informing that Andy and Florence were "coordinat[ing] friends' money" for the investment in AMP.

(e) WhatsApp messages from Florence Goh to Dr Goh on 25 and 26 November 2014 that Andy Lin and Florence Goh needed time "to align with friends" for the payment for the investment in AMP.

(f) A WhatsApp message from Florence Goh to Dr Goh on 10 December 2014, informing that payment for the investment in AMP involved "friends' money".

(g) A WhatsApp message from Florence Goh to Dr Goh on 18 December 2014 informing that she was waiting for the payment transferred by "Andy's friend" to LSI before LSI could make part payment to Dr Goh for the investment in AMP.

(h) Another WhatsApp message from Florence Goh to Dr Goh on 18 December 2014 that Andy Lin would "check with his friend when the 2nd tranche [payment] will come".

(i) A WhatsApp message from Florence Goh to Dr Goh on 30 December 2014 that LSI needed time to "align the agreement between Andy's friends and [LSI]" and that the Chinese investors "are too good and trust [Andy Lin and Florence Goh] and not even sign the paper when they remit the money."

(j) A WhatsApp message from Florence Goh to Dr Goh on 13 January 2015 that Andy Lin would "ask his friend to remit the 2nd tranche money to [LSI]".

49 In addition to the foregoing evidence, Dr Goh also admitted during a hearing before me that he was aware that LSI was transmitting what he told them "to the next one or ten respondents".[26] To be fair to Dr Goh, he subsequently clarified that:

> Yes. I am aware because of what Andy and Florence told me. But I was not personally aware of whether the transmission by Andy and Florence actually took place. The events were happening in China. I had no awareness of what Andy and Florence actually told these investors.

50 This distinction between, on the one hand, the point that Dr Goh was aware that LSI intended to on-communicate his representations to other investors and, on the other hand, the point that Dr Goh did not know what, *in actual fact*, was communicated by LSI to these other investors merits further consideration. For present purposes, the former point is sufficient to defeat Dr Goh's fifth and sixth arguments. I will return to consider the latter point at [54]–[64] below.

Dr Goh's seventh argument: Misrepresentations originated from Nelson Loh

51 By the seventh argument, Dr Goh was in effect challenging findings of facts which had been made against him in *Liberty Sky (HC)*. The role of Nelson Loh was discussed extensively in *Liberty Sky (HC)*, and Dr Goh's attempt to cast the blame for the misrepresentations on Nelson Loh in that case was rejected by the court (see *Liberty Sky (HC)* at [44] and [55]). In my view, it is

[26] NE, 16 July 2024, p 9, ln 31–32.

impermissible for Dr Goh to launch a collateral attack on the *Liberty Sky* decision in this manner, bearing in mind that the Claimant's case is not based on some separate misrepresentations which Dr Goh had made directly to them, but on the very same misrepresentations which Dr Goh had made to LSI and which had been adjudicated upon in *Liberty Sky*.

Dr Goh's eighth argument: Claimants did not rely on Dr Goh's representations

52 Dr Goh's eighth argument is that the Claimants exercised their own independent judgment and did not rely on any misrepresentations Dr Goh made to LSI which might have been on-communicated by LSI to the Claimants. In other words, Dr Goh is making the argument that the Claimants did not act upon Dr Goh's misrepresentations.

53 The first observation I would make about the eighth argument is that the question whether LSI had relied on or acted upon Dr Goh's representations and the question whether the Claimants had relied on or acted upon those representations are two distinct questions. While it was decided in *Liberty Sky* that LSI had relied on Dr Goh's representations, the question of whether the Claimants had similarly relied on those representations was not an issue which arose in *Liberty Sky*. In other words, the eighth argument, unlike the third and the seventh arguments, does not concern an issue which was canvassed in *Liberty Sky*. It is therefore not susceptible to the objections raised at [45] and [51] above. I shall refer to this issue of whether there was reliance by the Claimants on Dr Goh's misrepresentation as "the Reliance Issue"

54 As alluded to at [50] above, another issue that merits further consideration is whether LSI *in fact* on-communicated Dr Goh's misrepresentations to the Claimants. (This is a distinct question from whether

Dr Goh was aware that LSI intended to on-communicate those misrepresentations. This is for the simple reason that knowledge about what LSI's plans were does not equal knowledge about what LSI actually did.) Like the Reliance Issue, the contents of the conversations between LSI and the Claimants was also not an issue canvassed in *Liberty Sky* and therefore not susceptible to the objections raised at [45] and [51] above. I shall refer to this issue of whether Dr Goh's misrepresentations were actually communicated by LSI to the Claimants as the "On-communication Issue".

55 I turn now to consider the evidence adduced by the Claimants on both the Reliance Issue and the On-Communication Issue.

56 First, Andy Lin stated the following on affidavit:

> 56. Florence and I did on-communicate these Fraudulent Misrepresentations made by Dr Goh to us to the Claimants. In particular, Florence and/or I informed the Claimants of the Fraudulent Misrepresentations by Dr Goh over a series of phone calls and in-person meetings between October 2014 to January 2015. The clauses in the SPA referring to the Fraudulent Misrepresentations were also essentially reproduced in the [Investment Agreements] entered into between the Claimants and LSI at Clauses 3, 4 and 6. The cumulative effect of these references in the [Invesment Agreements] was to repeat and/or affirm the Fraudulent Misrepresentations made by Dr Goh which were communicated to the Claimants and relied upon by them in entering into the investment.
>
> …
>
> 58. Relying on these Fraudulent Misrepresentations, the Claimants contributed to the purchase price of the AMP shares through LSI. …

57 Mr Sun stated the following on affidavit:

> 10. Andy informed me that the founder/chairman of AMP, i.e., GSH told him that the business of AMP was doing well and expandingly quickly in Singapore and other places. My interest

> was piqued because AMP appeared to have a good business that was scalable that could be expanded to China and Hong Kong. What made me decide to invest were the Fraudulent Misrepresentations as defined in SOC [9] made by GSH to Andy/Florence, which Andy/Florence then on-communicated to me in or around the period from October 2014 to January 2015. Andy/Florence informed me that they were repeating to me what GSH had told them, and they repeated these misrepresentations to me on several occasions in person and over the phone during this period. I had no reason to doubt that Andy/Florence were accurately conveying to me what GSH had told them.
>
> …
>
> 14. I wish to highlight certain provisions in the 1st [Investment Agreement]:
>
> > …
> >
> > c. Clauses 3, 4 and 6: I refer to SOC [19(c)-(f)]. As stated in SOC [19(f)], these are the clauses that essentially repeat and affirm the Fraudulent Misrepresentations that GSH made to Andy/Florence and are therefore reflected in these clauses of the 1st [Investment Agreement]. I relied on them in deciding to invest in AMP and would not have done so if these representations had not been conveyed to me.

58 Ms Fu stated the following on affidavit:

> 10. Between October 2014 and January 2015, A/F conveyed to me the Fraudulent Misrepresentations (as defined in SOC, [9]) that GSH made to them. A/F told me that these (mis)representations were exactly what GSH made to A/F, and A/F then repeated them to me on several occasions in person and over the phone during this period. I had no reason to doubt that A/F were accurately conveying to me what GSH had told them. A/F told me that Mr Sun and I would be investing together in this opportunity. …
>
> …
>
> 15. I wish to highlight certain provisions in the [Investment Agreement]
>
> > …
> >
> > c. Clauses 3, 4 and 6: I refer to SOC [19(c)-(f)]. As stated in SOC [19(f)], these are the clauses that essentially repeat and affirm the Fraudulent

> Misrepresentations that GSH made to A/F and are therefore reflected in these clauses of the [Investment Agreement]. I relied on them in deciding to invest in AMP and would not have done so if these representations had not been conveyed to me.

59 The following observations may be made about the state of the Claimants' evidence:

(a) The alleged on-communication of Dr Goh's misrepresentations by LSI to the Claimants all occurred orally, either in person or over the telephone. No documentary records, such as emails or WhatsApp messages were referred to.

(b) The affidavits of Mr Sun, Ms Fu and Andy Lin did not condescend into details regarding what was said by whom to whom and when. Instead, Mr Sun's affidavit simply made a bare reference to "the Fraudulent Misrepresentations as defined in SOC [9] made by GSH to Andy/Florence, which Andy/Florence then on-communicated to me" while Ms Fu's affidavit similarly made a bare statement that "A/F conveyed to me the Fraudulent Misrepresentations (as defined in SOC, [9]) that GSH made to them". In other words, the Claimants did not particularise what it was that they had actually heard from Andy Lin and Florence Goh. Instead, they sought to encapsulate what they purportedly heard by vaguely cross-referencing to a defined term in paragraph 9 of the Statement of Claim. When one turns paragraph 9 of the Statement of Claim is examined, it would be seen that the paragraph was citing and paraphrasing of Lim JC's findings in *Liberty Sky (HC)* concerning the Trade Sale Representations and IPO Representations.

(c) As for the issue of reliance, what is stated in Mr Sun's and Ms Fu's affidavits is a bare assertion. There was no explanation of how

the Claimants analysed the deal and why they placed particular reliance on certain representations or considerations over others.

60 In this regard, the references to Clauses 3, 4 and 6 of the Investment Agreements in Mr Sun's and Ms Fu's affidavits did not assist the Claimants' case. Contrary to what is asserted in Mr Sun's and Ms Fu's affidavit, these clauses do not "essentially repeat" the Trade Sale Representations and the IPO Representations. Clause 3 is a principal guarantee given by AMP. Clause 4 states that if a trade sale takes place within two years, and the acquisition price under the trade sale was below a certain benchmark, AMP guarantees that the Claimants would receive the difference. Clause 6 states that if no trade sale or initial public offering occurs within two years, LSI may sell the AMP shares back to AMP by giving 21 days' notice, and the Claimants will receive the return of their principal investment plus 15% annualised return. Although Clauses 4 and 6 refer to a trade sale and an initial public offering, the contents of those clauses are very different from the contents of the Trade Sale Representations and the IPO Representations.

61 As noted above, the Court of Appeal has held in *Mercurine* (and also subsequently in *First Property*) that the test for setting aside a regular default judgement is the same as the test for obtaining leave to defend in an application for summary judgment. Commenting on the *Mercurine* decision, Jeffrey Pinsler SC, "Last Flight of The Eagle: New Principles Governing the Setting Aside of Judgments in Default" (2009) 21 SAcLJ 161 states (at para 15):

> Accordingly, the defendant is no longer required to show that he has a sufficiently forceful defence which is likely to succeed at trial. He merely has to raise an issue which ought to be adjudicated at trial. However, the Court of Appeal's observations in *Mercurine* should not be read as restricting the scope of O 13 r 8, which is broad enough to contemplate an order setting aside a regular judgment in any situation if this

> outcome is just. *For example, where the defendant is unable to raise a triable or arguable issue, but nevertheless satisfies the court that the circumstances of the case demand a comprehensive assessment of the facts which can only be undertaken at trial.*
>
> [emphasis added]

62 The last sentence in the foregoing quotation is a reference to the rule laid down in *Miles v Bull* [1969] 1 QB 258 ("*Miles*") which was followed in Singapore by Chan Sek Keong J (as he then was) in *Concentrate Engineering Pte Ltd v United Malayan Banking Corp Bhd* [1990] 1 SLR(R) 465 ("*Concentrate Engineering*"). In *Miles*, Megarry J states (at 265–266):

> Under rules 3 and 4 of the present Order 14, the defendant can obtain leave to defend if (and I read from rule 3 (1)) the defendant satisfies the court "that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial." These last words seem to me to be very wide. *They also seem to me to have special significance where, as here, most or all of the relevant facts are under the control of the plaintiff, and the defendant would have to seek to elicit by discovery, interrogatories and cross-examination those which will aid her.* If the defendant cannot point to a specific issue which ought to be tried but nevertheless satisfies the court that there are circumstances that ought to be investigated, then I think that those concluding words are invoked. There are cases when the plaintiff ought to be put to strict proof of his claim, and exposed to the full investigation possible at a trial; and in such cases it would, in my judgment, be wrong to enter summary judgment for the plaintiff. In the present case the plaintiff's evidence initially consisted of a single affidavit in which brevity could scarcely be carried further. He has now amplified this by further evidence, but this is certainly not exhaustive or conclusive. The words "there ought for some other reason to be a trial" seem to me to give the court adequate powers to confine Order 14 to being a good servant and prevent it from being a bad master. If I may adapt the language of Lord Parker of Waddington in *Daimler Company Ltd. v. Continental Tyre & Rubber Co. (Great Britain) Ltd.*, referred to in the notes to Order 14 in the Supreme Court Practice, 1967, p. 122, if the circumstances of the case are "such as to require close investigation," this will "preclude the propriety of giving leave to sign judgment under Order 14, r. 1."
>
> [emphasis added]

63 In relation to the Reliance Issue and the On-Communication Issue, the present case is precisely one where "all of the relevant facts are under the control of the plaintiff". Further, it is noteworthy that Mr Sun and Ms Fu seemed to have chosen to remain in the background in the present proceedings for as long as they could. They did not file their own AEICs for AD 11, but chose to rely on Andy Lin as their sole witness. When Dr Goh filed SUM 3158, the Claimants did not file their own affidavits in response but once again relied solely on an affidavit by Andy Lin. It was only after I questioned Claimants' counsel about this at the hearing on 16 July 2024 that the Claimants decided to file their own individual affidavits in August 2024. These are affidavits in which, to quote Megarry J's words in *Miles*¸ "brevity could scarcely be carried further". Further, the manner in which Mr Sun's and Ms Fu's affidavit is drafted (*ie*, by avoiding to give the court details about what exactly they purportedly heard from Andy Lin and Florence Goh, while attempting to shoehorn their evidence into a term which had been previously defined in the Statement of Claim) simply does not carry the ring of truth and conviction. Finally, the mischaracterisation of the Clauses 3, 4 and 6 of the Investment Agreements in Mr Sun's and Ms Fu's affidavits is worrying and further signals, to quote Megarry J's words in *Miles* again, "that there are circumstances that ought to be investigated."

64 Therefore, even though Dr Goh was not in a position to adduce any concrete evidence of his own to challenge the Claimants' position on the Reliance Issue and the On-Communication Issue (because he was simply not privy to either the discussions between LSI and the Claimants and or the Claimants' internal thought processes), I am of the view that, for the reasons discussed in the previous paragraph, this is a case where leave to defend would have been granted if this had been an application for summary judgment.

Conclusion on prima facie *defence*

65 Given my finding at [64] above, I accept that Dr Goh has established a *prima facie* defence, albeit barely.

Exercise of discretion whether to set aside the Default Judgment

66 Having accepted that there is some semblance of a *prima facie* defence in the present case, I turned to consider whether I should exercise my discretion to set aside the Default Judgment. In this regard, the key concern is the almost 14-month delay between the entry of the Default Judgment on 17 August 2022 and the filing of SUM 3158 on 12 October 2023.

67 The following is the chronology of events between 17 August 2022 and 12 October 2024:

(a) On 19 August 2022, the Default Judgment was served on Dr Goh by email. Dr Goh informed the Official Assignee of this on the same day.

(b) On 23 August 2022, the Official Assignee asked Dr Goh to submit an application for sanction and to provide the cause papers.

(c) On 24 August 2022, Dr Goh asked the Official Assignee to apply to set aside the Default Judgment.

(d) On 25 August 2022, NLC wrote to the Official Assignee to inform that Dr Goh wished to apply to set aside the Default Judgment.

(e) On 26 August 2022, the Official Assignee replied to NLC asking them to apply for the Official Assignee's sanction and to also provide a write-up on the merits of Dr Goh's case.

(f) On 31 August 2022, Dr Goh wrote to inform the Official Assignee that he had decided not to resist the Default Judgment as he had nobody to fund his legal costs. He added that representing himself was "out of the question" as he did not have the necessary technical expertise.

(g) On 12 September 2022, the Official Assignee decided to write to the Claimants' solicitors to ask for a copy of the cause papers, as they had not received the cause papers from either Dr Goh or NLC. In their letter, the Official Assignee stated that Dr Goh "has been 'flip-flopping' on his legal representation in the above matter over the last few weeks". (In my view, this is more likely a reference to Dr Goh "flip-flopping" on whether he would be represented by lawyers or be self-represented, and not, as alleged by Claimants' counsel, a reference to "flip-flopping" on whether to set aside the Default Judgment.[27])

(h) On 29 September 2022, at a Registrar's Case Conference ("RCC") where a representative of the Official Assignee was also present, Dr Goh informed the Official Assignee and the court that he intended to apply to set aside the Default Judgment but needed time to apply for the Official Assignee's sanction and also apply for legal aid. Later that day, Dr Goh submitted his application for the Official Assignee's sanction for Dr Goh to apply to set aside the Default Judgment.

(i) On 4 November 2022, the Official Assignee granted Dr Goh in-principle sanction to act in-person or with the aid of the Legal Aid Bureau to set aside the Default Judgment.

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[27] Claimant's Written Submissions dated 5 February 2024 ("CWS-1") at para 30.4.

(j) On 23 November 2022, a full sanction was granted by the Official Assignee.

(k) On 24 November 2022, Dr Goh applied online for legal aid but his application was rejected.

(l) On 30 November 2022, Dr Goh visited the Legal Aid Bureau in person to appeal against the rejection of his legal aid application but was advised to seek assistance from community legal clinics.

(m) On 4 December 2022, Dr Goh received notification from the Telok Blangah Constituency manager that he was included in the legal clinic list for January 2023.

(n) On 9 December 2022, the Claimants filed HC/AD 11/2022 ("AD 11") for assessment of damages pursuant to the Default Judgment.

(o) Also on 9 December 2022, Dr Goh contacted Tangjong Pagar Constituency regarding legal clinic services.

(p) On 17 December 2022, Dr Goh submitted a legal clinic application at Tanjong Pagar Community Club.

(q) On 30 January 2023, Dr Goh attended the meet-the-people session at West Coast GRC and obtained a letter from the member of parliament ("MP") to appeal to the Legal Aid Bureau for reconsideration of Dr Goh's application for legal aid.

(r) On 3 February 2023, at an RCC for AD 11, Dr Goh asked the court to stay all proceedings until Legal Aid Bureau has replied to the MP's letter. The court declined to grant a stay.

(s) On 6 February 2023, a Registrar's Notice was sent out by the court fixing 20 April 2023 as the date for the AD Hearing.

(t) On 21 February 2023, the Legal Aid Bureau wrote to Dr Goh that they had received the MP's letter. The Legal Aid Bureau noted that Dr Goh had previously applied for aid but found not eligible as he failed the means test. The Legal Aid Bureau ended the email by stating that if Dr Goh require legal advice/aid again, he may refer to a particular government website "for other avenues of legal assistance".

(u) On 14 April 2023, the Claimants sought re-fixing of the date for the AD Hearing as Andy Lin was not able to travel to Singapore for a hearing on 20 April 2023.

(v) On 2 May 2023, a Registrar's Notice was sent out by the court fixing 25 September 2023 as the date for the AD Hearing.

(w) On 25 September 2023, the AD Hearing took place. After hearing Andy Lin's evidence, I adjourned the AD Hearing for Dr Goh to file his AEIC.

(x) On 12 October 2023, Dr Goh filed SUM 3158 to apply for the Default Judgment to be set aside.

68 In his supporting affidavit for SUM 3158, Dr Goh claimed that the delay in seeking to set aside the Default Judgment was due to genuine "unawareness of the limited time duration to challenge a default judgment".[28] In a further affidavit in which he set out parts of the foregoing chronology, Dr Goh explained that he had made persistent and genuine efforts towards addressing

[28] Dr Goh's affidavit filed on 12 October 2023 in HC/SUM 3158/2023 at para 4.1.

and setting aside the Default Judgment.[29] He also submitted that any delays were caused by unavoidable financial constraints and his status as an undischarged bankrupt, which hindered his ability to secure timely legal representation.[30]

69 I did not find credible Dr Goh's claim that he was not aware that he had limited time to set aside the Default Judgment. Dr Goh had engaged the services of NLC from around 1 to 8 August 2022, during which NLC was negotiating with the Claimants' solicitors for the latter to hold their hands on applying for default judgment. After the Default Judgment was obtained, Dr Goh had engaged the services of NLC again for a short period (from about 25 August 2022 to sometime before 31 August 2022 – see [67(d)]–[67(f)] above) for the purpose of setting aside the Default Judgment.

70 As for Dr Goh's claim that he had made persistent and genuine efforts towards addressing the Default Judgment, I think the claim may be examined by dividing the chronology into a few distinct periods. First, I accept that, from 17 August 2022 to 26 August 2022, there were genuine efforts undertaken towards the setting aside of the Default Judgment. Dr Goh promptly forwarded the Default Judgment to the Official Assignee on the same day he received it, and he re-engaged the services of NLC to work on setting aside the Default Judgment. However, on 31 August 2022, Dr Goh suddenly informed the Official Assignee that he no longer wished to resist the Default Judgment. Dr Goh explained that he came to this decision because his daughter had decided not to fund NLC's representation of Dr Goh in these proceedings.[31]

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29 Dr Goh's affidavit filed on 25 July 2024 in HC/RA 11/2024 at p 2, para 1.

30 DWS-4 at p 17, heading 10.4, para 1.

31 NE, 16 July 2024, p 3, ln 22–27.

71 Dr Goh's change of mind on 31 August 2022 led to a one-month hiatus until he changed his mind again on 29 September 2022. Thereafter, the period from 29 September 2022 to 23 November 2022 could not, in my view, be considered a period of delay attributable to Dr Goh as he was waiting for the Official Assignee's sanction.

72 From 23 November 2022 until 21 February 2023, the evidence shows that Dr Goh was actively applying for legal aid while also seeking other forms of *pro bono* legal assistance. While it is debatable whether it was reasonable for Dr Goh to spend three months doing this, I am prepared to take a charitable view of the matter and overlook this period of delay especially having regard the finding I have already made at [73] below.

73 The most important feature of the chronology is the glaring gap between 21 February 2023, when Dr Goh received the Legal Aid Bureau's reply to the MP's letter, and the filing of SUM 3158 on 12 October 2023. Nothing further was done by Dr Goh towards the setting aside of the Default Judgment after 21 February 2023. Dr Goh has provided no explanation for this inaction of more than seven months from February to October 2023. In my view, once Dr Goh came to the realisation that legal aid and other forms of *pro bono* legal assistance were not forthcoming, it was incumbent on him to take whatever steps he could as a self-represented person, or risk rendering the Default Judgment increasingly "immune" to setting aside through the passage of time. Dr Goh's explanation that he was not able to engage a lawyer to represent him, because he did not qualify for legal aid and also could not afford to pay for a lawyer, is insufficient to absolve him of such an inordinate and inexcusable delay. This is especially since Dr Goh is a highly educated person, being a medical doctor and an experienced businessman, and also having had previous experience with

litigation in the Singapore courts. In other words, Dr Goh is much better placed than the average layperson to represent himself in court.

74 Another factor I had to consider is the prejudice that might be caused to the Claimants if the Default Judgment is set aside and whether such prejudice could be addressed by adverse costs order or the imposition of appropriate conditions. Claimants' counsel submitted that Claimants have suffered prejudice as substantial costs have been incurred in obtaining the Default Judgment, in the assessment of damages proceedings and in the present setting aside proceedings. Normally, if the only prejudice suffered by a claimant is costs, this can be remedied by an adverse costs order. However, as Dr Goh is a bankrupt, there is little to no prospect of the Claimants being able to collect on any adverse costs orders which the court might make. I therefore agree with the Claimants that they would suffer prejudice which cannot be addressed by an adverse costs order if the Default Judgment were to be set aside.

75 Claimants' counsel also submitted extensively on the lack of a good explanation for Dr Goh's initial default in allowing the Default Judgment to be entered in the first place. In my view, nothing turns on this. Dr Goh was served with proceedings on 8 July 2022. As a bankrupt, he was prohibited by s 131(1)(a) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) from filing a notice of intention to contest or not contest without the Official Assignee's sanction. On 21 July 2022, he wrote to the Claimants' solicitors to deny the Claimants' claim. By 1 August 2022, he managed to engage the services of NLC after having negotiated a funding arrangement with his daughter. Unfortunately, Dr Goh's daughter withdrew funding subsequently and, by 8 August 2022, NLC decided to cease acting for Dr Goh. When Dr Goh received the Claimants' solicitors' email of 10 August 2022 indicating that they would be applying for default judgment, Dr Goh forwarded the email to the Official Assignee on the

same day urging the Official Assignee not to allow that to happen. Overall, I did not consider Dr Goh's conduct during the period from 8 July 2022 to 17 August 2022 to be egregious in any way. This is not the case of a defendant who had deliberately allowed judgment to be entered by default for tactical or other ulterior purpose. Nor is this a case where the defendant allowed judgment to go by default because he paid no need to or completely ignored the proceedings.

76 In the light of the foregoing I concluded that Dr Goh's delay in applying to set aside the Default Judgment was inordinate and inexcusable, and a decision to set aside the Default Judgment would cause prejudice to the Claimants which could not be remedied by an adverse costs order.

Conclusion

77 For the reasons given above, even though I am of the view that Dr Goh may have a *prima facie* defence against the Claimants' claim, I declined to exercise my discretion to set aside the Default Judgment. The appeal in RA 11 is therefore dismissed.

78 Costs of RA 11 is fixed at of $10,000 (inclusive of disbursements) to be paid by Dr Goh to the Claimants.

Pang Khang Chau
Judge of the High Court

Harish Kumar s/o Champaklal, Marissa Zhao Yunan and Kiran Jessica Makwana (Rajah & Tann Singapore LLP) for the claimants;
Defendant in person.
