IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(I) 29

Originating Application No 2 of 2023 (Summons No 15 of 2024)

Between

W. Power Group EOOD

… *Claimant*

And

Ming Yang Wind Power
(International) Co. Ltd

… *Defendant*

JUDGMENT

[Civil Procedure — Pleadings — Striking out]
[Civil Procedure — Pleadings — Amendment]

TABLE OF CONTENTS

W Power Group EOOD
v
Ming Yang Wind Power (International) Co Ltd

[2024] SGHC(I) 29

Singapore International Commercial Court — Originating Application No 2 of 2023 (Summons No 15 of 2024)
Thomas Bathurst IJ
28 May, 8 July 2024

15 October 2024 Judgment reserved.

Thomas Bathurst IJ:

1 In these proceedings the claimant, W Power Group EOOD ("**the Claimant**" or "**WPG**") has brought proceedings against Ming Yang Wind Power (International) Co Ltd ("**the Defendant**" or "**Ming Yang**") claiming damages for breach of a Joint Venture Agreement ("**JVA**") entered into between them to develop two wind farm projects in Bulgaria. It is sufficient for the purpose of this judgment to describe them as Project 1 and Project 2. The Claimant is a company registered in Bulgaria whereas the Defendant is a company incorporated in Hong Kong.

2 By SIC/SUM 15/2024 the Defendant sought orders that the whole of the Statement of Claim in the proceedings or alternatively, paragraph 13(a) of the Statement of Claim be struck out.

3 The hearing of the Summons took place on 28 May 2024. Towards the conclusion of the hearing counsel for the Claimant made an oral application for leave to amend the Statement of Claim. In the circumstances I gave directions for a draft Statement of Claim to be filed and that the parties exchange submissions on the question of whether leave should be granted. It was agreed that I would determine both the striking out application and the application for leave without a further oral hearing.

The Relevant Agreement

4 The proceedings arise out of the JVA which according to the Claimant was dated 3 July 2011 between the Claimant in the agreement referred to as WPG and the Defendant referred to as Ming Yang. The Defendant does not dispute the existence of the JVA but pleads that the JVA was entered into on 13 July 2011 instead. The recitals to the JVA describe Ming Yang as a leading Chinese wind turbine manufacturer and WPG as an international investor and developer engaged in investing and developing wind farms in Bulgaria, Romania and other countries.

5 Clause 1.1 of the JVA stated that WPG owns and develops two wind farm projects that are vested with all regulatory permits required for design and construction. It stated that the parties agreed to incorporate a joint venture company in which Ming Yang or its subsidiary would hold two-thirds of the shares and WPG one-third. Clause 1.6 stated that the joint venture company would have five directors, three nominated by Ming Yang and two by WPG.

6 Clause 1.2 of the JVA stated that the joint venture company was to acquire all the shares in the two companies engaged in the development of two

wind farm projects, Project 1 and Project 2, and thereafter itself engage in development of those projects.

7 Clause 3.1 of the JVA provided that Ming Yang was to secure "financial means" and/or reasonable funding from a third party to issue a performance guarantee for the holder of Project 2 (which was W Power OOD ("**WP OOD**")) in order to keep the preliminary contracts for grid-connection in force as required by Bulgarian legislation, whilst clause 3.2 imposed a similar obligation on WPG in respect of the holder of Project 1 (which was A1 Development EOOD).

8 Clause 4.1 provided that the acquisition and development of the projects would be financed as to 70%–80% by bank borrowing and the remainder by equity proportionate to the party shareholding. Clause 4.2 contained an undertaking by Ming Yang to obtain financing in accordance with these parameters.

9 Clause 6 of the JVA contained an obligation on WPG to secure the buyback of Ming Yang's shares in the joint venture company within 24 months of the Commercial Operation Dates of the projects. The buyback price was a price containing a 15% premium per annum against the equity investment by Ming Yang.

10 Clause 8 of the JVA obliged the parties to complete the verification of the feasibility study of Project 1 and Project 2 to complete due diligence of Project 2, to negotiate and sign commercial agreements relating to the development of the projects and to arrange the issue of performance guarantees.

11 Clause 10 provided for revision or termination of the agreement. Clause 10.1 provided that in view of the fact that due diligence was ongoing for Project 2 and key technical/economic parameters and legal compliances were yet to be verified the parties agreed to reserve their right to revise the content of the agreement through amicable negotiations.

12 Clause 10.2 of the JVA conferred on Ming Yang the right to terminate the agreement for "all or one" of the following reasons: first, if the outcome of the due diligence showed that Project 2 failed to comply with Bulgarian legal requirements and the necessary technical requirements, second, that the due diligence showed that the economics of Project 2 failed to satisfy the benchmark of internal return of overseas project investment and as a result subsequently failed to get "a majority voting of the board of Ming Yang", third, that WPG failed to produce legal evidence showing that Wind Power OOD had 100% development rights of Project 2 and, fourth, WPG failed to transfer 100% of the shares in A1 Development EOOD and W Power OOD to the newly incorporated joint venture company.

13 The agreement was varied on a number of occasions by documents described as annexes. The first (Annex 1) dated 14 July 2011 added as additional parties W Power-3 OOD ("**WP3**") and two Bulgarian citizens, a Mr Georgi Aleksandrov ("**Mr Aleksandrov**") and Mr Spas Ivanov ("**Mr Ivanov**"). The recitals to Annex 1 referred to the somewhat complex arrangements surrounding the ownership of interests in Project 2 including that a company, W Power OOD ("**WP**") had holding rights of about 80 MW of installed capacity on 32 land plots and another company, W Power-2 OOD ("**WP2**") had holding rights in respect of 40 MW of installed capacity on 17 land plots. It stated that notwithstanding this, the whole of Project 2 had in fact

been developed by WP OOD. It stated that part of the land plots for Project 2 were thus owned prior to the signing of the joint venture agreement by WP2.

14 The recitals also stated that at the date of the agreement WPG held 64% of WP and the remaining 36% was held by Mr Aleksandrov and Mr Ivanov in equal proportions and it was necessary for them to sign the joint venture agreement to confirm they were familiar with its terms.

15 The recitals also stated that WP2 was owned by two other individuals, a Ms Daniela Voynova and a Ms Elenka Stoyanova. These individuals did not become parties to the agreement.

16 Clause 1 of Annex 1 stated that WPG and Ming Yang had agreed that WPG should ensure, at its cost and expense, that a group restructuring be implemented as a result of which all rights over Project 2 would be validly consolidated (owned by) a single company and Ming Yang would acquire the agreed shareholding in that company.

17 Clause 2 set out the steps to be taken in respect of that restructuring. First, it provided that all the shares in WP would be transferred to a company, MW Wind Power EOOD (the joint venture company). Second, all shares in WP2 would be transferred to the joint venture company. Third, 34% of the shares in the joint venture company would be transferred to WP3 whilst the remainder would be owned by WPG. Fourth, an agreement for the transfer of "the going concern of WP2 to WP" would be signed so that the rights of WP2 relating to Project 2 would be transferred to WP as required for the purpose of the validation of the preliminary connection agreement ("**Preliminary**

Connection Agreement") that WP had signed with the National Electricity Company of Bulgaria.

18 It should be noted that although the third step provided that the remainder of the shares in the joint venture company be owned by WPG, it is evident that the intention of the parties was that they would be owned by Ming Yang.

19 By clause 3(a) of the Annex, the parties acknowledged the joint venture company would play the role of and be considered the joint venture company envisaged in the original joint venture agreement only for Project 2.

20 Clause 3(b) provided that for Project 1 WPG and Ming Yang would "open" a different joint venture company in which only WPG and Ming Yang would hold shares.

21 Clause 3(d) provided that WP3 would consolidate the shareholders in WP2 and that WP3 would be the direct shareholder in the joint venture company only for Project 2. It also provided that neither Ming Yang nor the joint venture company would be concerned in any way by the internal relations among the shareholders in WP3.

22 The end result would appear to be that in respect of Project 1 Ming Yang and WPG would be the sole shareholders in the joint venture company owning 66% and 34% of the shares respectively whilst in respect of Project 2 the joint venture company would be MW Wind Power EOOD with 34% of the shares in that company held by WP3 and the remaining 66% by Ming Yang.

23 Annex 2 was dated 14 July 2011. It is unnecessary to refer to it in any detail.

24 Annex 3 was dated 9 January 2012. Ming Yang is described in that Annex as Party A, WP3 as Party B and WPG as Party D. Party C was a company Guangdong Ming Yang Wind Power Industry Group Co Ltd, a company which had not been involved in any of the previous arrangements.

25 The recital to the Annex referred to the structure of the joint venture of Project 2 describing the project as Milkovitsa 120MW. It referred to the operating company as W Power EOOD/WP2 a 100% subsidiary of the joint venture company.

26 The Annex provided that either Ming Yang or Party C would provide a guarantee of project financing for Project 2. It provided that the operating company would pay to Party A or Party C a fee of 1% per annum against the average balance of outstanding loan. It also provided that the amount equal to the valuation of the development right for the project injected by WP3 or its affiliates, directly or indirectly, would not be taken as a liability of the joint venture company to WP3 or its affiliates.

27 Annex 3 also provided that revenue generated from electricity sales of the project after deducting "interest, bank loans, guarantee fee, daily operational costs, depreciation and taxation, etc" would be taken as profit of the special purpose vehicle (WP2). It also provided that all disposable cash of the special purpose vehicle would be taken as dividends or borrowings of the joint venture company from the special purpose vehicle. It provided that all cash receipts remaining would be used to pay interest on borrowings by the joint venture from

Ming Yang at first instance and the balance after repaying all interest due would be used to repay principals of the borrowings by the joint venture from Ming Yang.

28 Annex 3 also provided that after the joint venture company had paid all outstanding principal and interest on borrowings from Ming Yang the remaining profits of the special purpose vehicle would no longer be taken as dividends in the joint venture company but used to repay principal and interest on the bank loan in advance. It provided that Party A would take over a 100% equity after the bank loan is fully paid off and the obligations of Party A or Party C under the loan guarantee are discharged.

29 It also provided that from the beginning of the second year after the commercial operation date WP3 had the exclusive right to sell out of the project provided that the selling price is sufficient to pay all principal and accumulated interest on the borrowings by the joint venture from Ming Yang and that Ming Yang and Party C are fully discharged from the obligations under the guarantee of the bank loan and the lending bank agrees to the sellout.

30 The Annex also contemplates investment in new projects. It stated that the joint venture could engage in developing/investing in wind/solar projects in prospective markets in the region including Romania, Bulgaria and the Ukraine. It provided that equity investment would be injected as to 66% by Ming Yang and 34% by importantly WP3 with Ming Yang agreeing to lend money to WP3 to enable it to contribute the equity at an interest rate of 15%.

31 Annex 4 was dated 11 December 2012. The parties were Ming Yang, WPG and a company Grisson Management Ltd ("**GM**"), a company

incorporated in the British Virgin Islands. It should be noted that Mr Jonathan Mann ("**Mr Mann**") was described in Annex 4 as the managing director of WPG and the owner of 100% of the shares in GM.

32 The Annex recited the entry into the joint venture agreement and the amendments contained in Annex 1, Annex 2 and Annex 3. It also recited that GM and Ming Yang had incorporated a company, MW EP Renewables International Ltd, a limited liability company under the laws of Cyprus. It was described in the Annex as the "JV Company".

33 The Annex also recited that the JV Company had been incorporated for the purpose agreed upon in clause 1 of the joint venture agreement (see [5]–[6] above). It stated that GM and Ming Yang wanted to balance the investments made by them in the JV Company and to restructure and reorganise their future investments in Central and East Europe for development of renewable energy projects.

34 Clause 1 of Annex 4 provided that the equity structure of the JV Company would be that 66.6% of the shares would be held by Ming Yang and 33.4% of the shares by GM.

35 Clause 2 provided that the investment of €500,000 by Mr Mann in A1 Development EOOD (the holding company in respect of Project 1) together with an office building in Bucharest, Romania be taken as the equity contribution by GM into the JV Company. It also provided that all investments by Ming Yang in A1 Development EOOD would be taken as "equity contribution and/or shareholder's loan by Ming Yang to the joint venture

company". The clause provided a formula by which the amount contributed by Ming Yang would be apportioned between debt and equity.

36 Clause 3.1 provided that if Ming Yang desired to convert its actual investment in the 120MW project in Bulgaria into the joint venture company, the equity contribution by GM referred to in clause 2 would be adjusted according to a formula. Clause 4.1 provided for further adjustment of debt and equity contributions but it is unnecessary to set it out.

37 Clause 4.2 provided that a wholly owned subsidiary of the JV Company would be incorporated in Romania and that GM was required to transfer the Bucharest office property to that company.

38 Clause 7 is important. It provided that WPG would deal with the matter concerning the retrieval of the bank guarantee provided to the National Electricity Company of Bulgaria for keeping the preliminary contract for connection to the grid concerning the Milkovitsa 120MW Project (*ie*, Project 2, see [25] above). WPG undertook that within one week of signing of the Annex it would use its best endeavours to ensure the retrieval of the bank guarantee.

39 Clause 8 of the Annex provided that Ming Yang would exert its best efforts to access financing of equity and loan for the JV Company needed for the development and construction of all future projects.

40 Clause 9 provided that Ming Yang through the Cyprus JV Company would support the development of all wind farm projects suggested by the JV Company in Bulgaria, Romania and Ukraine (subject to the approval of the board of directors of Ming Yang).

41 Clause 14 described the Annex as an integral part of the joint venture agreement and that other than as amended by the Annex, the provisions of the joint venture agreement remained in full force and effect.

42 Clause 15 provided that in the event of conflict between the Annex and the joint venture agreement, the Annex would prevail.

43 With that background it is convenient to turn to the Statement of Claim and the parties' submissions.

The Statement of Claim

44 The Claimant, WPG, pleads the entry into the JVA and the Annexes. It alleged that WPG and Ming Yang entered into the agreement and established a joint venture company, MW Wind Power OOD, in which WPG held one-third of the shares and Ming Yang two-thirds.

45 In paragraph 8 of the Statement of Claim the Claimant pleaded that its obligations under the Statement of Claim included the procurement of land and the rights and licences to develop Project 1 and Project 2, and to secure financial means and reasonable funding from a third party to keep the preliminary contract for grid-connection in respect of Project 1 on foot. It also pleaded it had certain other obligations but it is unnecessary to refer to them.

46 In paragraph 9 of the Statement of Claim the Claimant pleaded that the Defendant's obligations were, among other things, to secure financial means and reasonable funding from a third party to issue performance guarantees to keep the preliminary contracts for grid-connection in force for Project 2 and to

undertake to secure finance for Project 1 and Project 2 in accordance with the parameters set out in the JVA.

47 The Claimant alleged that it carried out its obligations under the JVA. In relation to Project 2 it pleaded it had contributed all the lands together with the development rights and licences "evaluated at the time of contribution to 18 million EUR".

48 It pleaded that notwithstanding the Defendant failed to fulfil its obligations to obtain financing for Project 2 and withdrew the performance guarantee on Project 2 whilst the project was ongoing and "despite the agreements in Article 7 [and] 8 under Annex 4 of the JVA the Defendant has never ever exerted any efforts to access financing for Project 2".

49 It was pleaded that as a result Project 2 was never started and in 2020 the Defendant's representative informed the Claimant that the Defendant would no longer undertake Project 2.

50 The Claimant pleaded that as a result it was unable to exercise its right under Annex 3 to sell its shares after the second year of commercial operation as it was entitled to under Annex 3 (see [29] above) and has suffered a loss of €37.5M. It pleaded in support of that proposition that if Project 2 was completed within timeline, it would produce approximately €7M worth of renewable energy a year since 2012 and the total output would have been €243M. It asserted that after deduction of costs, the joint venture company would have made a profit of €105M of which the Claimant would have been entitled to one-third, namely, €37.5M. It also claimed, presumably as an alternative, €18M as reliance loss.

51 It can be seen that the claim is based on an alleged breach by Ming Yang of its obligations in respect of Project 2 and the damages claimed are solely related to that breach.

52 It should be noted WPG has supplied Further and Better Particulars of its claim and Ming Yang has filed a Defence. I will refer to these documents to the extent necessary in dealing with the parties' submissions on the striking out application.

53 In addition, Ming Yang filed in support of its application a statement by Mr Ye Fan dated 27 March 2024, a statement of 8 May 2024 and a supplementary statement of 17 May 2024 both filed in response to a statement of Mr Mann dated 17 April 2024 filed by WPG. I will refer to these statements to the extent necessary. However, whilst it is open to parties to file affidavits or statements in support of an application to strike out a pleading on the grounds in Order 16 r 4(1)(*b*) or (*c*) of the Singapore International Commercial Court Rules 2021 ("**the SICC Rules**") it must be borne in mind that it is not my task on this application to determine any contested issues of fact. Further, it is well established that the Court will exercise its powers only in plain and obvious cases and the power will not be exercised by a minute and protracted examination of the documents and facts of the case in order to see if the plaintiff really has a cause of action: see *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18] ("***Gabriel Peter***").The Court of Appeal also stated at [18] that where an application for striking out involves a lengthy and serious argument, the court should decline to proceed unless, not only does it have doubts as to the soundness of the pleading but, in addition, it is satisfied that striking out will obviate the necessity for a trial or reduce the burden of preparing for a trial.

The parties' submissions on the striking out application

Ming Yang

54 In its written submissions, Ming Yang referring to the statement of Mr Ye Fan of 8 May 2024 noted that WP had entered into a Preliminary Connection Agreement with the National Electricity Company of Bulgaria ("**NEC**") under which WP was required to build, construct and commission an electricity substation and design, supply, construct and commission the connection facilities. It referred to the fact that the agreement was amended on 16 March 2012 and required WP to provide a bank guarantee for fulfilment of its obligations to build the facilities for connection at the energy site in a specified time. It referred to the evidence of Mr Ye Fan that around 20 July 2011, Ming Yang provided a bank performance guarantee of €3,067,800 in favour of the NEC.

55 Ming Yang also referred to the evidence of Mr Ye Fan in his statement of 27 March 2024 that there were changes to the Bulgarian legal and regulatory regime in around April 2012 which made the development of Project 2 economically unviable and that in those circumstances Ming Yang informed WPG that it would not proceed with Project 2. It referred to an email from Mr Bruce Li ("**Mr Li**") of Ming Yang to Mr Mann dated 27 August 2012 to the effect that the board of directors of Ming Yang had made a unanimous decision not to proceed further with Project 2 and that WPG was requested to proceed in a timely manner with all pending issues relating to the termination including withdrawal of the bank guarantee.

56 Ming Yang referred in that context to clause 7 of Annex 4 entered into subsequently on 11 December 2012 which I have set out at [38] and Mr Ye

Fan's evidence to the effect that on 14 December 2012, WPG procured WP to request the NEC to terminate the Preliminary Connection Agreement and for the bank guarantee to be handed over. It referred to Mr Ye Fan's evidence that following the expiration of a one month notice period the Preliminary Connection Agreement was terminated on 14 January 2013 and the bank guarantee released.

57 In its submissions, Ming Yang also provided a summary of the parties' respective pleadings. I have summarised the Statement of Claim above. Because of the limited nature of the application it is unnecessary to refer to the Defence except to note that it was alleged, among other matters, that WPG's claim was time-barred.

58 Ming Yang relied in support of its application on Order 16 r 4(1)(*a*), (*b*) and (*c*) of the SICC Rules. These rules are in the following terms:

> **4**.—(1) The Court may, on the application of a party, order any or part of any Originating Application, pleading, or memorial to be struck out or amended, on the ground that -
>
> (*a*) it discloses no reasonable cause of action or defence;
>
> (b) it is an abuse of the process of the Court; or
>
> (c) it is in the interests of justice to do so,
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly.

Furthermore, no evidence is admissible on an application under the ground in O 16 r 4(1)(*a*): see, O 16 r 4(2).

59 Ming Yang submitted that the applicable legal principles were set out by the Court of Appeal in *Iskandar bin Rahmat and others v Attorney General* [2022] 2 SLR 1018 at [17]–[19]:

> 17 Under O 9 r 16(1)(*a*) ROC, the test is whether the action has some chance of success when only the allegations in the pleadings are concerned: *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 ("*Gabriel Peter*") at [21]. If that is found to be the case, then the action will not be struck out.
>
> 18 Order 9 r 16(1)(b) allows the court to strike out pleadings which constitute an abuse of process of the court. The inquiry here includes considerations of public policy and the interests of justice, and signifies that the process of the court must be used *bona fide* and properly and must not be abused; the court will prevent improper use of its machinery and the judicial process from being used as a means of vexation and oppression in the process of litigation: *Gabriel Peter* at [22].
>
> 19 In addition, O 9 r 16(1)(c) allows the court to strike out pleadings when it is in the interests of justice to do so. The Judge agreed with the AG that this gives effect to the court's inherent jurisdiction to prevent injustice, such as where the claim is plainly or obviously unsustainable: *The Bunga Melati 5* [2012] 4 SLR 546 at [33]...

60 Ming Yang contended that any cause of action that WPG had arose at the latest on 27 August 2012 when Ming Yang communicated to WPG that it would not proceed with Project 2. It stated uncontroversially that the limitation period for actions for breach of contract was six years after the breach occurred per s 6(1) of the Limitation Act 1959 (2020 Rev Ed) and that it was immaterial that damage may have been suffered after that.

61 Ming Yang also submitted that once a limitation defence was raised the Claimant carried the onus of establishing its claim was not time-barred. It referred in that context to *IPP Financial Advisors Pte Ltd v Saimee bin Jumaat and another appeal* [2020] 2 SLR 272 ("***IPP Financial Advisors***") where the Court of Appeal stated at [37] the correct view is that the moment a limitation defence is raised by the defendant in pleadings, the plaintiff's burden is to prove the claim fell within the limitation period. The Court also stated at [41] that it is not necessarily sufficient for the plaintiff to prove the date of accrual of the

cause of action is different from the date pleaded in the defence but rather the plaintiff must prove that the date of accrual is within the limitation period.

62 Ming Yang submitted that WPG had not filed a reply or made any attempt in its pleading to demonstrate the cause of action was not time-barred.

63 Ming Yang further submitted that what it described as the attempt by WPG to embellish its case by way of affidavit evidence to explain away Mr Li's email of 27 August 2012 was hopelessly flawed. It appears Ming Yang was referring to the evidence of Mr Mann in his statement of 17 April 2024 that Mr Li's email did not show any solid intention to terminate Project 2 as such intention was not stated in Annex 4 and it was only stated that WPG would assist in the withdrawal of the bank guarantee.

64 In that context, Ming Yang submitted that the allegation by Mr Mann was unpleaded, contrary to WPG's pleaded case that Ming Yang had breached the agreement by withdrawing the bank guarantee and factually unsupportable. Because of the view I have taken on the Statement of Claim and the fact that the issue arises more directly on the application for leave to amend, it is unnecessary to deal with the submission any further at this stage.

65 Finally, Ming Yang submitted to the extent the claim made is for damages for the inability to exercise the rights to sell out of the project as provided by clause 1.3 of Annex 3 (see [29] above) that right resided in WP3, not WPG.

66 At the hearing, counsel for Ming Yang submitted it was not open on the pleadings for WPG to assert that although the guarantee was withdrawn Project 2 was not terminated as there would need to be a positive pleading of

some sort to say the parties had agreed to postpone or to explain what happened between 2012 and 2020. He submitted there was no pleading of a later breach than the one alleged to have occurred by the withdrawal of the guarantee.

67 Counsel for Ming Yang noted that although it was pleaded in the Statement of Claim that it was only in 2020 that Ming Yang said it did not want to proceed that was not sufficient to show that WPG had a reasonable cause of action that was not time-barred. He referred to *IPP Financial Advisors* noting that the onus was on the Claimant to show its claim is not time-barred.

68 He also submitted that WPG had no standing to sue on clause 1.3 of Annex 3. He submitted that on the plain contractual reading, any entitlement in relation to that claim could only be exercised by WP3. He submitted no application had been made to join WP3 and WP3 had not filed a consent to joinder as required by the SICC Rules.

The Claimant's submissions

69 The Claimant referred to the fact that Mr Li's email of 27 August 2012 stated it was the decision of the board and auditing committee of Ming Yang "not to proceed further with the execution of the 120MW as per the timeline of grid-connectivity proposed by the regulators" and "[WPG is] kindly advised to proceed with, in a timely manner, all pending issues related to the termination, including withdrawal of bank performance guarantee." It submitted "the termination" referred to in that email was not regarding the termination of Project 2 itself but only the Preliminary Connection Agreement with the NEC.

70 It submitted that the Claimant's agreement to assist in the withdrawal of the performance guarantee and the termination of the Preliminary Connection

Agreement was based on its understanding that the Claimant and the Defendant would sell the electricity generated in the private market when the project was finally completed. It submitted that was why Annex 4 only referred to the withdrawal of performance guarantees and did not refer to the termination of Project 2 entirely.

71 In its submissions, the Claimant took issue with Mr Ye Fan's understanding of the effect of the termination of the preliminary agreement as expressed in his statement of May 2024. Its submissions also took issue with Mr Ye Fan's characterisation of what took place post-2012, in particular, the contention that Project 2 was terminated (see Claimant's submissions, paras 17–19).

72 What is important is whether they be right or wrong none of the matters referred to in that portion of the Claimant's submissions, which I have summarised above, form any part of the Claimant's pleaded case. Similarly, the issue surrounding the retention of land which was to be used for the purpose of Project 2 formed no part of the Claimant's pleaded case and cannot support the conclusion that on the pleadings the cause of action only arose around 2020.

73 In relation to the contention that WP3 was the only party which could sue for a contravention of clause 1.3 of Annex 3, the Claimant submitted relying on the decision of the High Court of Malaysia in *Karpal Singh v Sultan of Selangor* [1988] 1 MLJ 64 ("***Karpal Singh***") that the Claimant being a party to the JVA has the right to enforce any terms of the JVA and Annexes, including clause 1.3 of Annex 3, and the Claimant who owned 66.67% of WP3 had an interest in the rights given to WP3 to decide on the selling out of Project 2.

74 At the hearing, counsel for WPG referred to the contention that Project 2 was not terminated until 2020. He relied in that regard on the evidence of Mr Mann that WP and WP2, companies wholly owned by the joint venture company, acquired 9 plots of land in November 2012 for the purpose of Project 2 notwithstanding Mr Li's email of 27 August 2012 and on his evidence that there were ongoing discussions on restructuring Project 2 in 2018 and 2019 and that it was only in 2020 Ming Yang made it clear it would not be building any wind farm in Bulgaria. However, counsel for WPG accepted this was not pleaded. Referring to these matters and making an oral application for leave to amend he made the following submission:

> There is a cause of action however weak the evidence may be. Unfortunately, this is not in the pleadings but these are the issues which should be properly ventilated at trial of this action. If leave is granted we will amend to particularise the events that took place after 2012 and what we deem to be the essence of the breach in 2020 and also, as far as damages are concerned, the prayer for damages that is all.

Consideration

75 The Statement of Claim is unequivocal. The breaches pleaded in paragraph 11 include the withdrawal of the performance guarantee. This breach together with the other breaches referred to in paragraph 11 of the Statement of Claim were said to have the consequence that Project 2 was never started and was said to give rise to the damages claimed to which I have referred at [50] above.

76 There is to say the least an air of artificiality about the claim having regard to the fact that Annex 4 makes it clear that the parties mutually agreed to withdraw the bank guarantee and the withdrawal was effected by a request from WPG to the NEC.

77 Whether or not the obligation on WPG to procure the withdrawal of the guarantee required by Annex 4 would mean the claim should be struck out as an abuse of process on that ground alone, the fact is that the limitation period for suing on such a breach had expired well prior to the commencement of the proceedings. There are no later breaches alleged in the Statement of Claim. The Statement of Claim merely states that as a consequence of the breach of Ming Yang's obligations Project 2 was never started and in 2020 Ming Yang informed WPG that Ming Yang would no longer undertake it. Counsel for WPG's concession to which I have referred at [74] was entirely correct. In my judgment, in these circumstances the Statement of Claim ought to be struck out in its entirety on the ground under O 16 r 4(1)(*b*) for being an abuse of process of the Court or on the alternative ground under O 16 r 4(1)(*c*) that it is in the interests of justice for the claim to be struck out: *Hong Alvin v Chia Quee Khee* [2011] SGHC 249 at [25] and [26]; see also *Management Corporation Strata Title Plan No 4099 v TPS Construction Pte Ltd and others* [2024] SGHC 149.

78 Although it is strictly unnecessary to deal with the matter, the loss pleaded included the inability of the Claimant (not WP3) to exercise its rights under clause 1.3 of Annex 3. No such right resided in the Claimant and no facts were pleaded to establish WPG's entitlement to sue for such damages. The decision in *Karpal Singh* which concerned the question of standing to seek declaratory relief in a public law context has no relevance to the question of the right of a party to a contract to claim damages for loss suffered by another person as a result of the breach. The whole of paragraph 13(a) of the Statement of Claim should also be struck out on the ground that it discloses no reasonable cause of action.

The Amendment application

79 As I indicated, recognising the difficulty with the original pleading, counsel for the Claimant made an oral application for leave to amend. I directed the Claimant provide a draft Amended Statement of Claim. Following its provision, submissions were made by the Defendant in opposition to leave being granted and by the Claimant in support of the application for leave to amend.

The Draft Amended Statement of Claim

80 The draft Amended Statement of Claim sought to substantially recast the pleading.

81 First, it added WP3 as an additional claimant. Paragraph 4 of the pleading described WP3 as a subsidiary of WPG brought into the joint venture to represent WPG's interest in the joint venture and was represented by its managers Mr Mann, Mr Ivanov and one Ms Violeta Yankova Karakachanova ("**Ms Karakachanova**").

82 Paragraph 7 of the draft Amended Statement of Claim pleads that at all material times the collaboration between WPG and Ming Yang in Project 1 and Project 2, was for WPG to provide the assets and licensing rights for the building of Project 1 and Project 2, and Ming Yang to build Project 1 and Project 2, including building the required turbine for these projects. It then pleads the agreement to form the joint venture company contained in the original JVA adding the following allegation:

> [W]hereby the Defendant will be given 66% shareholding of the joint venture company that holds all the assets and licensing rights for the development of Project 1 and 2, as security for the Defendant's building of these projects, and [WPG] will buy back these shares after the completion of the projects…

83 Paragraph 7A of the draft Amended Statement of Claim pleads first the agreement to establish separate joint venture companies for Project 1 and Project 2 (see [18]–[21] above) then pleads, presumably by reference to Annex 4, that thereafter in the Project 1 joint venture GM would hold 34% of the shares in the joint venture vehicle and Ming Yang would hold the remaining 66%, and for Project 2 WP3 would hold 34% and Ming Yang 66%.

84 I have summarised Annex 4 above. Suffice to say at the present time it is by no means clear it has the effect pleaded.

85 Paragraph 7B pleads that at all material times GM, an affiliated company of WPG, and WP3 are representatives of WPG in the collaboration between WPG and the Defendant in the JVA and they are not replacing WPG in the collaboration with the Defendant. The paragraph also pleads that it was understood that the four persons to whom I have referred at [14]–[15] above are "[WPG]'s partners in contributing the assets and licensing rights of Project 2".

86 Paragraph 9(e) of the draft Amended Statement of Claim states that clause 9.1 of the JVA imposes an obligation on Ming Yang to engage its full potential to build and develop a strategic partnership for the development of wind farm park projects in Eastern Europe and region.

87 Paragraph 10 of the Statement of Claim is also amended. In addition to the allegation that WPG had carried out its obligations under the JVA it pleads that WPG at its own cost and expense arranged for the companies which owned all the required lands for Project 2 to be wholly owned by the Project 2 joint venture company of which the Defendant owned 66%. It also pleaded that due to the fact the power production capacity of the wind turbines capable of being

produced by MY Guangdong was 1.5MW instead of 2.5MW as required for Project 2, WPG bought additional lands with loans provided by Ming Yang for these lands to be included in Project 2.

88 Paragraph 10A of the draft Amended Statement of Claim alleges that:

> … due to a change in Bulgarian law and the National Electricity Company of Bulgaria ("**NEC**") grid-connection can only be done in 2017-2018, the Defendant discussed with the [WPG] and decided in 2012 to withdraw the performance guarantee given to the NEC for the Preliminary Connection Agreement for Project 2 as the Defendant does not wish to provide such guarantee for so many years.

It pleaded that in convincing WPG to agree to the withdrawal, Ming Yang assured it that "it is not stepping out from Project 2 and suggested for the parties to do Project 2 in a different way that is beneficial to the parties and not necessarily to sell the electricity to the NEC at a preferential price". It pleaded that in this regard, Project 2 was "postponed for the parties to restructure their plan for it before recommencing it".

89 It can be seen that the allegation in this paragraph is entirely different to the allegations made in the original Statement of Claim. If not inconsistent with Mr Li's email, it goes well beyond it. It also goes further than the evidence of Mr Mann in his statement of 17 April 2024 where he deals with the circumstances in which the performance guarantee was withdrawn.

90 Paragraph 10B of the draft Amended Statement of Claim deals with Annex 4. It alleges that Annex 4 provided for the withdrawal of the bank guarantee "for Project 2 only" and for Ming Yang's undertaking to access financing and equity for all future projects undertaken by "Project 1 JVC" provided for in clauses 8–10 of Annex 4. I have summarised clauses 8–9 of

Annex 4 above, however, it should be noted the draft Amended Statement of Claim describes the joint venture company established pursuant to Annex 4 as the "Project 1" joint venture, a title not attributed to it in the Annex. It also alleges that clause 10 of Annex 4 provided that Ming Yang would agree to reconsider the remuneration paid to Mr Mann in his capacity as CEO of the Cyprus joint venture company (meaning Project 1 JVC), "taking into consideration the work on the new projects to be acquired, as well as the increased amount of duties and responsibilities to be taken in that regard".

91 Paragraph 10C pleads that WPG, Ming Yang and their appointed solicitor thereafter worked together to restructure the plan for Project 2 and "to build it as per the agreement in the JVA". It alleged that between 2012 and 2019 there were discussions concerning the type of turbines which were required so that Ming Yang could build Project 2 on less land and more efficiently and discussions concerning a suitable time to commence the building of Project 2. It alleged that during this period Ming Yang's representatives, Mr Li and Mr Wang Song, were assuring Mr Mann that Ming Yang was still interested to proceed with the building of Project 2 due to the increase in the cost of electricity in Bulgaria.

92 Paragraph 10D of the draft Amended Statement of Claim pleads that when Mr Larry Wang was appointed Chief Executive Officer of Ming Yang in 2020, he informed Mr Mann that Ming Yang would not be proceeding with the building of Project 2. It alleges WPG presented Ming Yang with its proposal "to part off from their collaboration in Project 2 but was not accepted by the Defendant, nor did the Defendant provide any alternative solution to exit Project 2, and carry on to hold on to the lands and licensing rights contributed by [WPG] and its partners for Project 2 until to-date".

93 Paragraph 11 pleads that by Ming Yang's decision in 2020 to discontinue Project 2 "after many years of reassurances given to [WPG] of its commitment to build Project 2 at the right time", Ming Yang has breached the terms of the JVA in the Annexes "for Project 2 as well as other projects" by:-

(a) failing to fulfill its obligations to obtain financing for Project 2 as required under clause 4.2 of the JVA;

(b) failing to have the necessary engineering for the installation and operation of the 120MW wind turbines and all other machines, appliances and installations needed as required under clauses 7.1 and 7.2 of the JVA for Project 2;

(c) failing to fulfill its obligations under clauses 8–10 of Annex 4 of the JVA; and

(d) delayed and/or failed to take any effort and/or its best effort required under clause 9.1 of the JVA to recommence Project 2 after the First Claimant's agreement to withdraw the performance guarantee provided to the NEC.

94 Paragraph 12 pleads that as a consequence Project 2 was unable to recommence and other projects around the Eastern Europe region were never started and that even after Ming Yang's communication of its decision to discontinue with Project 2 in 2020, Ming Yang refused to return the land and licensing rights contributed by WPG and its partners for the development of Project 2 and prohibited WPG from collaborating with third parties to build Project 2 by reason of the fact that Ming Yang was holding 66% of the shares in the Project 2 joint venture company.

95 The draft amended paragraph 13 pleads as a result WPG and WP3:

(a) are unable to exercise the rights granted under Annex 3 of the JVA after the second year of commercial operation to sell WP3's shares in the Project 2 joint venture company at a price sufficient to pay all principal and interest on the borrowings by the Project 2 joint venture company from Ming Yang; and

(b) have suffered damages due to:

(i) Ming Yang's failure to fulfil its obligations under the JVA and the annexures with respect to Project 2 and other projects;

(ii) the unnecessary additional land acquired by WPG and/or WP for Project 2 with a loan provided by the Defendant to WP;

(iii) the Defendant's failure to return to WPG the land and licensing rights contributed by WPG through WP and WP2 for Project 2.

96 The draft amended paragraph 14 pleads that WPG and WP3 seek orders for Ming Yang to return the land and licensing rights contributed by WPG (through WP and WP2) for the development of Project 2 by transferring Ming Yang's 66% shareholding in the Project 2 joint venture company to WPG at a nominal value of 660 Bulgarian Leva. It also claims damages for loss suffered by WPG and WP3 "as illustrated in paragraph 13(b)", interest and costs.

Ming Yang's Submissions in Opposition to the Grant of Leave to Amend

97 Ming Yang submitted that the draft amendments failed to cure the fundamental defects in the Statement of Claim and that in those circumstances its application to strike out the Statement of Claim should be allowed.

98 Ming Yang summarised its major objections to the draft amendments as follows: First, WP3 should not be added as a party to the proceedings. Second, that the amendments to paragraphs 9, 10A, 10C and 11 of the draft Amended Statement of Claim are vague and completely unparticularised. Third, there are arguments that have been raised which go beyond the issues set out in the List of Issues dated 15 January 2024 and have never been raised by way of witness statements, evidence or submissions. It referred in that context to the allegations in paragraphs 9(e), 10, 10A, 10B, 10D, 11(c), 11(d), 12 and 13 of the draft Amended Statement of Claim.

99 The submissions helpfully annexed a table setting out succinctly the basis of the objections to each of the paragraphs of the amendment about which complaint is made.

100 In support of its contention that WP3 should not be joined as a party, Ming Yang submitted the context in which leave to seek to make amendments was granted was to deal with the limitation argument, not the argument that WPG lacks standing to bring a claim under clause 1.3 of Annex 3. Whilst that may have been the context, I did not indicate that leave could be sought only to address the limitation problem.

101 Ming Yang submitted that in any event leave should not be granted to add WP3 as a party for the following reasons:

(a) It submitted that Order 16 r 4(1) of the SICC Rules does not confer on the Court power to add a party to the action.

(b) It submitted that if WPG wished to add WP3 as a party it was necessary to go through the procedures set out in Order 10 rr 6–7 of the SICC Rules. It pointed out that no application under O 10 rr 6–7 has been made.

102 It submitted that in any event the requirements of Order 10 r 7(5) of the SICC Rules have not been fulfilled as no written consent to joinder by WP3 has been filed with the Court. It submitted WPG has not produced any evidence of authority to join WP3 nor has any evidence been provided from WP3 of its consent to be added as a party.

103 Ming Yang pointed out that under Order 10 r 6 of the SICC Rules the Court may order a person be joined as a party if it is appropriate to add the new party so that the Court can resolve all matters in dispute in the proceedings or any issues that are connected to those matters. It submitted the principles were well settled. It submitted that the rule provided a person may be joined where it is necessary to ensure that all matters in issue may be effectively disposed of or, second, where there exists a question or issue arising out of or connected with any relief or remedy claimed and is a matter which, in the opinion of the Court, would be just and convenient to determine. It submitted in relation to the question of necessity that it was necessary for WPG to demonstrate that the action cannot be effectively and completely determined without the joinder whilst in relation to the just and convenient limb WPG must show there is a question between the party sought to be joined and one of the existing parties

and that in the Court's opinion joinder for the purpose of deciding the question would be just and convenient.

104 It submitted that if either of those criteria is satisfied the Court then decides whether to exercise its discretion taking into account a range of factors including issues of abuse of process, procedural fairness and prejudice to the parties. It referred in that context to the decision of the Court of Appeal in *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 ("***Ernest Ferdinand***") at [195].

105 Ming Yang submitted that paragraph 13(a) of the proposed Amended Statement of Claim sets out WP3's proposed claim in relation to clause 1.3 of Annex 3. However, it submitted no relief was sought in relation to that claim as paragraph 14 of the proposed pleading seeks damages only in respect of the matters in paragraph 13(b). It submitted in these circumstances it was neither necessary nor just and convenient to join WP3 as a co-claimant.

106 Ming Yang also submitted that the Court expects any application for joinder to be made as soon as possible. It submitted WPG knew of Ming Yang's contentions that WPG had no standing to bring the claim under clause 1.3 of Annex 3 as early as January 2024 but had not sought to make any formal joinder application or comply with the procedures required for joinder.

107 Finally on the question of joinder, Ming Yang submitted that the purported agreement to postpone and not cancel Project 2 was between WPG and Ming Yang and WP3 was not a party. It submitted that it followed that any cause of action by WP3 for a breach of clause 1.3 of Annex 3 would have occurred on 27 August 2012 when Ming Yang gave notice it would not be

proceeding with Project 2. It submitted it followed that the claim was time barred and there was no point in joining WP3.

108 Ming Yang also pointed to what it submitted were significant deficiencies in the pleading. It submitted the draft amendments do not clearly particularise the matters alleged in the proposed Amended Statement of Claim and make clear the damages which flow from the alleged breaches. It submitted that WPG's failure to particularise the claim after two rounds of further and better particulars and the provision of the draft amendment, meant that the amendment should not be allowed.

109 It submitted referring to *Chandra Winata Lie v Citibank NA* [2015] 1 SLR 875 at [34], [77]–[81] that a claimant, who was not in position to plead, particularise and point to the necessary proof from the outset of the suit runs a risk of having the suit struck out. It submitted the requirement to properly plead and particularise a claim served to deter speculative litigation and suppress litigiousness so as to save time and costs, prevent a claimant from circumventing the allocation of the burden of proof by pleading allegations which cannot be falsified and ensuring the claimant takes necessary care to be accurate in its assertions.

110 Ming Yang submitted that the allegations in paragraph 10A (see [88] above) were made for the first time and were not referred to in Mr Mann's witness statement. It submitted key particulars were missing, namely, how, when and what agreement was reached, whether in writing or otherwise. It submitted the assurances and suggestions referred to were bare assertions devoid of particulars.

111 It also submitted that the alleged agreement to restructure Project 2 was at most a mere agreement to negotiate on a further agreement to restructure that project and, as such, was neither binding nor enforceable.

112 In relation to paragraph 10C, Ming Yang submitted it was entirely unclear what the parties did to restructure Project 2 or how they sought together to build Project 2 "as per the agreement in the JVA". It submitted the allegations were inconsistent with paragraph 12 of the draft Amended Statement of Claim which pleads that Project 2 was never able to recommence. It submitted no particulars were given of the alleged assurances provided by Ming Yang to Mr Mann referred to in paragraph 10C stating the pleading expanded from the limited evidence of Mr Mann and the two exhibits to his statement, which Ming Yang submitted related to another project and not Project 2.

113 So far as paragraph 11 was concerned, Ming Yang pointed out that it continued to allege breaches of the JVA and the Annexes, not the alleged subsequent agreement to re-structure Project 2 as pleaded in paragraph 10A. It submitted on WPG's case, the parties agreed to restructure and recommence Project 2 so it followed that WPG could not make a claim under the original terms of the JVA.

114 Ming Yang also contended that notwithstanding counsel for WPG's concession at the hearing that WPG's case based on the withdrawal of the bank guarantee was fatally flawed, paragraphs 9(a) and 9(b) of the draft amendments referred to Ming Yang's obligations in respect of the bank guarantee whilst paragraph 11(a) retains a claim for damages arising from the alleged failure to obtain financing for Project 2 as required under clause 4.2 of the JVA. It submitted WPG had conceded that the withdrawal of the bank guarantee was

agreed to between the parties pursuant to Annex 4 and WPG has also not addressed why those claims would not be time-barred.

115 Ming Yang also submitted that the draft amendments raise a multitude of new arguments going beyond the list of issues dated 15 January 2024 and which are nowhere to be found in WPG's witness statement or submissions. It submitted these new arguments amount to a material change of position and is demonstrative of WPG's motive "to bring a claim frivolously, vexatiously and for collateral purposes".

116 In that context, Ming Yang referred to what it described as the well-established law on the amendment of pleadings under Order 16 r 3 of the SICC Rules. It submitted the general principle was that an amendment which would enable the real issues between the parties to be tried should be allowed unless the amendment would cause injustice or injury to the opposing party and could not be compensated by costs or otherwise. It submitted that in considering the application the Court should bear in mind, first, whether the amendments would cause prejudice to the other party which could not be compensated in costs and, second, whether the applicant was effectively asking for a second bite of the cherry in the sense that a party who had a chance to make amendments cannot later apply to make further amendments if no new circumstances arise to justify that application. Ming Yang also referred to the principle in cases such as *Ketteman and others v Hansel Properties Ltd and others* [1987] AC 189 at 220 that the court is entitled to consider a range of factors including the necessity that litigation be conducted efficiently. It submitted the court in applying the principles considers, first, the stage of the proceedings at which the amendments are sought, second, whether they would enable the real questions in controversy to be determined and, third, whether it is just to allow the amendments.

117 In that context, Ming Yang contended the allegations in paragraph 9(e) of the proposed amendments (see [86] above), the amendments to paragraph 10 (see [87] above), the allegations of a further agreement in paragraph 10A to 10D and the allegation of various breaches in paragraph 11 of the draft Amended Statement of Claim are all new arguments. Ming Yang submitted that these new claims do not arise out of the same or substantially the same facts as the existing cause of action for which relief had been sought submitting they related either to projects other than Project 2 or to new alleged breaches of the JVA which were not previously pleaded. It submitted that given the multitude of new arguments, WPG ought to have filed an affidavit to explain the amendments.

118 Ming Yang also submitted that WPG has failed to address Ming Yang's limitation defence.

119 Ming Yang also submitted that in all these circumstances leave to amend should be refused and the claim should be struck out.

WPG's submissions in support of the application for leave to amend

120 WPG submitted that the Court did not set out any restriction as to how the Claimant could amend its Statement of Claim and that there are cases which allow new issues and causes of action to be raised in amended pleadings.

121 WPG's submissions in relation to the principles surrounding the grant of leave to amend the pleading were broadly similar to those of Ming Yang but referred in addition to the statement by the Court of Appeal in *Ng Chee Weng v Lim Jit Ming Bryan and another* [2012] 1 SLR 457 at [24] to the effect that the Court should be extremely hesitant to punish litigants for mistakes they make

in the conduct of their case by deciding otherwise in accordance with their rights.

122 In answer to the submission that the amendments failed to address the time-bar issue, WPG repeated the submission it made in opposition to the striking out application to the effect that Project 2 was never terminated and it was illogical to rely on Mr Li's email as conclusive evidence so that there was no clear and unequivocal notice from the Defendant to terminate the project entirely. It submitted that the amendments in paragraphs 10, 10A, 10B, 10C and 10D are to provide particulars of why Project 2 was not terminated. It submitted the amendments were designed to show first that Project 2 was not terminated in its entirety in 2012 because if it was there was no need for the parties to consider restructuring it and, second, that the Claimant could only bring the action in 2020 when the Defendant decided not to proceed any more with Project 2 as well as the other projects in the Eastern Europe region.

123 WPG submitted that paragraph 10D of the draft amendments also explain how Ming Yang's Chief Executive Officer approached Mr Mann in 2020 to convey the decision not to proceed whilst paragraphs 11 and 12 particularised the obligations Ming Yang failed to fulfil. It submitted there was a breach of contract at the point when Ming Yang decided not to proceed with Project 2 in 2020 as well as refusing to return the land and licensing rights contributed by WPG.

124 WPG repeated its submission that it had standing to sue for a contravention of clause 1.3 of Annex 3 and that there was no fundamental defect in the Statement of Claim as alleged by Ming Yang. As I indicated at [78] I do not accept this submission. At the risk of repetition, clause 1.3 of Annex 3

conferred an exclusive right on WP3 and it conferred no right on WPG. In the original Statement of Claim, WPG simply claimed damages as a result of its inability to exercise the right under clause 1.3 of Annex 3 (see paragraph 13(a) of the Statement of Claim), a right that was not conferred upon it.

125 WPG submitted it was difficult to see how Ming Yang would suffer any prejudice as a consequence of WP3 being joined as a party. It submitted that Order 10 r 6 of the SICC Rules gives the Court a wide power to order that a party be joined as a new party so that the Court can resolve all matters in dispute in the proceedings or any issues that are connected to those matters. It submitted the Court was not bound to consider the matters in *Ernest Ferdinand* (see [103]–[104] above) because the test there set out were based on the requirements of Order 16 r 6 of what WPG incorrectly referred to as "the Rules of Court 2012" (this would be the Rules of Court 2014 that was referred to in the decision in *Ernest Ferdinand*) which required the Court to be satisfied by the necessity test or the just and convenient test before exercising its discretion.

126 However, it submitted that even applying the principle in *Ernest Ferdinand* it was just and convenient to add WP3 as a party as WP3 was a party to Annex 3 and "represents the Claimant's interest in the joint venture collaboration with the Defendant for Project 2". It submitted that by adding WP3 as a party to the suit it would solve the fundamental defect put forward by Ming Yang as well as any further issue that may arise from the absence of WP3 as a party.

127 WPG referred to the statement in *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 15/6/2 that the rules were to be considered with reference to the purpose of minimising the delay,

inconvenience and expense of multiple actions and the statement at para 15/6/3 that the tendency of modern practice is to allow the amendments when the defendant can be safeguarded as to costs and that the addition or substitution is necessary to enable the question in issue to be determined.

128 In dealing with the submission that the draft amendments failed to particularise and/or point to proof of its claim, WPG submitted in relation to paragraph 9 of the draft Amended Statement of Claim that the draft amendments merely set out the language used in the JVA and the amendments merely added the corresponding clause numbers. This is correct although the amendment referred to by the proposed paragraph 9(e) relating to clause 9.1 of the JVA was not referred to in the original Statement of Claim.

129 WPG submitted that paragraphs 10A and 10C of the draft amendments provide particulars of how the parties came to an agreement to withdraw the performance guarantee and terminate the Preliminary Connection Agreement as well as to explain the parties' intentions to postpone Project 2 and to restructure it before recommencing it. It submitted that as the discussions took over seven years it was commonsense that not every discussion would be documented. It submitted, "[h]ence, there is no physical agreement and/or terms recorded … apart from some email correspondences between 2012-2019 showing discussion on Project 2 to prove that Project 2 was never terminated but postponed for restructuring to commence in the near future".

130 WPG also submitted that it was commonsense for it to be unable to state a specific date or what was specifically discussed as there were so many discussions on Project 2 as well as other projects. It submitted that Ming Yang was incorrect in saying that paragraph 10A claimed that a fresh agreement had

been reached between WP3 and Ming Yang to postpone, restructure and recommence Project 2.

131 So far as paragraph 11 was concerned, WPG submitted that paragraph laid down what Ming Yang had breached in relation to Project 2 as well as other projects. It submitted that Ming Yang's obligations in relation to Project 2 had at all times remained the same "[e]ven after the parties [had] agreed to postponed [*sic*] Project 2". It submitted in these circumstances there was no merit in Ming Yang's argument. It also submitted referring to *EA Apartments Pte Ltd v Tan Bek and others* [2017] 3 SLR 559 at [38] that even if the draft amendments added material facts or a new cause of action, as long as the proposed amendments were in order, the Court should generally allow them. It submitted the draft amendments had furnished sufficient particulars for Ming Yang to have reasonable notice of the case it had to meet.

132 So far as Ming Yang's contention that the amendment raised new arguments which went beyond the existing issues, WPG submitted that Ming Yang did not specify the manner in which it was prejudiced by the amendments. It submitted in relation to Ming Yang's contention that it was having a second bite at the cherry that the application in each of the cases cited by Ming Yang in support of that proposition related to applications to amend after judgment had been delivered: *Asia Business Forum Pte Ltd v Long Ai Sin and another* [2004] 2 SLR(R) 173 at [18], *Wang Piao v Lee Wee Ching* [2024] 4 SLR 540 at [36]–[37].

133 WPG also submitted that the amendments were not new and they could either be found in the contents of the JVA and/or the Annexes or from the same

underlying facts or facts of a similar nature. It submitted there was no direction to file an affidavit to explain the amendments.

134 WPG also contended that there is no inconsistency between its pleaded case and the draft amendments stating that the only inconsistency was that the Statement of Claim pleaded as one of the breaches the withdrawal of the performance guarantee which was removed by the draft amendments.

135 WPG also referred to what was said in *Tan Kian Chye v Ang Siew Yan and others* [2024] SGHCR 5 at [59] to the effect that inconsistency was not the end of the matter but the question was whether the inconsistency showed that the claimant knew that his claim based on the contested amendments could not succeed. However, WPG submitted there was no inconsistency and merely an elaboration on how Project 2 was not terminated but postponed.

136 In these circumstances, WPG submitted the amendments should be allowed.

Ming Yang's submissions in reply

137 In its submissions in reply, Ming Yang again emphasised that no application had been brought under Order 10 r 6 of the SICC Rules to join WP3 as a plaintiff and that the requirements under Order 10 r 7(3) and 7(5) requiring the written consent of the person to be added being filed in court had not been complied with. It submitted the amendments had been introduced in the context of a striking out application under Order 16 r 4(1) of the SICC Rules which allows a court to strike out or amend a pleading but not to add a party to the action. It submitted the Claimant's reliance on *Tan Yow Kon v Tan Swat Ping and others* [2006] 3 SLR(R) 881 to argue that the Court's discretion could be

exercised broadly was misplaced as the Court's power was not engaged since the precondition for the joinder of a party had not been satisfied.

138 Ming Yang also submitted that it was not an appropriate occasion to dispense with procedural requirements or waive non-compliance with the rules. It submitted there remains no evidence that WP3 consented to be added as a plaintiff or that Mr Mann had authority to act on its behalf. It submitted there was no reason given for WPG's refusal to make a formal application and that WPG has not denied that damages have not been pleaded in the draft amendments as flowing from the alleged breach of clause 1.3 of Annex 3. It submitted that in those circumstances, the proposition set out in *Alliance Entertainment Singapore Pte Ltd v Sim Kay Teck and another* [2007] 2 SLR(R) 869 that amendments which do not disclose how the claimant suffered any real loss or substantial loss from the defendant's alleged actions should be struck out is applicable.

139 Ming Yang also submitted that the prejudicial effect of adding WP3 as a party are clear. It submitted, first, it would be required to spend time and cost in defending a claim by a party who had not consented to be joined. It submitted it would also be required to defend a claim for a contravention of clause 1.3 of Annex 3 where no loss had been pleaded to flow from that contravention. It noted it was not pleaded that WP3 was a party to the alleged agreement that Project 2 not be terminated but rather postponed, so any cause of action WP3 may have had against the Defendant would have accrued by 27 August 2012. It repeated its submission that it was irrelevant that WPG was a party to Annex 3 as the right under clause 1.3 of Annex 3 was conferred on WP3 exclusively.

140 In relation to the question of the adequacy of the pleadings, Ming Yang first submitted that despite having conceded the withdrawal of the bank guarantees did not constitute a breach of the joint venture agreement, WPG by paragraphs 9(a) and (b) of the draft amendments continued to plead facts in relation to Ming Yang's obligation to secure the bank guarantee. It submitted these paragraphs should be deleted along with the corresponding claim for damages in paragraph 11(a). Second, it contended that the pleadings still did not disclose a reasonable cause of action. It pointed to the fact that WPG in its submissions took issue with Ming Yang's contention that clause 10A in substance pleaded a fresh agreement to postpone, restructure and recommence Project 2 (see [130] above) but also submitted that, in effect, a fresh agreement to that effect had been reached. It referred in that context to WPG's submissions to which I have referred at [129].

141 Ming Yang contended that WPG sought to overcome the time-bar by alluding vaguely to the fact that the parties agreed to postpone and restructure Project 2 before resuming it. It submitted that on WPG's new case, the parties discussed restructuring between 2012 and 2018 but ultimately no agreement was reached and in 2020 Ming Yang informed WPG it was not proceeding. It submitted, putting aside the absence of particulars, the amendments raised the following difficulties for WPG.

142 First, on WPG's case any obligation in respect of Project 2 would be conditional on the parties having restructured Project 2 agreeing to recommence it on a fresh basis.

143 Second, if the parties had not agreed in such fresh terms, there was at best only an agreement to negotiate which was unenforceable.

144 Ming Yang also contended that the agreement did not set out material facts relating to the formation of the oral agreement including its date, the parties to it, whether or not it was oral or in writing and its terms. In that context it referred to the statement by Goh Yihan JC (as he then was) in *Chan Tam Hoi (alias Paul Chan) v Wang Jian and other matters* [2022] SGHC 192 at [47]–[48] that in the case of oral contracts it was important for the plaintiff to plead the material particulars of the alleged oral agreement and whilst they may not be able to be given to the same precision as with a written agreement, it is incumbent on the plaintiff to plead its case to a sufficient degree of certainty. It also referred to the statement by Vivian Ramsay IJ in *Arovin Ltd and another v Hadiran Sridjaja* [2018] 5 SLR 117 at [10] to the effect that if the defendant relies on an express undertaking or agreement the defendant must provide particulars of the gist of what was stated as this is material to the allegation. Ramsay IJ also pointed out at [11] it was necessary for the plaintiffs (in that case) to know sufficient material facts on which the oral agreement was based to enable it to put forward evidence to dispute it and that it was important, for example, to know the gist of what one person said to see whether the basis of the terms of the understanding or agreement were made out.

145 Ming Yang submitted that WPG had not pointed to a single point of time when the parties were *ad idem* on the alleged oral agreement much less to a range of dates at which the agreement was entered into. Ming Yang pointed to paragraph 10A of the draft amendments which referred to Ming Yang assuring WPG that it was not stepping out from Project 2 and Project 2 was postponed for the parties to restructure their plans before recommencing it. It must be remembered, however, that it is pleaded in the draft amendment to paragraph 10B that it was following that decision Annex 4 of the JVA was entered into. Ming Yang contrasted the draft pleading to WPG's original claim

that Project 2 was never started and after many years of delay, was cancelled. It submitted in those circumstances the alleged oral agreement was insufficiently pleaded.

146 Ming Yang submitted that the alleged oral agreement did not include terms that Ming Yang's obligations under the JVA remained unchanged despite the alleged agreement to postpone and restructure Project 2. It submitted that in these circumstances the default position was given the parties' agreement to postpone and restructure Project 2 any obligation of Ming Yang was conditional on the parties agreeing on the restructure and recommencement.

147 In dealing with the new arguments said to have been raised, Ming Yang pointed out that in *EA Apartments* relied on by WPG in support of the proposition that amendments could raise new issues and arguments, the amendments ultimately were not allowed as they remained lacking in particulars and material facts. It submitted that the position was similar in the present case.

148 Ming Yang also pointed out that *EA Apartments* did not concern an expired limitation provision. It referred to Order 16 r 3(3) of the SICC Rules which in essence states that when an application for permission to amend is made after the relevant limitation period has expired, an amendment may only be added if the new cause of action arises out of the same or substantially similar facts as an existing cause of action in respect of which, relief has already been claimed. I do not think that rule applies when the limitation period in respect of the proposed new cause of action has not expired prior to the time of the amendment. Thus, in *Multistar Holdings Ltd v Geocon Piling & Engineering Pte Ltd* [2016] 2 SLR 1 ("***Multistar Holdings***"), the Court of Appeal made it clear that the relevant provisions in the domestic Rules of Court applied when

the amendment introduced a new cause of action and the new cause of action would have been time-barred if raised in a new action on the date on which the amendment application was made: see *Multistar Holdings* at [28]–[30].

149 In the present case, WPG contends that the new cause of action pleaded is not time barred.

150 Ming Yang also raised two more matters in reply. First, it contended that the circumstances where in seeking to make an amendment the applicant was "having two bites at the cherry" were not limited to cases where leave to amend was sought after judgment as contended by WPG. It submitted that in the present case, WPG had been aware of Ming Yang's argument on the time bar since the time of filing of the Defence on 18 November 2022 which raised the limitation period and made no application for leave to amend until fundamental defects in the pleading were identified during the course of the hearing of the striking out application. Second, it contended WPG was changing its case materially.

Consideration

151 There was in fact little difference between the parties as to the relevant principles to be applied in determining whether leave to amend should be granted. Nevertheless, it is convenient to summarise the principles at the outset. First, as with any pleadings, amendments, particularly if they raise a new cause of action, should clearly articulate the material facts said to give rise to the cause of action, the cause of action relied upon and the damages said to result. In the case of an alleged breach of contract, it is necessary to plead the material facts said to give rise to the agreement and, if an oral agreement is alleged, the date or range of dates on which the agreement was made, the parties to the

agreement, the substance of the discussions said to give rise to the agreement and particulars of breach including in cases where limitation defences are in issue, the date the breach is said to have occurred and the damages said to have flowed from the breach.

152 Second, the fact that the amendment raises new causes of action does not necessarily mean the amendment will be refused. However, it will depend on the nature of the amendments sought. If the effect is to raise a substantially different claim to the case originally propounded, the courts will be hesitant in granting leave having regard to the potential prejudice to the other party to the litigation. That is particularly the case when the proposed new cause of action is not clearly articulated.

153 It is also particularly the case where the applicant for leave to amend is having what is colloquially described as a second bite of the cherry. Contrary to WPG's submission that factor is not limited to circumstances where leave is sought after judgment but certainly extends to circumstances where the applicant seeing difficulties in its case seeks to amend to propound a new and contradictory case.

154 Finally, in relation to joinder, the relevant principles, in my opinion, were correctly set out in Ming Yang's submissions which I have summarised at [103]–[104] above. There is, in my view, no basis for a different approach merely because the claim is being heard in the Singapore International Commercial Court.

155 There was an issue between the parties as to whether as a pre-condition of joinder it was necessary for the written consent of WP3 to be filed as provided

for by Order 10 r 7(5) of the SICC Rules. As I pointed out, the rule provides no person may be added as a claimant unless that person's written consent has been filed with the Court.

156 WPG contends that I am able to order the joinder of WP3 despite the fact its written consent has not been filed, under the general powers of the Court contained in Order 1 r 11(1).

157 Although no argument was directed to the question, it may be doubted that I have that specific power. This is because of Order 1 r 11(2) which provides that where a provision of the SICC Rules which makes the exercise of a power by the Court conditional upon a party agreeing or consenting to the exercise of that power by the Court, Order 1 r 11(1) does not authorise the Court to exercise that power without the consent or agreement of the party.

158 Even if I had the power to order the joinder without the consent of WP3, something which I very much doubt, I would not do so in the present case. First, the evident purpose of Order 10 r 7(5) is to ensure that a person sought to be joined as a claimant and thus exposed to the costs and risks of litigation, including the other side's costs, has consented to the joinder. It would be a rare case where a court would waive that requirement and expose a person to the risk of litigation in circumstances where they have not consented.

159 Further, no explanation has been given as to why consent has not been supplied and why notwithstanding WP3 should be joined. It should be noted that no application was made that I join WP3 to the action conditional upon it providing its written consent. I would add that in the present case, having regard

to the total inadequacy of the pleading to which I refer below, I would not have made such an order even if it was sought.

160 It is convenient to turn to the amendments. The first thing to note is that the effect of the amendments is to entirely abandon the claims made in the original Statement of Claim. The claims pleaded, particularly in paragraph 11 of the draft amendments, make entirely different allegations of breach. Whilst that would not of itself necessarily lead to the amendments being refused, there can be little doubt that WPG is seeking to have a second bite at the cherry.

161 Paragraph 4 of the draft amendments pleads that WP3 is represented by Mr Mann, Mr Ivanov and Ms Karakachanova. There is nothing to suggest that Mr Ivanov and Ms Karakachanova consented to an application by WP3 to be joined as a party. Nor is there any evidence that the Board of WP 3 consented to such joinder. This is a further reason for refusing leave to join that company as the claimant in the proceedings.

162 Paragraph 6A of the amendments is a new paragraph and pleads the Annexes supplemented the terms and conditions of the JVA in relation to Projects 1 and 2 as well as other projects in the Eastern Europe region.

163 Although it is not expressly stated, paragraph 7 as amended seems to summarise the original JVA. Whilst not of particular significance, the allegation in that paragraph that the joint venture company holds all its assets and licensing rights for the development of Projects 1 and 2 as security for Ming Yang building those projects, seems incorrect. Rather, clause 6.3 of the JVA provides that all the shares in the joint venture company will be pledged as security for WPG's obligations to buyback Ming Yang's shares (see [9] above).

164 Paragraph 7A of the draft amendments creates significant difficulties. It pleads without particularisation that, subject to the joint venture, it was agreed in clause 3(a) and (b) of Annex 1 that separate joint venture companies would be established for Projects 1 and 2. That is consistent with the terms of Annex 1. However, it then pleads that for Project 2 the shareholders in the joint venture company will be WP3 and Ming Yang but in respect of Project 1 the joint venture company would be MW Wind Power Renewables International Limited, shares in which will be held as to 34% by GM and 66% by Ming Yang.

165 The arrangements between GM and Ming Yang were set out in Annex 4. I have summarised the terms of that annex at [32]–[42] above. There is nothing in it to suggest that the joint venture company established pursuant to Annex 4 being MW EP Renewables International Ltd was to be the joint venture company for Project 1 to the exclusion of Project 2. The joint venture company established pursuant to Annex 4 was stated in the recitals to be established for the purposes agreed in clause 1 of the original JVA which included the development of both the Project 1 and Project 2 wind farm (see [5]–[6] above).

166 In that context, paragraph 7A fails to plead material facts to establish that notwithstanding Annex 4 and particularly the provisions in the recitals, clause 3.1 and clause 7 thereof (see [36] and [38]), the agreement between the parties was as contended for in that paragraph.

167 Paragraph 7B is embarrassing. It pleads an understanding without identifying the parties to it that GM and WP3 were representatives of WPG in the collaboration between WPG and Ming Yang in the JVA "to preserve [WPG's]'s interest in the JVA and [GM and WP3] are not replacing the [WPG] in the collaboration with [Ming Yang]". It also pleads that the individuals to

whom I have referred at [13]–[15] were WPG's partners in contributing the assets and licensing rights of Project 2.

168 Not only are the circumstances said to give rise to the understanding, the way it was reached and the parties to it not particularised, but its meaning is opaque and its relevance unclear.

169 In these circumstances, I would not grant leave to add paragraph 7A and paragraph 7B of the draft amendments to the Statement of Claim.

170 Paragraph 10 of the amendments simply expands on the work WPG claimed to have carried out pursuant to the JVA.

171 Paragraph 10A is critical to the claim presently made by WPG. It pleads a decision by the parties in 2012 to withdraw the bank guarantee coupled with an assurance by Ming Yang that it was not stepping back from Project 2 and a suggestion that Project 2 be done in a different way. It pleads that Project 2 was postponed to restructure the parties' plan for it before recommencing it.

172 The pleading is not couched in the language of contract and as Ming Yang pointed out in its submissions WPG was somewhat ambivalent on this question (see [129]–[130] above). However, an alleged agreement to postpone Project 2 and to subsequently recommence it is critical to WPG's contention that its cause of action arose *within* the limitation period. In these circumstances, proper particulars should have been provided. It bears repeating that the onus is on WPG to prove that the date of accrual of its claim falls within the limitation period: *IPP Financial Advisors* at [41].

173 In fact, there are no particulars given as to the date of these assurances, the terms and to whom and by whom assurances were given. There is no suggestion in the material before the Court of any such agreements, arrangements or assurances. The reference in Mr Li's email of 27 August 2012 to the decision of the Board and Auditing Committee of Ming Yang not to proceed further with the execution of the project as per the timeline of grid connectivity proposed by the regulator (pleaded in the amendment to be 2017 or 2018) says nothing about postponement, restructuring or recommencement. Mr Mann's affidavit of 4 May 2024 makes no reference to any such assurances or arrangement but merely states in paragraph 8(b) that the message in the email "does not mean the Defendant was stopping Project 2 but only to withdraw the bank performance guarantee for NEC's commitment to purchase the electricity from Project 2". It makes no reference to any assurances being given.

174 The allegations in paragraph 10A in these circumstances are, in my opinion, of such a vague and general nature that it is impossible for Ming Yang to properly investigate them, let alone plead to them. Quite apart from the deficiencies already referred to, it is.

175 It is no answer to this to say as WPG contended that there was no "physical agreement /or terms recorded from some email correspondence … to prove Project 2 was never terminated but postponed" (see [129] above) or that it was commonsense to be unable to state a specific date or what was specifically discussed as there were so many discussions on Project 2 (see [130] above). If WPG wished to make the allegations it was necessary for them to be particularised.

176 Paragraph 10B of the proposed amendments pleads clauses 8–10 of Annex 4. The pleading continues to assert the joint venture company established by that annex was the Project 1 joint venture company, an assertion I have already dealt with in considering paragraphs 7A and 7B of the amendments. Further, it ignores the fact that the obligation to finance and support projects in clauses 8 and 9 of Annex 4 relate in clause 8 to all future projects, not Project 1, and the obligation in clause 9 related to projects approved by the board of directors of Ming Yang. It was not pleaded there were any such projects.

177 So far as clause 10 of Annex 4 is concerned, the obligation to reconsider the remuneration of Mr Mann for undertaking new work on projects has little relationship to the case sought to be propounded by WPG. Further, there were no new projects pleaded which would give rise to that obligation.

178 Paragraph 10C pleads further discussions over a period of seven years between 2012 and 2019 and alleges further assurances given by Ming Yang to WPG. Apart from the fact that Mr Li and Mr Wang Song are identified as the persons giving the assurances and the assurances were given to Mr Mann, there is again no particularisation.

179 Paragraph 10D pleads that in 2020 Mr Larry Wang, the Chief Executive Officer of Ming Yang, informed Mr Mann that Ming Yang would not be proceeding with Project 2 or any other projects in Eastern Europe.

180 Paragraph 11 of the proposed amendments pleads that Ming Yang's decision in 2020 to discontinue Project 2 after many years of reassurance of its commitment to recommence Project 2 at a right time and Ming Yang's decision to discontinue wind farm projects in Eastern Europe constituted a breach of the

JVA and the Annexes in the following respects. First, a breach of the requirement in clause 4.2 of the JVA (see [8] above), second, a breach of the obligation to supply the necessary engineering services and equipment as required by clauses 7.1 and 7.2 of the JVA, third, a failure to fulfil its obligations under clauses 8–10 of Annex 4 and, fourth, a failure to use any effort or its best effort under clause 9.1 of the JVA to recommence Project 2 after WPG's agreement to withdraw the bank guarantee.

181 Thus the essence of the allegation seems to be that WPG agreed to the withdrawal of the bank guarantee on the basis of the assurances allegedly given by Ming Yang and any breach only occurred when those assurances were withdrawn. However, having regard to my view as to the deficiencies of the pleading of the assurances in paragraphs 7A, 7B, 10A and 10B or, for that matter, paragraph 10C, I am not prepared to allow the proposed amendments.

182 That leaves the allegation of contravention of clauses 8–10 of Annex 4. Whilst the agreement to withdraw the bank guarantee formed part of that annex, the obligations contained in it relate to new projects and the pleading identified no new projects or, for that matter, potential new projects to which clauses 8–10 would apply. It follows there is no basis to bring the claim under clauses 8–10 of Annex 4.

183 In these circumstances, the proposed amendments to paragraphs 12 and 13 can be dealt with shortly. Paragraph 12 pleads a refusal by Ming Yang to return land and licensing rights contributed by WPG and its partners for the development of Project 2 and prohibiting WPG from collaborating with third parties to build Project 2 as Ming Yang's holding of 66% shareholding in the joint venture company for Project 2 prevented such collaboration. As to the first

of these allegations, there are no facts pleaded to establish WPG's rights to have these assets returned. As to the second, it does not follow from any breach of the agreement and no facts are pleaded to show that Ming Yang or, for that matter, the joint venture company, has taken any steps to prevent WPG exercising any rights it may have in relation to Project 2. I would not allow the proposed amendments to paragraph 12.

184 Paragraph 13 claims damages as a result of the matters pleaded in the amendments. It follows from the fact that I would not allow these amendments that I would not allow the amended claim for damages.

Conclusion

185 In the result I would refuse the application for leave to amend. As I have indicated that the original Statement of Claim should be struck out, it follows that the proceedings should be dismissed. WPG should pay Ming Yang's costs of the proceedings as agreed or assessed. I would make the following orders:

(a) order that the Statement of Claim filed by the Claimant on 16 June 2022 be struck out in its entirety;

(b) refuse the Claimant's application for leave to file an Amended Statement of Claim;

(c) order the Claimant's claim be dismissed in its entirety, and judgment be entered in favour of the Defendant;

(d) order the Claimant pay the Defendant's costs of the proceedings as agreed or assessed; and

(e) in the event the parties are unable to agree the quantum of costs payable within fourteen (14) days, order that within a further

period of fourteen (14) days each party file their submissions on the question of costs together with a schedule showing the costs incurred by them in the proceedings.

Thomas Bathurst
International Judge

Han Wah Teng (CTLC Law Corporation) for the claimant;
William Ong Boon Hwee, Ivan Lim Jun Rui, Wong Pei Ting and Seth Yeo Ao-Wen (Allen & Gledhill LLP) for the defendant.
