

**A Framework for Staying Appeals Over Unpaid Costs:  
Owner of the vessel(s) “CHLOE V” v UBS AG [2026] SGCA 7; [2026] 1 SLR 107**

## **I. Executive Summary**

It has been said that a litigant’s vindication, by winning his or her lawsuit on the merits of the case, may prove to be hollow if the fruits of success are soured by uncompensated costs. What, then, can the successful party do when the unsuccessful party not only refuses to pay the costs ordered against it, but also files an appeal, compelling the successful party to incur further legal costs in defence of its position, while remaining out of pocket from the proceedings below?

This was the predicament facing UBS AG in the case of *Owner of the vessel(s) “CHLOE V” v UBS AG* [2026] SGCA 7. UBS AG had successfully defeated in the General Division of the High Court (“HC”) a claim brought against it by the owner of the vessel “Chloe V” (the “Owner”), a British Virgin Islands company, and had obtained a substantial costs order in its favour. However, the Owner repeatedly ignored demands for payment, while simultaneously pressing on with its appeal against the lower court’s decision. Accordingly, UBS AG filed an application before the Court of Appeal (“CA”) seeking to stay or dismiss the appeal, pending the payment of the outstanding costs ordered below and further security of costs for the appeal. The CA allowed the application. It stayed the appeal and directed that it would be automatically struck out if the Owner did not pay the outstanding balance within four weeks, while also ordering the Owner to provide additional security for the costs of the appeal itself.

Further, the CA laid down a framework for how such applications are to be approached under Order 21 rule 2(6) of the Rules of Court 2021 (“ROC 2021”).

## **II. Material Facts**

The Owner is a special purpose vehicle incorporated in the British Virgin Islands. At all material times, it was the registered owner of a vessel called the “Chloe V”. UBS AG, an international bank, had lent money to the Owner under a facilities agreement (“**Facilities Agreement**”), which was secured by a mortgage over the Chloe V.

When the Owner defaulted on its obligations, UBS AG commenced admiralty proceedings against the vessel in September 2021 and arrested it in October 2021. The vessel was subsequently sold *pendente lite* (pending litigation) by the court for US\$42,100,000. The total sum paid into court was US\$42,933,184.45, which comprised the proceeds from the sale of the vessel and the bunkers onboard (the “**Sale Proceeds**”). Notably, the Sale Proceeds were insufficient to cover the full judgment debt of US\$43,586,317.36. In the course of the proceedings, UBS AG was also awarded costs against the Owner of S\$80,000 for the main case and S\$30,000 in the related appeal.

In response, the Owner filed a counterclaim against UBS AG, alleging that UBS AG had breached an implied term and/or duty to not prevent the Owner from performing its obligation, to act rationally in exercising its discretion, and/or to not unreasonably withhold any approval which it may give under the Facilities Agreement. Specifically, the Owner claimed that UBS AG had unreasonably refused to issue a “Letter of Quiet Enjoyment” – a document required by the charterer from the mortgagee bank as assurance that the bank will not interfere with its use of the vessel. According to the Owner, this refusal scuppered the Owner’s negotiations for a new charterparty with Koch Supply and Trading Pte Ltd (“**New Koch Charterparty**”).

Even as the counterclaim proceedings were ongoing, the Owner had refused, delayed or ignored the demands for the court-ordered payment of costs at every opportunity, in a manner which the CA would later describe as “thoroughly abusive”. First, the Owner delayed significantly in furnishing the security for costs ordered in respect of the counterclaim. As mentioned, UBS AG had obtained a costs order of S\$80,000 against the Owner. As the Owner had failed to pay these costs, UBS AG subsequently applied for security of costs. In September 2022, the court ordered the Owner to provide security of S\$265,000 within 14 days. Instead of complying, the Owner appealed; this was dismissed mid-November 2022. The Owner was given an extended deadline of 28 November 2022 but again failed to meet it, applying instead for a further variation. It was only in late-December 2022 – more than three months after the original order – that the Owner finally paid the S\$265,000 into court.

Further, the Owner had persistently ignored multiple costs orders, arising from summary judgment proceedings and interlocutory applications relating to the counterclaim, for more than 3 years. Despite repeated demands from UBS AG’s solicitors, the Owner did not respond to any of them. UBS AG ultimately applied for payment out of the security funds held in court. On 30 August 2023, the HC ordered S\$21,953.53 to be paid out from the security sum to UBS AG, with the remaining S\$243,046.67 to be held by the court. Leading up to the trial, the HC ordered the Owner to provide further security of S\$60,000 by 13 November 2024, bringing the total security to S\$303,046.47.

In July 2025, the HC dismissed the counterclaim; the Owner also appealed against that judgment. In November 2025, the court fixed the costs of the counterclaim at S\$650,000, disbursements of S\$39,985.53, £85,900, US\$83,626.76 and CHF 93,875.12, with interest accruing at a rate of 5.33% per annum commencing 11 November 2025 until the date when full payment was received.

UBS AG’s solicitors demanded payment on 12 and 18 November 2025 but the Owner did not respond to either demand. UBS AG then filed the present application seeking to stay or dismiss the appeal until the outstanding costs were paid, and for further security for the costs of the appeal itself.

### **III. Issues**

The CA considered the following issues:

- (A) Whether the appeal should be stayed or dismissed as the Owner had refused or neglected to pay the costs ordered against it in the HC proceedings below; and
- (B) Whether UBS AG was entitled to further security for the costs of the appeal itself.

#### ***A. The appeal should be stayed pending the Owner’s payment of the outstanding costs***

##### **(i) The interaction between ROC 2021 and the court’s inherent power**

The CA first noted that before ROC 2021 came into force, courts appeared to favour a more restrained approach towards staying or dismissing appeals pending payment of outstanding costs by an appellant. While the court had inherent power to stay or dismiss appeals as a penalty for unpaid costs, this power required “exceptional circumstances” where there was a “clear need” for it, and “the justice of the case so demands”. The mere fact that an appellant was able but did not pay was insufficient on its own to stay or dismiss the appeal. This inherent power now comes under Order 3 rule 2(2) of the ROC 2021.

Order 21 rule 2(6) of the ROC 2021 introduced a new and separate regime for staying or dismissing appeals pending payment of the outstanding costs by an appellant. It states that the court may “stay or dismiss any application, action or appeal” if “a party refuses or neglects to pay any costs ordered within the specified time, whether the costs were ordered in the present proceedings or in some related proceedings”. The CA held that given the express power provided in Order 21 rule 2(6), there is no longer any need to resort to the court’s inherent powers, and that a more robust approach should prevail in response to an appellant’s failure or omission to pay the outstanding costs. However, that is not to say that the court’s inherent powers to stay appeals on account of outstanding costs orders would never be invoked again – they remain available if Order 21 rule 2(6) does not apply for whatever reason. This is also in line with the “Ideals” set out in Order 3 rule 1(2) of the ROC 2021 in particular, to achieve fair and practical results suited to the needs of the parties.

(ii) The applicable principles under Order 21 rule 2(6)

The CA clarified the principles governing the exercise of the power under Order 21 rule 2(6). First, as the party seeking the stay, the respondent must show that the other party has “refused or neglected” to pay the outstanding costs. The fact that the appellant has failed or omitted to pay the outstanding costs should suffice to show a *prima facie* case.

Once this is made out, the burden shifts to the appellant to explain why the outstanding costs order has not been satisfied, and to provide a good reason why a stay should not be granted due to the outstanding costs order. The CA considered it “fair and sensible” to place such burden on the appellant because only the appellant would know the true state of its own financial position. If no good reason is given, a stay should ordinarily be granted. However, any stay order should be limited to an appropriate period of time. If the costs order remains outstanding beyond that period, the appeal would be deemed to have been struck out automatically. This is to ensure that the appeal does not remain pending indefinitely due to the costs matter.

If the appellant claims that it lacks the financial resources to make the costs payment, it must explain its financial position, including the provenance of the funds for the litigation below and for the appeal. It is no answer for an appellant to allege that the funding by a third party (such as controllers, shareholders, potential investors or related companies) was voluntary in nature and hence limited only to the costs for the pursuit of the claims. As the outstanding costs order arose as a direct result of the funding provided by such third parties, there is no legitimate reason why third parties should not be required to pay the outstanding costs if they wish to proceed with the appeal. If third party funders adopted such a position, that would be plainly self-serving and is precisely the type of conduct cautioned against in prior cases.

If the court is satisfied that the appellant does not have the financial resources to pay the outstanding costs – which would typically be the case if the party is a litigant-in-person – then the failure or omission to pay might not properly be regarded as a refusal or neglect to pay under Order 21 rule 2(6). This is because “[m]ere omission to pay a debt on demand does not of itself constitute neglect to do so within the meaning of that provision”. Instead, “neglect” required an omission to pay *without reasonable excuse*. In such circumstances, the court should ordinarily allow the appeal to proceed in order to ensure that the appellant’s right to pursue a legitimate appeal is not stifled.

However, this is subject to the court’s inherent power to stay or dismiss the appeal where it is evident that the appeal is plainly hopeless. To show that the appeal is not hopeless, the appellant is merely required to show that it has a good arguable case on appeal: one that is more than

barely capable of serious argument, but not necessarily one which a judge considers would have a more than even chance of success. Where the appeal turns on questions of fact which the trial judge has resolved against the claimant, it must be shown that there is a good arguable case that the trial judge's assessment was "plainly wrong or against the weight of the evidence".

Nonetheless, the court should not be required to engage in a detailed examination of the merits of the appeal at this point; any contention about the merits of the appeal should be one that is readily apparent. Where the appellant is unable to even cross this threshold, the balance of justice tilts in favour of the respondent, who bears all the financial risks of an appeal that is hopeless with little prospect of recovering its costs. Thus, the combination of an impecunious appellant and a hopeless appeal qualifies as a special or exceptional circumstance in which the court should invoke its inherent power to stay or even dismiss the appeal.

If the court is satisfied that the appellant has refused or neglected to pay the outstanding costs, it retains a discretion to refuse to stay or dismiss the appeal, pursuant to Order 21 rule 2(6) of the ROC 2021. The justice of the case must strongly demand that the appeal be heard: the situations where the court would exercise its discretion to allow the appeal to proceed should be extremely limited, as an appellant should not be allowed to ignore costs orders with impunity.

(i) Application to the facts

It was not disputed that the Owner had failed or omitted to pay the outstanding costs in respect of its unsuccessful counterclaim. The inquiry thus focused on the Owner's reasons for its failure or omission to pay.

The Owners did not claim to not have the financial ability to make payment. The CA noted that although the appellant did not appear to have any substantial assets in Singapore or elsewhere in the world, this had not impeded its ability to engage in costly legal proceedings. Further, there was no pretence that the Owner had been financially supported by its controllers throughout the proceedings. The Owner argued that its controllers "did not offer the [Owner] financial support unconditionally" and that they would have been prepared to invest additional funds in the vessel only if the vessel had entered into a New Koch Charterparty. This was notwithstanding that the Owner had, throughout the proceedings, maintained its ability to muster substantial financial resources to fund its dispute resolution needs or endeavours that supported its own interests. In other words, the controllers were only prepared to provide financial support to the Owner when doing so was in their own interests; such support would not be forthcoming for the purposes of satisfying costs orders made against the Owner.

However, the CA rejected this as a self-serving response. It followed that the Owner could not be said not to have access to the financial resources to pay the outstanding costs. It was the funding provided by the Owner's controllers to date that had created the outstanding costs debt due to the respondent UBS AG in the first place.

Further, the Owner had not once cited financial difficulty as a reason for its failure or omission to pay the outstanding costs. Instead, it took issue with UBS AG's given figure. The Owner argued that: (1) UBS AG had not provided any calculation to show how this figure was derived; (2) UBS AG should have given credit for the security which the Owner had already provided; and (3) UBS AG's calculation was incorrect. The Owner argued that it was reasonable "to await proper quantification rather than make a payment on the basis of an inflated or uncertain figure to avoid overpayment/underpayment".

The CA found this explanation to be “entirely contrived”. First, UBS AG’s solicitors provided the Owner with a breakdown of its start and end dates, the total number of days calculated, the interest rate applied, the interest accrued in the respective original currencies, the exchange rate for the foreign currencies and the interest accrued in the local currency. Given this information, the Owner could not claim that it was unable to understand how the figure was arrived at. Second, the Owner had not disputed the foreign currency disbursements; as such, there was no basis for withholding those amounts. The discrepancy between the parties’ calculations was quite minor and did not offer any credible reason to withhold the payment entirely. In any event, it was the Owner who had erred in its calculation. Applying the Owner’s own formula, the correct interest figure should have been S\$2,216.65, not the S\$2,229.62 that the Owner calculated. Third, even if the Owner disputed UBS AG’s calculations, it should have taken steps to seek clarifications from UBS AG. That the Owner completely failed to do so strongly suggests that this was a mere afterthought in order to delay the payment of the outstanding costs.

The CA thus held that the Owner had failed to provide any credible reason for its failure or omission to pay the outstanding costs. This amounted to a refusal or neglect to pay the outstanding costs. In fact, the Owner’s conduct in these proceedings would have in any event satisfied the higher threshold of “special or exceptional circumstances” required for the exercise of the court’s inherent power. At every opportunity, the Owner refused or delayed or ignored the demands for the payment of costs ordered by the court, despite having sufficient access to financial resources. This was thoroughly abusive and could not be countenanced. The CA ordered that the balance security of S\$243,046.67 held in court be released to UBS AG in partial satisfaction of the outstanding costs orders, as well as a stay of the appeal proceedings, for four weeks pending payment of the balance outstanding costs of S\$390,463.57.

***B. Further security for the costs of the appeal should be ordered***

Regarding security for costs, the CA noted that the purpose of providing such security was three-fold: (a) to protect the defendant, who cannot avoid being sued, by enabling him to recover costs from the plaintiff out of a fund within the jurisdiction in the event that the claim against him by the plaintiff proves to be unsuccessful; (b) to ensure, within the limits of protecting the defendant, that the plaintiff’s ability to pursue his claim is not stifled; and (c) to maintain a sense of fair play between the parties even amidst the cut-and-thrust of litigation.

The court may take into account any circumstances for the purpose of making this determination, including: the financial means of the appellant, foreign residency, the merits of the appeal, the conduct of the appellant (for example, whether he has acted in a manner which shows a clear intention to avoid potential liability for costs), potential difficulties in enforcing a judgment for costs, including delay and expense, and whether the application for further security is made promptly.

The CA found that the conduct of the Owner amply demonstrated that UBS AG was likely to face continued difficulties in recovering costs from the Owner (who possesses access to financial resources to pay), even if it prevails in the appeal. Accordingly, the CA ordered the Owner to furnish additional security of S\$100,000 for the appeal within four weeks, which would result in a total amount of S\$120,000 as security for costs for the appeal.

**IV. Lessons learnt**

This is the most comprehensive appellate decision to date on the courts’ power under Order 21 rule 2(6) of the ROC to stay or dismiss proceedings where a party refuses or neglects

to pay costs ordered against it. The CA has laid down a clear, step-by-step framework for how such applications are to be approached. The judgment also addresses a pattern of conduct that the court found troubling: controllers who are prepared to provide financial support to a litigant only when doing so is in their own interests, such that financial support would not be forthcoming for the purposes of satisfying costs orders made against it. The CA made clear that such a self-serving approach will not be tolerated.

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