

Clarifying the application of the *Riddick* principle:
***Ong Jane Rebecca v Lim Lie Hoa and other appeals and other matters* [2021] SGCA 63**

I. Executive Summary

At the discovery stage of a trial, parties are expected to disclose to each other relevant documents in their possession, custody or power relating to the claim. The law on discovery of documents entails a fine balancing process between the discovery of truth in the name of justice and the protection of confidential information. Against this backdrop, the “*Riddick* undertaking”, first enunciated in *Riddick v Thames Board Mills Ltd* [1977] QB 881 (“*Riddick*”), refers to an implied undertaking not to use disclosed documents for any collateral purpose.

The *Riddick* undertaking states that a party who discloses a document in discovery under compulsion, in any particular action, is entitled to the protection of the court against any use of the document otherwise than in that action. Thus, a party may use the documents disclosed to him through discovery only for the proper purpose of conducting his own case. As such, there is an implied undertaking by him not to use them for any collateral or ulterior purpose.

In *Ong Jane Rebecca v Lim Lie Hoa and other appeals and other matters* [2021] 2 SLR 584, the Court of Appeal (“CA”) noted that there was a difference between whether a disclosed document was even subject to the *Riddick* undertaking in the first place, as opposed to whether such a document can be used in separate proceedings *with or without leave*. Noting that this distinction has at times been overlooked, the CA laid out a framework delineating the approach that should be taken in cases involving the *Riddick* undertaking:

- (a) First, one had to determine whether the documents sought to be protected were disclosed under compulsion and were thus covered by the *Riddick* undertaking. If the answer was in the negative, the documents were not protected and could be used without the leave of court.
- (b) Next, if the *Riddick* undertaking applied (due to the element of compulsion), the court would determine whether the protected documents could nonetheless be used without leave of court, due to the nature of the related enforcement proceedings for which the documents were being used.
- (c) If neither of the above was satisfied, the party relying on the protected documents to commence or sustain related proceedings had to seek the court’s leave for the undertaking to be lifted. This entailed a consideration of whether the balance of interests lay for or against the grant of leave. Further, if the leave sought was *retrospective*, the court had to consider whether this fact would militate against the granting of such leave.

This framework developed by the court explained the extent and scope of the *Riddick* undertaking, and clarified the situations in which parties seeking to use disclosed documents are required to seek leave of court.

II. Material Facts

In 1974, Mr Ong Seng Keng, the patriarch of the Ong family, passed away. He was survived by his widow, Mdm Lim Lie Hoa (“**Mdm Lim**”), and three sons, Ong Siau-w-Tjoan (“**OST**”), Ong Siau-w Ping (“**OSP**”) and Ong Keng Tong (“**OKT**”). Mdm Lim passed away in 2009 and OSP was the sole executor of her estate (the “**Estate**”).

The appellant, Jane Rebecca Ong (“**Jane**”), was the estranged wife of OST. Despite a series of litigation starting from 1991, Jane unsuccessfully sought a share of Mr Ong’s estate from Mdm Lim. Nevertheless, in BC 118/2006 (“**BC 118**”), she was awarded the costs of the inquiry proceedings and taxation against Mdm Lim (“**judgment debt**”).

On 14 May 2019, Jane commenced examination of judgment debtor (“**EJD**”) proceedings against the Estate. OSP, in his capacity as sole executor of the Estate, proceeded to file four affidavits (the “**EJD documents**”). Based on information disclosed in these documents, Jane argued that OSP had breached his duties as sole executor of the Estate.

Using information obtained from the EJD documents, Jane commenced **Suit 47** against OSP. This claim was based on OSP’s alleged misconduct as sole executor of the Estate, including his alleged misappropriation of sale proceeds and/or rental income from several properties of the Estate.

OSP applied to strike out Suit 47, arguing that Jane had used the EJD documents to commence Suit 47 in violation of the *Riddick* principle. Jane then sought a declaration from the court that she was entitled to use the EJD documents and the information therein without the court’s leave (“**Prayer 1**”). Alternatively, she sought for leave of court to be granted (“**Prayer 2**”).

The High Court Judge (“**the HC**”) dismissed Prayer 1 as there was no basis to conclude that the *Riddick* principle did not apply to the EJD documents. The HC directed Prayer 2 to be heard by an Assistant Registrar, who also decided in OSP’s favour and refused leave for Jane to use the EJD documents. On Jane’s subsequent appeal to the HC, the HC upheld the Assistant Registrar’s decision.

The present case arose from Jane’s appeal of the HC’s decisions.

Before the first hearing of the appeal, Jane also filed an originating summons for the administration of the bankruptcy of the Estate. The HC ordered the administration of the bankruptcy of the Estate. This led to Jane filing applications to stay the appeal. Out of concern that the Estate could not defend itself, OSP also applied for leave to intervene and make submissions on behalf of the Estate. The Court of Appeal (“**CA**”) also addressed these applications together with Jane’s original appeal.

III. Issues

Though the CA dealt with a few issues on appeal, the following were the most significant ones:

- (a) Whether the *Riddick* undertaking applied to the EJD documents; and
- (b) If the *Riddick* undertaking applied, should Jane nevertheless be granted leave to use the EJD documents to pursue Suit 47.

As a preliminary point, the CA noted that the mismanagement of the litigation had led to the present “convoluted state of affairs”. There were a total of four appeals and six applications before the CA, even though the case should have been dealt with in a single or at most two appeals.¹ The CA also explained that it was inappropriate for the HC to deal with Prayer 1 but

¹ The CA noted that this mismanagement was caused by: Jane’s failure to make the Estate bankrupt at the earliest opportunity; the failure to seek a declaration or alternatively, leave to use the EJD documents prior to commencing Suit 47; and the “questionable” decision to make the Estate bankrupt on the eve of the appeal after taking the EJD

to direct Prayer 2 to be heard by the Assistant Registrar, when both prayers emanated from the same application and largely engaged the same legal issue. The CA then issued a warning, stating that each court process is meant to be invoked for a particular purpose. The court would not condone “trigger-happy invocation – whether wanton, impulsive or reckless – of such processes.”

A. Whether the *Riddick* undertaking applied to the EJD documents

First, the CA noted that Prayer 1 should not have been pursued in the first place because Suit 47 had *already been filed* and Jane had used the EJD documents without leave of court.

The CA then laid out the following framework for approaching cases involving the *Riddick* undertaking (*ie*, an implied undertaking not to use disclosed documents for any collateral purpose):

- (a) First, one must determine whether, on the basis of the element of *compulsion*, a document produced in discovery is covered by the *Riddick* undertaking. If the answer is in the negative, the documents are not protected and may be used without the leave of court. (“**First Category**”)
- (b) Next, if the *Riddick* undertaking applies, the question is whether notwithstanding the undertaking, the protected documents may nonetheless be used *without* leave of court, due to the nature of the related *enforcement* proceedings for which the documents are being used. (“**Second Category**”)
- (c) If neither of the above is satisfied, the party relying on the protected documents to commence or sustain related proceedings must seek the court’s leave for the undertaking to be lifted. (“**Third Category**”)

(1) First Category

The first question is whether the document is even protected by the *Riddick* principle. This turns on whether the documents sought to be used were disclosed on *compulsion*. The following are the relevant principles:

- (a) The *Riddick* principle is not engaged simply because information has been disclosed in court proceedings; the critical factor is the element of compulsion that accompanies the discovery;
- (b) It is not necessary for a breach of the court order to be punishable by contempt of court to engage the *Riddick* principle;
- (c) Voluntariness is not an exception to the *Riddick* principle as the *Riddick* principle simply does not apply to documents that have been voluntarily disclosed; and
- (d) In determining whether discovery was voluntary or otherwise, the court must examine the context under which the disclosure was made.

Applying these principles, the CA held that documents disclosed in EJD proceedings were covered by the *Riddick* principle and did not fall under the first category of situations identified in the framework above. In coming to this holding, the CA noted that EJD proceedings commenced under Order 48 of the Rules of Court (2014 Rev Ed) represented an invocation of the coercive powers of the court. Further, non-compliance with orders made in EJD proceedings could result in committal proceedings being commenced, thus strongly suggesting that the *Riddick* principle applies to such situations.

route and commencing a separate action against OSP, though the actions shared the same aim of enforcing her judgment debt.

(2) *Second Category*

The CA also provided guidance on when leave of court is required to use information and documents in subsequent *enforcement* proceedings. In determining whether proceedings are “enforcement” proceedings (in which documents covered by the *Riddick* principle may be used without leave), there are two key points of reference: the nature of the proceedings in which the documents were *disclosed* (“**First Hurdle**”), and the nature of the proceedings in which the said documents were being *used* (“**Second Hurdle**”).

With respect to the First Hurdle, the CA used the example of EJD proceedings to illustrate how the nature of proceedings in which documents were disclosed would affect the application of the *Riddick* principle. EJD proceedings involve an exercise in obtaining information to assist in the enforcement of a judgment debt. Thus, the judgment debtor would certainly know that information disclosed in the course of EJD proceedings would be used for subsequent related proceedings. In contrast, in specific discovery in the course of an action, the party producing documents pursuant to such discovery applications would have the expectation that the documents would *only* be used for the purposes of that action. Unlike in EJD proceedings, there would be no expectation that the documents would be used in related proceedings.

With respect to the Second Hurdle, the CA laid out three factors that were relevant in examining the nature of subsequent related proceedings:

- (a) **Identity of parties:** If the defendant in the related proceeding is also the defendant in the original proceeding in which the documents were obtained, a case may be made that the related proceeding constitutes enforcement against that defendant. The same could be said if the related proceeding is against an entity legally empowered or obliged to make payment on behalf of the said defendant.
- (b) **Nature of debt:** If the sum being pursued in the related proceedings is the same debt that forms the subject matter of the original proceedings in which documents were disclosed, this would indicate that the former set of proceedings is an enforcement of the latter.
- (c) **Nature of related proceedings:** The question under this factor is whether the related proceedings can be considered “enforcement” in the ordinary sense, *ie*, modes of execution or proceedings that facilitate the payment of judgment debts owing to a plaintiff.

If the related proceeding complies with the above factors, the party using the protected documents would not require the leave of court to use the documents in the proceeding, despite the existence of the *Riddick* undertaking.

(3) *Conceptual Difference between the First and Second Category*

The CA also reiterated the difference between the First and Second Categories. Under the First Category, where the element of compulsion is absent, the *Riddick* principle does not apply. On the other hand, when documents fall under the Second Category, the *Riddick* undertaking applies and will continue to cover the documents in question. However, specific use of the documents in related enforcement proceedings is not a breach of the *Riddick* undertaking. The implication of this is that while the documents can be used for enforcement proceedings, it may not be permissible to use them in *another* distinct set of proceedings.

(4) *Application*

Applying the above framework to the present case, the CA held that the EJD documents were clearly covered by the *Riddick* undertaking as they were disclosed by OSP on compulsion

during the course of the EJD proceedings. Hence, the present case did not fall under the First Category.

Next, Jane sought to argue that Suit 47 was an “enforcement” of BC 118 and thus the EJD documents could be used without leave of court. The CA held that the First Hurdle was crossed as the EJD documents had been disclosed in the course of the EJD proceedings. Therefore, the Estate had knowledge that they would likely be used in subsequent related enforcement proceedings.

Jane’s case, however, fell on the Second Hurdle. BC 118 and the EJD proceedings were strictly against the Estate, while Suit 47 was against OSP. Further, Suit 47 was in respect of a different cause of action. Notably, Jane sought to use the EJD documents to sue OSP for different reliefs, and not to directly enforce the costs order in BC 118. Suit 47 therefore was not an enforcement of the judgment debt owed by the Estate. Lastly, Suit 47 was a pending civil suit and could not be characterised as an enforcement of the orders obtained in BC 118. An ongoing civil suit does not fall within the modes of execution under Order 45 of the Rules of Court (2014 Rev Ed), and does not, in and of itself, compel payment in satisfaction of a debt.

In light of the above, the CA held that the use of the EJD documents in Suit 47 did not fall within the First and Second Categories, and the EJD documents could not be used without leave of court. The CA therefore dismissed Jane’s appeal on Prayer 1.

B. Whether leave of court should nevertheless be granted to use the EJD documents to pursue Suit 47

With respect to Prayer 2 (on whether leave of court should be granted), the court divided its analysis into two parts:

- (a) Whether the balance of interests lay for or against the grant of leave for Jane to use the EJD documents to commence and sustain Suit 47; and
- (b) Whether the fact that the leave sought was retrospective militated against the granting of such leave, despite the conclusion on the balance of interests.

(1) Balance of Interests Test

The CA explained that the court undertakes a rigorous fact-sensitive inquiry in determining whether to exercise its discretion to lift the *Riddick* undertaking. The need to satisfy considerations of substantive fairness and justice, on one hand, must be weighed carefully against the need to protect other interests such as a defendant’s privacy and the preservation of the integrity of the court’s processes.

In the present case, the CA held that the balance of interests militated in favour of lifting the *Riddick* undertaking.

First, there was no collateral or improper motive on Jane’s part in commencing the EJD proceedings. In determining if there was a collateral or improper motive, the applicable test was whether the party commenced the proceedings “for the predominant purpose of achieving something other than what the legal process was designed to achieve”. Here, Jane was motivated by the real concern that the Estate’s assets had been dissipated and that she would be left with a paper judgment in respect of the judgment debt owed to her.

Second, the EJD documents were being meaningfully used to support related proceedings, namely BC 118. On the face of the pleadings, OSP had been dissipating the Estate’s assets to

the detriment of the Estate and its creditors. Suit 47 was commenced to specifically address this issue. The CA thus expressed “grave misgivings” with respect to the alleged misappropriations by OSP and concluded that the EJD documents would assist the court in Suit 47 in arriving at a clear picture of the Estate’s affairs.

Third, there were no countervailing considerations militating against the lifting of the undertaking.

(2) *Retrospective Leave*

The CA reiterated that retrospective leave was to be granted “very sparingly” and required “something unusual about the particular facts of a case”. Nonetheless, the CA held that the salient aspects of the present case militated in favour of a grant of retrospective leave.

The CA explained that the present case was exceptional given the potential wrong committed by OSP and the fact that the circumstances in totality were questionable. In particular, if Jane’s allegations were proven true in Suit 47, this would be a “classic case of a family (wrongfully and surreptitiously) squirrelling assets away to frustrate creditors’ attempts at recovery”. Additionally, Jane had a plausible explanation for not seeking prospective leave, namely that she had genuine concerns that OSP might resort to delay tactics while he continued dissipating the Estate’s assets.

In light of the above, the CA allowed Jane’s appeal on Prayer 2 and lifted the *Riddick* undertaking over the EJD documents.

IV. Conclusion

The CA rejected the appeal on Prayer 1 but allowed the appeal on Prayer 2. The net effect was that Jane was allowed to use the EJD documents in Suit 47. Notably, the CA decided not to award Jane costs on the issue which she prevailed on. This was due to the “layers of complications that she had added to the appeals due to her actions in the Estate’s bankruptcy”.

V. Lessons Learnt

Two key lessons can be drawn from this case. First, the CA’s clarification on the scope and extent of the *Riddick* undertaking is instructive. Parties can only use documents in other separate proceedings where:

- (a) the documents are not disclosed on compulsion (thus the *Riddick* undertaking does not apply); or
- (b) the documents are disclosed on compulsion, and are being used in related enforcement proceedings (thus there is no *breach* of the *Riddick* undertaking).

Importantly, if the document does not fall within these two categories, parties should be mindful to seek leave of court *prior* to the commencement of separate legal proceedings as retrospective leave is only granted under exceptional circumstances.

The second lesson that can be drawn is the importance of proper case management. Parties should be careful not to file applications without proper understanding of their effects or consequences. Failing which, these applications risk being struck out for abuse of process or the imposition of costs consequences.