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(2) Redaction HAS/~~HAS NOT~~ been done.

Clement Yong  
District Judge  
3 January 2022

**IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE**

**[2021] SGFC 112**

FC/OSG112/2021  
HCF/DCA 141 of 2021

Between

VLI

*... Plaintiff*

And

VLJ

*... Defendant*

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**JUDGMENT / GROUNDS OF DECISION**

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[Guardianship] – [Welfare of child]

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**VLI**  
**v**  
**VLJ**

**[2021] SGFC 112**

Family Justice Court — OSG112 of 2021  
District Judge Clement Yong  
19<sup>th</sup> October 2021

3<sup>rd</sup> January 2022

**District Judge Clement Yong**

### **Introduction**

1        Shortly after the plaintiff wife (the “**Wife**”) and the defendant husband (the “**Husband**”) got married in April 2020, the marriage broke down and a web of litigation has since been spawned over their child (the “**Child**”) and the immigration status of the Wife in Singapore. The Wife has sought multiple reliefs in the courts and have not been successful in the majority of her actions. This judgment relates to her latest attempt for relief, and I explain below why her application is without merit.

2 On 15 July 2020, the plaintiff wife (the “**Wife**”) applied in OSG 102/2020 for interim sole custody and care and control of the Child<sup>1</sup> and that the Husband be granted restricted and supervised access to the Child<sup>2</sup>. Having heard the evidence and substantive arguments on this, I dismissed the application on 8 February 2021. The Wife did not appeal against my decision in this regard.

3 On 12 August 2021, the Wife applied again in OSG 112/2021 for substantially the same prayers that she be granted sole custody and care and control of the Child<sup>3</sup>, and that the Husband be granted restricted and supervised access to the Child<sup>4</sup>. On grounds of *res judicata* and issue estoppel, I was not persuaded to allow the Wife to make the same arguments twice on the same issue expecting a different outcome and I dismissed her prayers accordingly.

4 In addition, the Wife also sought an order that in the event that the Child’s application for Singapore citizenship is withdrawn, that the Husband be ordered to re-apply for the Child’s Singapore citizenship and to do all that is necessary to make the said application. As this infringes on the right of the Husband to decide in his personal capacity whether or not the Child should be registered as a Singapore citizen, I was not prepared to grant such an *in personam* order against him and dismissed this prayer.

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<sup>1</sup> See Prayer 1 of OSG xx/2020

<sup>2</sup> See Prayer 2 of OSG xx/2020

<sup>3</sup> See Prayer 1 of OSG 112/2021

<sup>4</sup> See Prayer 2 of OSG 112/2021

## Facts

5 The background facts of this case have been set out by the High Court in *VLI v VLJ* [2021] SGHCF 27 (“*VLI*”):

[1] The background facts of this case are summarised in the Grounds of Decision (“GD”) of the District Judge (“DJ”) for OSG 102/2020 (at [5]–[6], [7]–[8]):

The Wife is a 27-year-old Israeli citizen and an architect by profession. ... The Husband is a 32-year-old Singaporean currently working as a service engineer. ... The parties met in Bangkok sometime in 2019. Shortly after, the Wife found herself pregnant and she gave birth to the Child in November 2019. The Husband proposed that the Wife relocate to Singapore and she took up his offer after meeting with his parents over Chinese New Year in 2020. On 2 April 2020, parties registered their marriage ... in Singapore. ... By July 2020, the marriage broke down. The Husband terminated the lease of a condominium in Bishan that the Wife was living in and refused to complete the application for the Wife’s LTVP with the ICA.

6 Relevant to the present dispute, it bears stating that the Child, although born in Thailand, is also an Israeli citizen like the Wife. Prior to the breakdown of the marriage, the Husband had applied with the Immigration and Checkpoints Authority (the “ICA”) for citizenship for the Child. However, at the time of the Wife’s present application, she was unaware of the status of the said application because after her solicitors had written to the ICA on 2 August 2021 to inquire, the ICA replied on 4 August 2021 that she should check with the Husband on the status. On 3 August 2021, the Wife’s solicitors wrote to the Husband to inquire on the same, but he did not respond.

7 After I heard this matter on 19 October 2021, I directed the Husband to provide an update to the Wife and the Husband the status of the Child’s citizenship application, and he has since complied. On 21 October 2021, the

Husband sent an email to the Wife’s solicitors with a document purportedly from the ICA showing that the Child’s citizenship application has been withdrawn.

**The parties’ cases**

8 The Wife seeks an order for sole custody and care and control of the Child (the “**Custody Application**”) on the following grounds:

- (a) After I had dismissed her application for the same on 8 February 2021 in OSG xx/2020, genuine disputes have since arisen.
- (b) As the Child was born to a Singaporean father, the Husband had agreed to apply for Singapore Citizenship for the Child.
- (c) The Husband had promised that the Child would receive the best education in Singapore, and he would ensure that the Child had the best.
- (d) The parties had intended for the Child to be raised in Singapore and to study in Singapore.
- (e) The Husband had said that he would give the Child stability and a future in Singapore.
- (f) The Husband has continued to remain silent and unresponsive towards the Wife’s request for information on the status of the Child’s citizenship application with the ICA.
- (g) The Husband’s turnabout and reversal of position raises a serious dispute between the parties.

9 The Wife seeks an order for the Husband to re-apply and do all that is necessary to make an application with the ICA for the Child to have Singapore Citizenship (the “**ICA Application**”). She cites the following grounds in support:

(a) The Husband has since changed his mind about the Child being a Singapore citizen, and this went against what was originally planned for the Child.

(b) The Husband, in refusing to respond to the Wife about the status of the Child’s application for Singapore citizenship and his refusal and/or neglect to diligently pursue the same acts against the Child’s best interests.

(c) The Child is entitled to apply for Singapore citizenship and should not be deprived of his right to live and study in Singapore.

10 The Husband, on the other hand, highlights that the Wife is the current primary caretaker of the Child and did not tender in evidence that he has any disagreements with the Wife on the major, long term decisions concerning the Child’s upbringing and welfare such as matters relating to education, healthcare, or religion.

11 Quite pertinently, the Husband highlighted that it appeared that the Wife’s main interest in pursuing Singapore citizenship for the Child is so that it would allow her to “ride on” this and live in Singapore. The Husband drew my attention to *VLI*, where the crux of the Wife’s appeal (heard on 28 July 2021) involved her application to obtain a Long Term Visit Pass (“**LTVP**”) to remain in Singapore. After the appeal was dismissed, I note that the Wife took

out the present application barely two weeks later on 12 August 2021 in respect of the ICA Application.

### **Issues to be determined**

12 In my view, the relevant issues in this matter are:

- (a) In respect of the Custody Application, whether *res judicata* and issue estoppel applies;
- (b) If so, has an actual dispute arisen since my previous decision on 8 February 2021 in respect of OSG xx/2020;
- (c) In respect of the ICA Application, whether the Husband has a constitutional duty to register the Child for Singapore citizenship; and
- (d) If not, whether the court should compel the Husband to register the Child for Singapore citizenship.

### **Issue 1: Whether *res judicata* and issue estoppel applies to the Custody Application**

13 It is helpful to first set out a summary these doctrines. To this end, I am guided by the High Court decision in *CKR Contract Services Pte Ltd v Asplenium Land Pte Ltd and others* [2020] SGHC 133 (“**CKR**”), where it was noted that:

[40] In the case of *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 (“*Goh Nellie*”), Sundaresh Menon JC (as he then was) outlined at [17] to [25] that the doctrine of *res judicata* encompasses three conceptually distinct though interrelated principles – cause of action estoppel, issue estoppel, and the extended doctrine of *res judicata*.

...

[43] The second subspecies of *res judicata* is issue estoppel. In *BNX v BOE and another matter* [2017] SGHC 289 (“*BNX v BOE*”), Vinodh Coomaraswamy J observed at [125] that issue estoppel precludes a party from re-litigating an *issue* and applies where a litigant raises *a question of fact or law* which has already been determined by a court of competent jurisdiction. Issue estoppel applies, per *Zhang Run Zi* at [53], even where the causes of action in question are not the same in the new proceedings as they were in the previous proceedings. In *BNX v BOE*, the judge struck out the plaintiff’s claims for fraudulent misrepresentation on the basis of, *inter alia*, issue estoppel, because the issue as to whether certain representations had been made had already been raised and decided at an earlier arbitration. For completeness, I note that the unsuccessful plaintiff in *BNX v BOE* appealed to the Court of Appeal, which dismissed the appeal.

[44] The requirements for issue estoppel are fourfold and are set out at [14] to [15] of the Court of Appeal’s judgment in *Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No 301* [2005] 3 SLR(R) 157. The majority of the Court of Appeal held that the following requirements have to be met to establish an issue estoppel:

- (a) There must be a final and conclusive judgment on the merits;
- (b) That judgment must be of a court of competent jurisdiction;
- (c) There must be identity between the parties to the two actions that are being compared; and
- (d) There must be an identity of subject-matter in the two proceedings.

14 In my view, if the doctrine of *res judicata* applies, then it precludes the Wife from raising claims which had previously been raised and decided on. On the facts, I am satisfied that *res judicata* has arisen by way of issue estoppel.

15 Taking a closer look at the Wife’s prayers in OSG xx/2020 and her prayers in OSG 112/2021, even though they are worded slightly differently, i.e., the prayers in OSG xx/2020 sought *interim* sole custody and care and

control of the Child *pending the hearing of the OS*, whilst OSG 112/2021 sought sole custody and care and control of the Child outright. The difference in wording did not distract me from the fact that the fundamental issue before me was the same in both summons – whether or not there was an actual or genuine dispute between parties over any serious matters relating to the Child’s upbringing. This to me, was the core issue for decision in both cases.

16 I arrived at this starting point because the Court of Appeal in *CX v CY* [2005] SGCA 37 (“*CX v CY*”) had made clear at [18] and [19] that where there is no actual dispute between the parents over any serious matters relating to the child’s upbringing, it may be better to leave matters at status quo, and not to make any custody order. It was further noted that the courts should not intervene unnecessarily in the parent-child relationship where there is no actual dispute between the parents over any serious matters relating to the child’s upbringing. As I am bound by the Court of Appeal, I had proceeded to hear OSG xx/2020 and OSG 112/2021 with these pronouncements in mind.

17 In relation to OSG xx/2020, in dismissing the Wife’s application for interim sole custody and care and control of the Child, I considered whether there was any parental disagreement over the Child’s upbringing<sup>5</sup>. On this note, I had made the following findings<sup>6</sup>:

Court: Now on the evidence, the Plaintiff tendered in her first affidavit a letter signed by the Defendant, agreeing not to have any custody fights against the Plaintiff for the child. The Defendant does not dispute that he signed this document, dated 16th January 2020. In the same affidavit, the Plaintiff states that the Defendant has deserted the child. Likewise, the **Defendant himself**

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<sup>5</sup> OSG 112/2010, NE, Day 2, Page 6, Line 23

<sup>6</sup> OSG 112/2010, NE, Day 2, Page 6, Line 27

**has declared in unequivocal terms that he did not want to have anything to do with the child.** The Plaintiff has also stated that **she has always been, and remains the child's primary caregiver** according to her affidavit. **There is nothing in the Plaintiff's affidavit or affidavits to suggest that the Defendant actually has a dispute with the Plaintiff on any major matters relating to the child's upbringing like, education, religion, or healthcare.** Therefore, on the Plaintiff--on the Plaintiff's own evidence, the Defendant does not appear to have any disagreements with the Plaintiff over the major decisions concerning the child.

[emphasis added]

18 From the above, I had clearly made a finding of fact that there are no disagreements between the parties concerning the Child. Applying the law as set out in *CX v CY*, there was therefore no need for me to intervene unnecessarily and make any custody or care and control order. I therefore dismissed the Wife's prayers for interim sole custody and care and control of the Child.

19 Considering now the four criteria set out by the Court of Appeal in *Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No 301* [2005] 3 SLR(R) 157, I am of the view that the issue of whether there were any disagreements between the parties concerning the Child's upbringing turned on a question of fact. This has now been determined by myself in a court of competent jurisdiction, and by not appealing against my decision on this issue, the Wife is now out of time to do so. Hence, I shall for the present purposes, regard my finding in OSG xx/2020 as final and conclusive.

20 Therefore, in repeating her prayers *in pari materia*, albeit without reference to the duration of the order being in the interim, and in view of my

remarks above, issue estoppel must apply to preclude the Wife from re-litigating a similar question of fact before me.

**Issue 2: Whether an actual dispute has arisen since the Wife's application in OSG xx/2020 was dismissed on 8 February 2021**

21 In dismissing the Wife's prayers in OSG xx/2020 on the issue of custody and care and control, I felt it was only fair to inform the parties that should a genuine dispute arise in future between parties (on the Child's upbringing), the Wife is at liberty to reapply to Court for the necessary orders<sup>7</sup>.

22 Notwithstanding my finding of issue estoppel above, I understand that the relationship between the parties is a dynamic one and their views and approaches towards the Child's upbringing is liable to change, and from that, fresh disputes may arise after my order on 8 February 2021. If indeed that was the case, it may necessitate a custody and care and control order, to which I would be prepared to consider if supported by evidence.

23 In practice, this means that any questions of fact or disputes that had happened between the parties on or before 8 February 2021 were already dealt with when I gave my decision on that day, and in considering the present Custody Application, I was prepared only to consider fresh events or disputes which had happened since. If the Wife disagreed with my findings on 8 February 2021, her proper course of action was to have appealed my decision (whilst she did appeal, it was not against my decision on the issue of custody and care and control of the Child). In other words, if the Wife is seeking to re-litigate the same issue on the same facts, that is not allowed. However, if she

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<sup>7</sup> OSG 112/2010, NE, Day 2, Page 10, Line 17

wishes to re-litigate the same issue because of new facts which have arisen, that will be allowed.

24 Turning now to the affidavit filed by the Wife on 12 August 2021 in support of her present application, I note that her allegations of disagreements over the Child's upbringing mostly relate to events happening *before* 8 February 2021. The only dispute which the Wife can rely on (after 8 February 2021) is the Husband's continuous refusal to answer her question on the status of the Child's citizenship application. The Wife's counsel in oral submissions made the point that by reason of the Husband refusing to answer the Wife's question, this effectively crystallised a dispute between them as to whether the Child should obtain Singapore citizenship.

25 However, I fail to see how this amounts to a fresh dispute having arisen. The Wife's claim that the Husband had ignored her query on the Child's citizenship application with the ICA as of 3 August 2021 describes exactly the same state of affairs which had existed as at the time I gave my decision on 8 February 2021, where the Husband had similarly refused to engage her on this matter. Therefore, this is not a fresh dispute which had arisen. The Husband's present refusal to engage the Wife on this matter is an ongoing one, and it cannot be said that for each day he continues to ignore her, that a fresh dispute is also correspondingly created each day.

26 On the facts, I find that no fresh dispute had arisen between the parties after 8 February 2021. If anything, it seems that the Wife has voluntarily forfeited her right to appeal against my previous decision and is instead, attempting a second bite of the proverbial cherry. As such, it is not necessary to make any orders in respect of the Wife's Custody Application.

27 For completeness, even if I accepted the Wife's argument that the Husband's omission in refusing to answer her questions on the Child's citizenship application effectively means that parties have disagreed as to whether the Child should obtain Singapore citizenship, this dispute on its own doesn't make it necessary to grant the Custody Application. That is because I distinguish between the major decisions of a child's life which ought to be made by the parents (i.e., issues of medical treatment, religion, choice of school etc.) and major decisions affecting a child's life which are made by a government body (i.e., whether or not a child should be granted Singapore citizenship).

28 If the dispute between the parties relate to the former category, which in my mind are *parental decisions*, then it may be plausible that a custody and care and control order is necessary, as made clear by case law. However, where the dispute between the parties relates to a decision that is ultimately vested in the ICA, which in my view is an *executive decision*, then even if custody and care and control is granted to one parent, that does not vest in that parent any decision making powers which are exclusive to the executive decision maker.

29 If I follow the Wife's argument correctly, she is taking the position that since there appears to be a dispute between the parents on whether the Child should be a Singapore citizen, she wants to be the parent to have the final say on how to break this deadlock. Taking the Wife's argument to its logical conclusion, if I were to grant sole custody and care and control of the Child to the Wife, does that put her in a position to make the child a Singapore citizen? No. Only the ICA can do that in its capacity as an executive decision maker. Granting sole custody and care and control to the Wife would not make any

practical difference to her insofar as the Child's citizenship is concerned. The court does not make an order if there is no need to do so. On this ground, I would also dismiss the Custody Application.

**Issue 3: Whether the Husband has a constitutional duty to register the Child for Singapore citizenship**

30 This next argument by the Wife is an intriguing, but ultimately defective and meritless one. She cites Article 122 and 124 of the Constitution of the Republic of Singapore in support of her argument that the Husband must do all that is necessary to register the Child for Singapore citizenship, and that he has no discretion not to do so<sup>8</sup>.

31 I shall set out the relevant Articles below:

**Citizenship by descent**

**122.**—(1) Subject to clauses (2) and (3), a person born outside Singapore after 16th September 1963 shall be a citizen of Singapore by descent if, at the time of his birth —

(a) where the person is born before the date of commencement of section 7 of the Constitution of the Republic of Singapore (Amendment) Act 2004, his father is a citizen of Singapore, by birth or registration; and

(b) where the person is born on or after the date of commencement of section 7 of the Constitution of the Republic of Singapore (Amendment) Act 2004, either his father or mother is a citizen of Singapore, by birth, registration or descent.

(2) A person born outside Singapore shall not be a citizen of Singapore by descent by virtue of clause (1) unless —

(a) his birth is registered in the prescribed manner at the Registry of Citizens or at a diplomatic or consular mission of Singapore within one year, or such longer

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<sup>8</sup> Made in oral submissions by the Wife's counsel

period as the Government permits, after its occurrence;  
and

(b) he would not acquire the citizenship of the country in which he was born by reason of his birth in that country where —

(i) in the case of a person born before the date of commencement of section 7 of the Constitution of the Republic of Singapore (Amendment) Act 2004, his father is a citizen of Singapore by registration at the time of his birth; or

(ii) in the case of a person born on or after the date of commencement of section 7 of the Constitution of the Republic of Singapore (Amendment) Act 2004, either his father or mother is a citizen of Singapore by registration at the time of his birth.

#### **Registration of minors**

**124.**—(1) The Government may if satisfied that a child under the age of 21 years —

(a) is the child of a citizen of Singapore; and

(b) is residing in Singapore,

cause such child to be registered as a citizen of Singapore on application being made therefor in the prescribed manner by the parent or guardian of such child.

(2) The Government may, in such special circumstances as it thinks fit, cause any child under the age of 21 years to be registered as a citizen of Singapore.

32 Whilst the Wife is an Israeli citizen, it is not disputed that the Husband is a Singapore citizen, and the Child is his descent. I therefore agree with the Wife's counsel that a reading of Article 122 suggests that the Child is entitled to be a Singapore citizen by descent, and that upon registration under Article 124, the Child shall be a citizen of Singapore.

33 Where I disagree with the Wife's counsel, is his submission that the Husband has a duty to register for the Child as a Singapore citizen under Articles 122 and 124, and that he has no discretion not to do so.

34 On an analysis of Article 122, this Article makes clear that a person born outside Singapore shall be a citizen of Singapore if his birth is registered with the relevant authorities within one year. In my view, this Article is concerned solely with giving the right of citizenship to certain classes of persons, provided that the condition precedent (i.e., registration with the relevant authorities) is met. It is clear and unambiguous. I am not prepared to read further into this Article and interpret it as placing an obligation on a parent (or any other person as the case may be) to register the Child for Singapore citizenship.

35 As for Article 124, this in my view is an Article which vests in the Government the power and discretion to register a child as a Singapore citizen if the parent of the child makes the registration in the prescribed manner. This Article is a power-creating one, specifically for the Government. Again, it is clear and unambiguous. There is no basis whatsoever for me to read into this Article an obligation on the Husband to register the Child for Singapore citizenship.

36 In summary, Articles 122 and 124 do not impose any obligation or liability on the Husband to register the Child for Singapore citizenship.

**Issue 4: Whether the court should compel the Husband to register the Child for Singapore citizenship.**

37 In view of my finding above, it naturally follows that the Husband retains the discretion as to whether or not he wishes to register the Child for Singapore citizenship and I think there are good reasons for this. For instance, where a child is born overseas and has already obtained citizenship by birth in a foreign country, it may not be in the best interests of international comity for Singapore to compel its citizen to forcefully register that child for Singapore citizenship. Further, not making registration compulsory in Singapore also respects and leaves open a Singaporean parent's freedom of choice to have his/her child raised in another country. Given the increasing trend of marriages between Singaporeans and foreign citizens nowadays, there may very well be good and legitimate reasons why a Singaporean parent may want his/her child to obtain overseas citizenship and forgo his/her right to Singapore citizenship.

38 My analysis above wholly applies to the present case, and the Husband therefore retain his discretion as to whether or not he wishes to register the Child for Singapore citizenship. However, the question of whether I should compel the Husband to exercise this right is a different one. In the analysis below, I seek to answer this question.

39 I observe that ordinarily, when a Singaporean parent registers his/her child for Singapore citizenship, he/she would do so in two capacities. First, as a Singapore citizen exercising his constitutional right under Article 122, and second, as a parent under Article 124. These rights are exercised concurrently.

40 At this point, I pause to consider the limits of my power and whether I even have the jurisdiction to make orders on the ICA Application sought by

the Wife. The present application is one under sections 3 and 5 of the Guardianship of Infants Act (Cap. 122). This means that any *in personam* order I make on the Husband is made against him in his capacity as a father/parent, and I do so in the exercise of my matrimonial jurisdiction. However, I do not think that I am vested with the jurisdiction or powers (inherent or otherwise) to direct a Singapore citizen to exercise his constitutional right in a certain manner, in this case, ordering the Husband to register the Child for Singapore citizenship.

41 Given the competing interests here between the best interests of the Child (which does not necessarily equate to obtaining Singapore citizenship for him), and that of the Husband to exercise his rights as a Singapore citizen any way he deems fit, I certainly think that the balance lies in maintaining the Husband's constitutional freedom to choose if he wishes to register the Child for Singapore citizenship. There will be no prejudice to the Child, as both him and the Mother are Israeli citizens.

42 To conclude this point, I decline to grant the ICA Application order as it would not be fair to the Husband for me to do so. As I did not make any order as to the custody and care and control of the Child, I accordingly did not find it necessary to make the corresponding orders as to the Child's access.

### **Conclusion**

43 I would conclude by addressing the elephant in the room, i.e., the Wife's true motivation in taking out his application, which was somehow alluded to by the Husband in his affidavit<sup>9</sup>, where he stated that "it seems that

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<sup>9</sup> Husband's affidavit dated 19 August 2021, at [17]

currently the main interest of the plaintiff is pursuing [sic] to obtain the child citizenship status [sic] that allows her to ride on and live in Singapore...”. Here, the Husband was highlighting the possibility that the present application might have been taken out by the Wife for the collateral purpose of assisting her LTVP application. Meaning, by obtaining a Singapore citizenship for the Child, the Wife might stand a better chance with the ICA to obtain an LTVP.

44 It suffices for me to reproduce the observations of the High Court in *VLI*, where the court remarked:

[15] It seems that the main interest the Wife is pursuing is to obtain a long term immigration status that allows her to live in Singapore. The proper authority to which the Wife should apply in order to obtain the necessary permission to stay and work in Singapore may be the Ministry of Manpower or the Immigration and Checkpoints Authority; the court is not the appropriate forum.

45 Prayers 1, 2, and 4 of OSG 112/2021 are accordingly dismissed for the reasons given above.



Clement Yong  
District Judge



Koh Tien Hua (Harry Elias Partnership LLP) for the Plaintiff;  
Defendant-In-Person.