Tan Chi Min *v* The Royal Bank of Scotland Plc
[2013] SGHC 154

Case Number : Suit No 939 of 2011 (Summons No 4812 of 2012)

Decision Date : 20 August 2013

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Suresh Nair and Muralli Rajaram (Straits Law Practice LLC) for the plaintiff; Celeste Ang Hsueh Ling and Jonathan Pek Zhanpeng (Wong & Leow LLC) for the defendant.

Parties : Tan Chi Min — The Royal Bank of Scotland Plc

civil procedure

20 August 2013 Judgment reserved.

Lee Seiu Kin J :

1 This case raises interesting questions regarding the principle of open justice in the context of public access to documents filed in civil proceedings.

Background

2 On 27 December 2011, Mr Tan Chi Min ("the Plaintiff") commenced an action ("S939/2011") against his former employer, The Royal Bank of Scotland Plc ("the Defendant"), claiming, *inter alia*, wrongful dismissal and breach of his employment contract with the Defendant. According to the Plaintiff, he was wrongfully dismissed by the Defendant as he claimed he was made a "scapegoat" following the infamous scandal regarding the alleged manipulation of the London Interbank Offered Rate ("LIBOR"), in which the Defendant as one of the contributory banks under the British Bankers' Association ("the BBA") was implicated. Prior to his dismissal, the Plaintiff was an employee of the Defendant tasked with submitting the Defendant's interbank interest rates to the BBA.

3 On 22 September 2012, the Defendant filed Summons No 4812 of 2012 ("SUM4812/2012") seeking an order for the case file in S939/2011 or, alternatively, all affidavits and/or exhibits thereto to be sealed from media or public inspection "until the earlier of (i) the resolution of the [sic] one or more of the regulatory investigations into the Defendant being conducted by the US Commodity Futures Trading Commission, the US Department of Justice (Fraud Division), the [Financial Services Authority]; or (ii) the date falling three months from [22 September 2012] (at which point the Defendant may make a further application for a similar order)."

4 Counsel for the parties appeared before me in chambers for the hearing of SUM4812/2012 on 24 September 2012 and 24 October 2012. At the end of the hearing on 24 October 2012, I ordered that all affidavits filed in S939/2011 since 7 September 2012 be sealed from public inspection pending trial, with leave given to the Plaintiff to write in for further arguments in the event that there were additional authorities which the Plaintiff wished to raise. On 21 November 2012, the Plaintiff's solicitors presented further arguments in writing to which the Defendant replied on 19 December 2012. The Plaintiff's solicitors wrote in again on 25 February 2013 to inform the court that, *inter alia*, the investigations into the LIBOR scandal by the United States and United Kingdom regulatory authorities

had concluded and, accordingly, the purpose of the application in SUM4812/2012 was spent. In a letter dated 27 February 2013, the Defendant's solicitors informed the court that they wished to appear before me to respond substantively to the Plaintiff's solicitors' letter dated 25 February 2013.

5 On 1 April 2013, counsel for both sides attended before me for a further mention on SUM4812/2012, at the end of which it was established that the grounds for the original sealing order had no longer existed. Accordingly, I indicated to parties that I was inclined to discharge the sealing order, but that would be done along with a written judgment addressing the law on access to court documents by members of the public. I now issue my written judgment together with my order discharging the sealing order.

The question on access to court documents by members of the public arising from SUM4812/2012

6 In the course of submissions in support of the sealing order under SUM4812/2012, counsel for the Defendant argued that although the public has a general right to access documents in the court files under a principle commonly referred to as the "principle of open justice" (see *Scott v Scott* [1913] AC 417 ("*Scott v Scott*")), such right of access is never unfettered or unconditional. It was also submitted that given the early stages of the proceedings in S939/2011, it was unnecessary for the maintenance of the principle of open justice for the public to have access to affidavits which have been filed with the court registry for the purposes of interlocutory proceedings in S939/2011. In essence, the Defendant was concerned that granting the public (and in particular the media) access to court documents in the present case would, *inter alia*, undermine the integrity of the investigations which were then still ongoing in the United States over the LIBOR scandal. The Defendant at the same time also voiced its concern that S939/2011 was in danger of being used as an avenue for the press to access information or documents about the said investigations (to which the press would not otherwise have access whilst the investigations were still ongoing), given that the press appeared to be more interested in the allegations made by the Plaintiff with regard to the alleged LIBOR manipulation rather than in the Plaintiff's claim for wrongful dismissal. Additionally, the Defendant took the view that it would be manifestly unjust to other individuals under the Defendant's employment, who were not party to S939/2011 but who might be concerned in the alleged LIBOR manipulation, for the press to have access to the case file in S939/2011 and to infer wrongdoings on their part while the investigations were still ongoing when in truth they might not even be culpable at all.

7 Against this backdrop, the key question that arose was: under what circumstances should court documents such as affidavits filed pursuant to interlocutory applications be made available for public access and inspection, given the concerns raised by the Defendant in the present case?

The principle of open justice

8 The provision governing public access to court documents filed in the registry is O 60 r 4 read with O 60 r 2 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules of Court"):

> **Information to be maintained by Registry**
>
> **2.**—(1) The Registrar shall cause to be maintained such information as is prescribed or required to be kept by these Rules and by practice directions issued by the Registrar.
>
> (2) The Registrar may maintain at his discretion all the information referred to in paragraph (1) in such medium or mode as he may determine.

…

Right to search information and inspect, etc., certain documents filed in Registry

4.—(1) Any person shall, on payment of the prescribed fee and without leave of the Registrar, be entitled to search the information referred to in Rule 2.

(2) *Any person may, with the leave of the Registrar and on payment of the prescribed fee, be entitled —*

(a) during office hours, at the Registry or a service bureau established under Order 63A, to search for, inspect and take a copy of any of the documents filed in the Registry; or

(b) to use the electronic filing service established under Order 63A to search for and inspect any of the documents filed in the Registry during the period permitted by the Registrar.

(3) Nothing in paragraph (2) shall be taken as preventing any party to a cause or matter searching for, inspecting and taking or bespeaking a copy of any affidavit or other document filed in the Registry in that cause or matter or filed therein before the commencement of that cause or matter but made with a view to its commencement.

[emphasis added]

9 The foremost consideration in determining whether leave under O 60 r 4(2) of the Rules of Court should be granted upon a request being made is what is commonly termed as the "principle of open justice", the roots of which can be traced to the House of Lords decision in *Scott v Scott*. In *Dian AO v Davis Frankel & Mead (a firm) and another (OOO Alfa-Eco and another intervening)* [2005] 1 WLR 2951 ("*Dian AO*"), Moore-Bick J referred to *Scott v Scott* and explained the principle of open justice in detail as follows (at [28]-[29]):

28 I would accept at once that the highest importance is to be attached to the principle of open justice, but I think it is important for the purposes of the present application to understand what end it is intended to serve. For the reasons set out in the speech of Lord Shaw in *Scott v Scott* [1913] AC 417 it has long been recognised that *if justice is to be properly administered it is essential that the decisions of the courts and the decision-making process itself be open to public scrutiny. It is for that reason that in all but exceptional cases hearings are conducted in public, judgment is delivered in public and proceedings can be freely reported.*

29 It is for the same reason that, as the use of written rather than oral procedures have become more widespread, the courts have recognised that it is necessary to give the public access to documents that contain material that has been placed before the judge, but not read out in open court as would once have been the case. The two most obvious categories are statements of witnesses who are called to give evidence at trial and advocates' skeleton arguments. Both were considered in [*GIO Personal Investment Services Ltd v Liverpool and London Steamship Protection and Indemnity Association Ltd (FAI) General Insurance Co Ltd intervening)* [1999] 1 WLR 984, CA] and the position of skeleton arguments was considered again in the [*Law Debenture Trust Corpn (Channel Islands) Ltd v Lexington Insurance Co* [2003] EWHC 2297 (comm)] case. The principle was recognised in *Derby & Co Ltd v Weldon The Times*, 20 October 1988 and more recently in *Barings plc v Coopers & Lybrand* [2000] 1WLR 2353 as extending to copies of documents that the judge has been invited to read in the privacy of his room. Without access to material of this kind a member of the public attending the hearing could

not form any reliable view about the propriety of the decision-making process.

[emphasis added]

10 In the same case, Moore-Bick J further explained that the principle of open justice should similarly apply to affidavits which were used for chamber hearings (at [50]):

> **50** The affidavits referred to in the orders were, as I have said, considered by the court as part of its judicial function. They may have been read out in the course of the proceedings, but I think it more likely that they were read by the judge in private as part of his preparation for the hearing and that particular passages were referred to at the hearing itself. In accordance with the practice of the court the hearings would all have taken place in chambers rather than open court, but it is clear from authorities such as *Barings plc v Coopers & Lybrand* [2000] 1 WLR 2353 and the *Law Debenture Trust case* [2003] EWHC 2297 (Comm) that these affidavits ought to be treated as if they had been read in open court and that anyone with a legitimate interest ought to be allowed reasonable access to them in accordance with the principle of open justice.

11 This was consistent with the position that chamber hearings are not confidential and that information pertaining to what had occurred in chamber hearings could be made available to the public, save where there are exceptional circumstances. In *Hodgson and Others v Imperial Tobacco Ltd and Others* [1998] 1 WLR 1056 ("*Hodgson v Imperial Tobacco Ltd*"), the English Court of Appeal held (at 1072):

> In relation to hearings in chambers the position may be summarised as follows. (1) The public has no right to attend hearings in chambers because of the nature of the work transacted in chambers and because of the physical restrictions on the room available but, if requested, permission should be granted to attend when and to the extent that this is practical. (2) What happens during the proceedings in chambers is not confidential or secret and information about what occurs in chambers and the judgment or order pronounced can, and in the case of any judgment or order should, be made available to the public when requested. (3) If members of the public who seek to attend cannot be accommodated, the judge should consider adjourning the proceedings in whole or in part into open court to the extent that this is practical or allowing one or more representatives of the press to attend the hearing in chambers. (4) To disclose what occurs in chambers does not constitute a breach of confidence or amount to contempt as long as any comment which is made does not substantially prejudice the administration of justice. (5) The position summarised above does not apply to the exceptional situations identified in section 12(1) of the Act of 1960 or where the court, with the power to do so, orders otherwise.

12 For completeness, I should add that in our local context, although para 13A of the Supreme Court Practice Directions provides that hearings in chambers in civil proceedings are "private in nature, and that members of the public are not entitled to attend such hearings", it does not go further to state that chamber hearings in civil proceedings are confidential or secret. Paragraph 13A of the Supreme Court Practice Directions reads as follows:

> **13A. Attendance at hearings in Chambers**
>
> (1) For the avoidance of doubt, the general rule is that hearings in chambers in civil proceedings are private in nature, and that members of the public are not entitled to attend such hearings.
>
> (2) However, subject to any written law, the Court may, in its discretion, permit interested

parties, such as instructing solicitors, foreign legal counsel and parties to the matter, to attend hearings in chambers. In exercising its discretion, the Court may consider a broad range of factors including: (a) the interest that the person seeking permission has in the matter before the Court; (b) the interests of the litigants; (c) the reasons for which such permission is sought; and (d) the Court's interest in preserving and upholding its authority and dignity.

13 It should, however, be noted that there were occasions when the principle of open justice was held as not having been engaged at all. In *Dian AO*, for example, the court declined to grant permission for the inspection of affidavits and statements relating to an application for summary judgment which was disposed of without a hearing. Moore-Bick J held (at [47], [51] and [57]):

> **47** Mr Joseph told me on instructions that an application for summary judgment was made which was disposed of without a hearing, it having been agreed that Tiller should have unconditional leave to defend. That is not confirmed in Mr Georgiou's statement and formally, therefore, there is no evidence to support it. However, in the absence of an order reflecting a contested hearing, I have no reason to think that any affidavits sworn for the purposes of that application were, or should be treated as having been, read by a judge as part of the judicial process.
>
> …
>
> **51** However, for reasons I have already given, [the documents which ought to be given reasonable access to] does not include any affidavits that were filed in connection with the application for summary judgment. Mr Smith submitted that it is not uncommon for affidavits or witness statements made for the purpose of one application to be deployed in support of, or in opposition to, a later application so that the use of these affidavits in connection with one of the contested applications cannot be ruled out. That is true, and it demonstrates why it is highly desirable that the preamble to any order should identify clearly the evidence on which it is based. However, where the matter is in doubt the burden is on the applicant to show that an affidavit or witness statement expressed to be made in relation to one particular application was in fact considered in relation to another. In the present case there is no basis for drawing that conclusion.
>
> …
>
> 57 … I do not consider that the court should be as ready to give permission to search for, inspect or copy affidavits or statements that were not read by the court as part of the decision-making process, such as those filed in support of, or in opposition to, the application for summary judgment in this case. *These were filed pursuant to the requirements of the rules but only for the purposes of administration. The principle of open justice does not come into play at all in relation to these documents.* I do not think that the court should be willing to give access to documents of that kind as a routine matter, but should only do so if there are strong grounds for thinking that it is necessary in the interests of justice to do so. …
>
> [emphasis added]

14 In sum, the principle of open justice requires that decisions by judges (and Registrars) in court proceedings be amenable to scrutiny by members of the public through inspection of documents filed in court that were considered in the decision-making process. This serves to promote public confidence in the administration of justice. However, it does not mean that all court documents are open to inspection by members of the public the moment they are filed in court, for the principle of

open justice is engaged only when a court has made a decision involving a consideration of those documents.

15 With these in mind, I now set out guidelines pertaining to requests under O 60 r 4(2) of the Rules of Court with specific mention of some of the more common court documents involved in such requests.

Access to court documents filed and/or used in interlocutory civil proceedings heard in chambers

16 Court documents under this category may be divided into two broad classes: interlocutory summonses and the affidavits filed either in support of or in opposition to the interlocutory summonses (hereafter referred to as "interlocutory affidavits").

Interlocutory summonses

17 Public access to interlocutory summonses may generally be granted upon a proper request being made pursuant to O 60 r 4(2) of the Rules of Court, regardless of whether the hearing of the interlocutory summonses have been heard or concluded. It is necessary in the interest of the public and for the purposes of promoting public confidence in the administration of justice for interested members of the public to be able to follow the extent to which the progress of an action commenced at the courts have been or may be affected by any interlocutory legal skirmishes between the litigating parties pending trial or full determination of the action.

Interlocutory affidavits

18 With regard to affidavits filed in connection with interlocutory applications, the principle of open justice as elucidated in [8]–[14] above would apply such that access under O 60 r 4(2) of the Rules of Court should generally only be granted when the underlying interlocutory application has been fully heard and/or determined. Accordingly, the registrar is entitled to refuse leave for any request seeking access to interlocutory affidavits if the request was made prematurely (*ie*, before the interlocutory application in which the interlocutory affidavits are being relied upon have been fully heard and/or determined by the court). A member of the public may not expect to have his or her request pursuant to O 60 r 4(2) of the Rules of Court granted if the principle of open justice has not been engaged (see [13] above).

Access to court documents filed and/or used in civil proceedings heard in open court

19 As far as open court civil proceedings are concerned, the two most common categories of court documents which are filed and/or used in court are the originating processes (including the pleadings) and the affidavits of evidence-in-chief ("AEICs"). In this regard, a legal provision that gives statutory expression of the principle of open justice in respect of hearings conducted in open court is s 8(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") which provides as follows:

> **8.**—(1) The place in which any court is held for the purpose of trying any cause or matter, civil or criminal, shall be deemed an open and public court to which the public generally may have access.

Originating processes and pleadings

20 Originating processes and pleadings in open court civil proceedings constitute the official record

of the matters *to be* litigated before and decided by the court (*cf* Jeffrey Pinsler SC, *Principles of Civil Procedure* (Academy Publishing, 2013) at para 15.001). As a matter of both principle and practice, these papers are often also the very first documents that would come to the court's attention in civil litigation. In line with s 8 of the SCJA (see [18] above), and provided that there are no sealing orders in place, it may therefore be said that it is necessary in the public interest for these fundamental documents to be made available for inspection under O 60 r 4(2) of the Rules of Court regardless of whether the substantive hearing of any legal action commenced by such documents has begun. This is so that any interested members of the public (or the media) may properly apprise themselves in advance of the issues that litigating parties *intend to put* before the court for adjudication, and not be made to wait until the start of the substantive hearing before they could do so. On this basis, public inspection of originating processes and pleadings would be allowed the moment they are filed at the registry.

AEICs

21 AEICs form a unique category of court documents used in civil trials. The use of AEICs in civil trials is a relatively modern practice designed to expedite court proceedings by avoiding oral examination-in-chief of witnesses. This results in more than just the time for examination-in-chief, but with early notice of such evidence, the time required for cross-examination may be reduced. For this reason, AEICs are filed and exchanged in advance of a civil trial. However it is not until the commencement of trial proceedings that AEICs are admitted into evidence. It is a common practice in our trials to dispense with the reading out of AEICs to further save time. However this means that people in the public gallery, and court reporters, would not have access to the evidence-in-chief given in the trial. In Sharon Rodrick, "Open Justice, the Media and Avenues of Access to Documents on the Court Record" (2006) 29(3) University of New South Wales Law Journal 90 at 90, the learned author explained this concern as follows:

> … Courts freely acknowledge that, today, the vast majority of people rely on the media for information about judicial proceedings and, in deference to this fact, regard the principle of open justice as embracing the right of the public to receive media reports about the workings of the courts.
>
> … [M]edia organisations are likely to argue that in view of the striking changes that have taken place in the way court cases are conducted, access to documents on the court record is critical if the media are to effectively discharge their role as the purveyors of information about the courts. Today, there is far less reliance on what takes place orally in open court, and a correspondingly greater emphasis on documentary evidence and written submissions and arguments. For example, pleadings are no longer read aloud in full by counsel in open court. This is largely because the length of the pleadings is now of a different order to earlier years, to the point where a reading aloud of the entirety is no longer appropriate, especially in complex commercial cases. Moreover, counsel frequently present their legal arguments in written form. Indeed, many courts require written outlines of submissions to be submitted to the court in advance of the hearing. This means that counsel will just refer the court to pertinent paragraphs of the pleadings, and oral argument proceeds on the basis that the court is familiar with the written submissions. It is also commonplace for witnesses to present their evidence-in-chief in the form of affidavits or witness statements (with exhibits) rather than orally. The affidavits or witness statements which contain the evidence-in-chief are not read out verbatim, but are simply treated as read. Oral evidence is usually confined to cross-examination of the witnesses. In *McCabe v British American Tobacco Australia Services Ltd* [[2002] VSC 150], the Court explained that as a consequence of this change, the phrase 'read in court' has acquired a completely different meaning. In the words of the Court: '[i]mplementation of this recommended

practice has the consequence that the expression "read in court", when referring to an affidavit or an exhibit, becomes a fiction which harks back to the days when this was done aloud'.

A number of explanations can be advanced for these changes in the conduct of court cases. Primary among them is the need for increased efficiency in the trial process in view of the number, length and complexity of modern trials, and the consequent pressures they place on court time, the public purse and the litigants' pockets. Whilst these changes have produced efficiencies in terms of time and money, their impact on the principle of open justice has not been as laudable. They effectively mean that a member of the public who wishes to understand a case can no longer adequately do so by sitting in the courtroom. For example, it is impossible to follow the cross-examination of a witness if the evidence-in-chief has not been given orally and the documentary evidence-in-chief, upon which the cross-examination is based, has not been read aloud in court or otherwise made public. Likewise, it is not possible to grasp the legal arguments put to the court if counsel is merely speaking to a detailed written outline of submissions. In the words of Byrne J, the changes that have taken place serve to 'make the curial and adjudicative process less and less comprehensible to the person in the public gallery'.

The impact of these changes has been most keenly felt by the media, since media organisations are the section of the public mostly likely to be seeking to take advantage of their right to attend hearings. Any inability to access information about a case has a detrimental impact on reporting. It has the potential to 'promote inaccurate, ill-informed and damaging speculation', which in turn has a tendency to 'erode public confidence in the system of justice'. As a result, media organisations are likely to maintain that if the principle of open justice is to continue to have meaningful content, it can no longer be confined to what takes place in the courtroom, but must be construed as extending to documents in the court registry.

22 Hence, to maintain the principle of open justice, it is important that the public, and particularly the media, have access to AEICs admitted in a trial. I am therefore of the opinion that requests by members of the public (including the media) made pursuant to O 60 r 4(2) of the Rules of Court in respect of AEICs in civil trials conducted in open court should generally be allowed from the time the AEICs in question have been admitted as evidence in a trial.

When access may be granted

23 However the principle of open justice does not require access to AEICs prior to their being admitted in court. As elaborated above, the principle of open justice is engaged only when such AEICs are admitted in evidence and therefore before a court whose proceedings are amenable to public scrutiny. This would address the Defendant's concern that it would be manifestly unjust to other individuals under the Defendant's employment who were not party to S939/2011 but who might be concerned in the alleged LIBOR manipulation, for the press to have access to the case file in S939/2011 and to infer wrongdoings on their part while the investigations were still ongoing when in truth they may not even be culpable at all (see [6] above).

24 There is another consideration bearing on this point. Statements made in the course of judicial proceedings are absolutely privileged. In *Hong Lam Marine Pte Ltd and Another v Koh Chye Heng* [1998] SGHC 65, the court accepted the following statement from Philip Lewis, *Gatley on Libel and Slander* (Sweet & Maxwell, 8th Ed, 1981) (at [21]):

21 Gatley on Libel and Slander (8th Edition) contains the following passages in the chapter on 'Absolute Privilege':

"381. General principles. There are certain occasions on which public policy and convenience require that a man should be free from responsibility for the publication of defamatory words. The courts are unwilling to extend the number of these occasions on which no action will lie even though the defendant published the words with full knowledge of their falsity and with the express intention of injuring the plaintiff. A statement of claim which alleges publication on [any] such occasion will be struck out as disclosing no cause of action. An absolute privilege attaches to the following statements:

(1) Statements made in the course of judicial proceedings.

(2) Statements made in the course of quasi-judicial proceedings.

(3) Statements contained in documents made in judicial or quasi- judicial proceedings.

(4) ...

383. General rule. No action will lie for defamatory statements, whether oral or written, made in the course of judicial proceedings before a court of justice or a tribunal exercising functions equivalent to those of an established court of justice. "The authorities establish beyond all question this: that neither party, witness, counsel, jury, nor judge, can be put to answer civilly or criminally for words spoken in office; that no action for libel or slander lies whether against judges, counsel, witnesses, or parties for words spoken in the course of any proceeding before any court recognised by law and this although the words were written or spoken maliciously, without any justification or excuse, and from personal ill will or anger against the party defamed." It is immaterial whether such proceedings take place in open court or in private, whether they are of a final or preliminary character, whether they are *ex parte* or *inter partes*, and whether the court has jurisdiction to deal with the matter before it or not. "The authorities are clear, uniform, and conclusive that no action of libel or slander lies, whether against *judges*, *counsel*, *witnesses*, or *parties*, for words written or spoken in the ordinary course of any proceeding before any court or tribunal recognised by law." The privilege will also attach to any matter incidental to the proceedings "practically necessary for the administration of justice." That it is convenient is insufficient.

[emphasis in original]

25 This privilege was granted for the purpose of enabling the court to determine the truth in order to dispense justice. To the extent that it may contain statements that are defamatory of any person, it was a necessity for justice to be done. However this privilege has not been extended beyond the realm of court proceedings and there is no reason to do so. For a variety of reasons, an AEIC may not see the light of day in a trial. The party may decide, after filing the AEIC, not to call that witness. Or the parties may settle the suit before trial. The law does not protect publication of defamatory statements in an AEIC unless they are made in the course of judicial proceedings, which would only be the case after the AEIC is admitted as evidence in a trial. But once this is done, the publication of an AEIC would constitute a report of a judicial proceeding and come within the protection of s 11 of the Defamation Act (Cap 75, 1985 Rev Ed), which provides as follows:

Reports of judicial proceedings

11—(1) A fair and accurate and contemporaneous report of proceedings publicly heard before any court lawfully exercising judicial authority within Singapore and of the judgment, sentence or finding of any such court shall be absolutely privileged, and any fair and bona fide comment

thereon shall be protected, although such judgment, sentence or finding be subsequently reversed, quashed or varied, unless at the time of the publication of such report or comment the defendant who claims the protection afforded by this section knew or ought to have known of such reversal, quashing or variation.

(2) Nothing in this section shall authorise the publication of any blasphemous, seditious or indecent matter or of any matter the publication of which is prohibited by law.

As the AEIC, after it is admitted in a trial, contains the evidence given by the witness in court, a report thereon falls within the words emphasised.

26 The same considerations apply to an affidavit filed in support of interlocutory applications. Access may only be granted after the affidavit has been admitted in the hearing of the application. However pleadings and interlocutory applications, once filed, are part of court proceedings so that any statements therein would be made in the course of judicial proceedings.

27 There is one further point. Under s 79 of the SCJA, immunity from civil liability is conferred on the Registrar, Deputy Registrar, Assistant Registrars (hereafter collectively referred to as "registrars") and officers of the Supreme Court under certain specific circumstances. Section 79 of the SCJA provides as follows:

Protection of Registrar and other officers

79.—(1) The Registrar, the Deputy Registrar or an Assistant Registrar or other person acting judicially shall not be liable to be sued in any court exercising civil jurisdiction for any act done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

(2) No officer of the Supreme Court charged with the duty of executing any writ, summons, warrant, order, notice or other mandatory process of the court shall be liable to be sued in any court exercising civil jurisdiction for the execution of or attempting to execute such writ, summons, warrant, order, notice or other mandatory process, or in respect of any damage caused to any property in effecting or attempting to effect execution, unless it appears that he knowingly acted in excess of the authority conferred upon him by such writ, summons, warrant, order, notice or other mandatory process of the court.

(3) An officer of the Supreme Court shall not be deemed to have acted knowingly in excess of his authority merely by reason of the existence of a dispute as to the ownership of any property seized under any writ or order of execution.

28 In relation to the registrars' powers in respect of requests seeking case file inspection and/or the taking of copies of court documents, O 60 r 4(2) of the Rules of Court provides as follows:

(2) Any person may, *with the leave of the Registrar* and on payment of the prescribed fee, be entitled —

(a) during office hours, at the Registry or a service bureau established under Order 63A, to search for, inspect and take a copy of any of the documents filed in the Registry; or

(b) to use the electronic filing service established under Order 63A to search for and

inspect any of the documents filed in the Registry during the period permitted by the Registrar.

[emphasis added]

29 The first question is therefore whether immunity under s 79(1) of the SCJA applies when a registrar exercises his or her power under O 60 r 4(2) of the Rules of Court. I have no difficulty in answering that in the affirmative. As can be seen from the wordings of s 79(1) of the SCJA, immunity applies when the registrar does any act "in the discharge of his judicial duty". That O 60 r 4(2) of the Rules of Court requires that "leave" of a registrar must be obtained before a person may be allowed to inspect and take copies of court documents filed at the registry indicates that the process being invoked by a request made pursuant to O 60 r 4(2) of the Rules of Court is a judicial as opposed to an administrative one.

30 Indeed, this conclusion is supported by an English case authority where the registrar's powers under the Rules of the Supreme Court ("RSC") Ord 63 r 4 (*ie*, a close English equivalent of our O 60 r 4 of the Rules of Court) was held to be of a judicial nature and not merely an administrative one. In *Dobson and another v Hastings and others* [1992] 1 Ch 394 ("*Dobson*"), a journalist, intending to write an article about a proceeding before the court, went to the court offices to inspect the originating summons in that proceeding. She was informed that she would need leave from the registrar to inspect the court file. After filling out a form, a court clerk handed the journalist several folders containing court documents and instructed her to take them to the registrar, but she was not told she could not look inside them. While she was waiting to see the registrar (who eventually refused leave for inspection of the court file), she read an official receiver's report, which was among the papers, and openly made notes from it. Two news articles were later published which contained information obtained from the court file. A motion for committal proceeding was commenced against, *inter alia*, the journalist. Although the motion was ultimately dismissed, Sir Donald Nicholls VC observed that pursuant to RSC Ord 63 r 4, inspection of court files was permissible only with leave of court, and that anyone who inspected the documents in the custody of the court without such leave when he knew he needed leave for that purpose would have committed contempt of court (see *Dobson* at 394, 401). More pertinently, the court did not accept the journalist's evidence that she understood that the entire process of seeking leave from the registrar was an "administrative procedure" and that the registrar was an "administrative official" (see *Dobson* at 407). RSC Ord 63 r 4 was cited in *Dobson* at 399–400 which is reproduced as follows:

… R.S.C., Ord. 63, r. 4 provides:

"(1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Central Office, namely - (*a*) the copy of any writ or summons or other originating process, (*b*) any judgment or order given or made in court or the copy of any such judgment or order, and (*c*) *with the leave of the court*, which may be granted on an application made ex parte, any other document. (2) Nothing in the foregoing provisions shall be taken as preventing any party to a cause or matter searching for, inspecting and taking or bespeaking a copy of any affidavit or other document filed in the Central Office in that cause or matter or filed therein before the commencement of that cause or matter but made with a view to its commencement."

[emphasis added]

31 In summary, the registrar's power under O 60 r 4(2) of the Rules of Court is of a judicial nature.

Accordingly, s 79(1) of the SCJA would apply to confer immunity on any registrar granting or refusing "leave" for case file inspection and/or the taking of copies of court documents as that amounts to an act done "in the discharge of his judicial duty".

32 It would therefore follow that any officer at the registry who executes a registrar's order granting leave for access to court documents under O 60 r 4(2) of the Rules of Court would similarly be immune from civil liability under s 79(2) of the SCJA, as the officer executing the order would qualify as an "officer of the Supreme Court charged with the duty of executing any writ, summons, warrant, *order*, notice or other mandatory process of the court" [emphasis added] who "shall [not] be liable to be sued in any court exercising civil jurisdiction" (see [24] above).

Conclusion

33 The sealing order made on 24 October 2012 is discharged herewith. However access to AEICs and other affidavits filed in court in this suit would be available to the public only after they have been admitted as evidence in the trial or interlocutory hearing.

34 Costs are to be in the cause.