IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 148

Suit No 903 of 2020
Summons 3724 of 2023

Between

(1) Distributed Ledger Technologies (DLT) Pte Ltd
(2) Dowser Group Pte Ltd

… *Plaintiffs*

And

(1) Suji Mannattu Thampi
(2) Sheravathy Suji Thampi
(3) Samir Vinodray Makwana
(4) Thiyagarajan Athmanathan
(5) Sevnic Pte Ltd (formerly known as Digital Vyuh Pte Ltd)
(6) Intellidocx Asia Pte Ltd

… *Defendants*

JUDGMENT

[Contempt of Court — Civil Contempt]
[Contempt of Court — Sentencing]

Version No 1: 26 Jun 2024 (12:04 hrs)

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Distributed Ledger Technologies (DLT) Pte Ltd and another
v
Suji Mannattu Thampi and others

[2024] SGHC 148

General Division of the High Court — Suit No 903 of 2020 (Summons 3724 of 2023)
Andre Maniam J
12, 26 March 2024

26 June 2024 Judgment reserved.

Andre Maniam J:

Introduction

1 This judgment is about the consequences of disobeying a discharge order (an order that discharged a search order) - the discharge order required the plaintiffs ("DLT" and "Dowser") to irretrievably delete data obtained by the search, but the plaintiffs instead retained some of that data, and used it in this suit.

Background

The search order

2 The plaintiffs obtained a search order on 25 September 2020,[1] which was varied on 7 October 2020.[2] The search was carried out with the assistance of forensic investigators from FTI Consulting (Singapore) Pte Ltd ("FTI").

The discharge order

3 On 3 December 2020, the search order was discharged because of material non-disclosure.[3] The judge who made that discharge order held that the non-disclosure was of such great importance that the entire search order obtained was tainted and should be discharged. He ordered (among other things) that:[4]

> (a) the hard disks containing the documents and forensic images of the devices of the affected defendants be handed over to the respective defendants' solicitors;
>
> (b) the plaintiffs arrange for irretrievable deletion of the data of the affected defendants collected pursuant to the search order, whether stored in hard disk(s) or in cloud storage; and
>
> (c) an affidavit be filed confirming such irretrievable deletion of data.

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1 HC/ORC 5295/2020.

2 HC/ORC 5550/2020.

3 HC/ORC 6906/2020 ("**ORC 6906**").

4 ORC 6906 at [1]–[2], [4]–[5].

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4 Pursuant to the discharge order, affidavits from FTI and the plaintiffs' solicitors were filed on 14 January 2021 confirming irretrievable deletion of the affected defendants' data collected by the search.

The plaintiffs' retention of data collected by the search

5 On 28 April 2021, Mr Nikhil Joshi ("Mr Joshi", then the Chief Operating Officer of the plaintiffs) sent an email to Mr Samir Salim Neji ("Mr Neji", then the Chief Executive Officer of the first plaintiff, DLT).[5] The email was copied to Mr Vishal Gala ("Mr Gala", then the Chief Financial Officer of the plaintiffs), and Mr Atul Patel ("Mr Patel", then the Chief Platform Officer of the plaintiffs). The email was captioned, "FTI Consulting – Search Results", and it read:

> **DO NOT SHARE OUTSIDE THIS GROUP**
>
> Samir,
>
> This is what FTI Consulting found, further to your discussion with Vishal and Atul.
>
> Nikhil

6 Attached to the email was a spreadsheet entitled "Confidential – Project Sanga…".

7 The spreadsheet contained (among other things) extracts of Whatsapp messages between the first and third defendants, various file names and file paths, headers of email messages, and various comments.

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5 Affidavit of Suji Mannattu Thampi dated 20 November 2023 ("**Mr Suji's Affidavit**") at p 46.

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8 The email and attached spreadsheet were collectively marked exhibit P1 at trial. P1 contains data obtained by the search, which the plaintiffs were required by the discharge order to irretrievably delete, but did not.

The plaintiffs' use of retained data

9 After P1 was sent by Mr Joshi on 29 April 2021, it appears to have remained dormant for some two years until it was used in the drafting of Mr Patel's Affidavit of Evidence-In-Chief affirmed on 29 August 2023 ("Mr Patel's AEIC"). At [151]–[162], Mr Patel described a basic navigation exercise that was carried out via a forensic tool. At [157], he said that he recalled seeing various file paths and/or messages as part of the navigation exercise. Mr Patel went on to set out these file paths, together with descriptions and extracts of Whatsapp messages. Mr Patel referred to P1 in the drafting of those paragraphs.

10 On 25 September 2023, the first defendant applied for those paragraphs of Mr Patel's AEIC to be struck out.

11 The application was initially resisted by the plaintiffs. Mr Patel filed a reply affidavit on 28 September 2023 (Mr Patel's "Reply Affidavit") where he asserted that the discharge order was not contravened. He maintained that those paragraphs of his AEIC were deposed to based on his recollection. He asserted that:[6]

> (a) the discharge order did not mean that he would have to destroy and/or refrain from making any notes regarding the search order (assuming any were made);

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6 Mr Patel's Reply Affidavit at [38]–[40].

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(b) he should not be prevented from making reference to or making records / aide memoires of his experiences and memory during the period the search order was in force; and

(c) assuming any "records" were made, they would not be records of "data" within the discharge order, and the search order would not prevent him from making his own records and notes after the irretrievable destruction of the data (assuming any were made).

12 These assertions did not match what had in fact happened, which is that Mr Patel had used P1 in the drafting of his AEIC: P1 was not a note that Mr Patel had made regarding the search order, it was not a record or aide memoire he had made of his experiences and memory, it was not a record or note made by him after the irretrievable destruction of data. Instead, P1 was a document prepared from the "basic navigation exercise" described by Mr Patel when the search order was still in force; Mr Patel received P1 from Mr Joshi on 28 April 2021; and when Mr Patel located P1 in or around August 2023, he used it in the drafting of his AEIC.

13 Mr Patel now says he regarded P1 (from Mr Joshi) as an aide memoire, but it was not an aide memoire of *Mr Patel's* experiences and memory (which is what Mr Patel referred to in his Reply Affidavit). The impression Mr Patel sought to give in his Reply Affidavit, was that he may have referred to some records, notes, or aide memoires, *made by him*; but that is not what happened.

14 Mr Patel's Reply Affidavit did, however, have one bright spot: it prompted the plaintiffs' lawyers to ask on 2 October 2023 about his comments about aide memoires, in response to which he told them that he had referred to

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P1 when he drafted paragraphs 151 to 162 of his AEIC. He provided P1 to them, and they disclosed it to court at the start of trial the next day, 3 October 2023.

15 The striking out of those paragraphs from Mr Patel's AEIC was then not resisted, and those paragraphs were struck out.

16 When Mr Patel took the stand, however, he maintained that he had drafted those paragraphs from memory. He was unable to replicate this feat, though, when he was asked to state a particular file path. He then admitted that reference could have been made to P1 in the drafting of his affidavit.[7]

17 In his affidavit in response to the contempt application, Mr Patel finally admitted that he had shared P1 with the plaintiffs' in-house lawyer, which whom he drafted those paragraphs of his AEIC.[8]

Liability for contempt

18 After a hearing of the first defendant's application for contempt on 12 March 2024, I found all four contempt respondents (the plaintiffs DLT and Dowser, Mr Patel, and Mr Neji) to be in contempt of court.

19 P1 contained data obtained by the search order, which the discharge order required the plaintiffs to irretrievably delete. Instead, the plaintiffs retained the data contained in P1. Mr Patel then used P1 to draft his AEIC, which was filed in court.

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7 Official Transcript of 18 October 2023 at p 40 ln 12 – p 44 ln 17; p 46 ln 25 – p 47 ln 5.

8 Affidavit of Atulkumar Nanjibhai Patel dated 16 February 2024 ("**Mr Patel's 16 February Affidavit**") at [23].

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Sentence for contempt

The parties' positions

20 The first defendant asks that:

(a) the plaintiffs each be fined $60,000;

(b) Mr Patel be sentenced to imprisonment for 14 days and fined $60,000; and

(c) Mr Neji be sentenced to imprisonment for 7 days and fined $50,000.

21 The contempt respondents ask that:

(a) a fine be shared between the plaintiffs, bearing in mind that the second plaintiff Dowser is a subsidiary of the first plaintiff DLT;

(b) Mr Patel be fined an amount less than $20,000; and

(c) Mr Neji be given a far lesser fine; one that is symbolic in nature.

Mr Patel

22 I start with Mr Patel. He says he had not opened the P1 spreadsheet, or saved it, when it was sent to him in April 2021; P1 may have been subsequently archived or deleted automatically, as he did not find it in his inbox in the lead up to trial.[9]

[9] Mr Patel's 16 February Affidavit at [19].

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23 I give Mr Patel the benefit of the doubt in relation to the period from April 2021 until he located the document in Mr Joshi's mailbox when he was reviewing his draft AEIC. However, Mr Patel should not then have used P1 to draft his AEIC; he should not have in his Reply Affidavit suggested all sorts of other possibilities when he knew that he had used P1; and he should not have lied on the stand about drafting paragraphs 151 to 162 of his AEIC from recollection.

24 Having regard to the principles of sentencing for contempt (set out in cases such as *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 at [98]–[116]; *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 4 SLR 828 at [69]–[87] and *Sembcorp Marine Ltd v Aurol Anthony Sebastian* [2013] 1 SLR 245 at [47]–[88]) and instances where imprisonment either was or was not imposed, I consider that an imprisonment sentence for Mr Patel is not warranted.

25 First, Mr Patel's contempt has not caused any irreversible prejudice. The paragraphs of Mr Patel's AEIC that were based on P1 have been struck out, and I accept that the plaintiffs have since deleted P1.

26 Second, Mr Patel's contempt involves one document – the spreadsheet in P1 – and its use over a short span of time from around August 2023 when Mr Patel's AEIC was drafted, until P1 was raised with the court on 3 October 2023 and was dealt with then. There is no evidence that the discharge order was breached other than in relation to P1.

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27 Third, although Mr Patel's behaviour in seeking to deflect attention from his use of P1, and then falsely denying such use, is aggravating, it still does not justify a custodial sentence. In *Wang Xiaopu v Goh Seng Heng and another* [2021] SGHC 282, the contemnor ("Dr Goh") was ordered to "account for [a sum of proceeds] and a consequential tracing order for those proceeds" (at [3]). Both on the stand and in his affidavits, Dr Goh asserted that he was unable to recall what had happened to the funds (at [8], [12]), however this was plainly untrue; it was discovered that Dr Goh had lost the funds due to bad investments (at [9]). The learned judge imposed on Dr Goh a seven-day custodial sentence to "impress upon him that his blatant lying in the face of a court order poses a serious obstruction in the administration of justice" (at [45]). I consider Mr Patel's conduct less egregious than Dr Goh's. Dr Goh had lied "in answer to a direct order of court to disclose information" (at [28]) – the lying was part of the disobedience to the court order that constituted contempt. Here, Mr Patel's conduct was an attempt to cover up contempt that had already been committed.

28 Moreover, Mr Patel's conduct is less egregious than that of Mr Weber in the case of *Baker, Michael A v BCS Business Consulting Services* [2024] 3 SLR 302. Motivated by financial gain, Mr Weber demonstrated flagrant disregard for an anti-suit injunction, but the court imposed the maximum fine of $100,000 instead of a custodial sentence, having regard to Mr Weber's lack of success in obtaining a decision in his favour.

29 I thus consider that a fine is appropriate punishment for Mr Patel. Given his active role in the matter, and his aggravating conduct (at [27] above]), a fine higher than the $20,000 imposed in *Neo Chin Heng v Good Year Contractor Pte Ltd* [2024] SGHC 52 (*"Neo Chin Heng"*) is appropriate. In *Neo Chin Heng*, the court imposed a fine of $20,000 on a company ("Good Year") for its failure

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to provide access to certain company documents, as it had been ordered to. The same quantum of fine was imposed on Good Year's director, Mr Peh, who knew or ought reasonably to have known that Good Year was in breach of the court order, yet did not take all reasonable steps to enable Good Year to comply with the court order.

30 I impose on Mr Patel a fine of $50,000.

Mr Neji

31 In the case of Mr Neji, I consider that (within s 6(2)(b)(iii) of the Administration of Justice (Protection) Act 2016 (2020 Rev Ed)) he knew or ought reasonably to have known that the contempt of court by the plaintiffs would be or was being committed and failed to take all reasonable steps to prevent or stop the commission of that contempt of court.

32 Although Mr Joshi was the one tasked with the conduct of the suit at the time, when Mr Joshi reported to Mr Neji by way of P1 the search order had already been discharged. Yet, Mr Joshi purported to share with Mr Neji "what FTI Consulting found"[10], pursuant to some discussion involving Mr Neji, Mr Gala, and Mr Patel. I do not accept that Mr Neji never opened the attached spreadsheet. Without opening the spreadsheet, Mr Neji would not know what Mr Joshi wished to tell him about "what FTI Consulting found". But even if Mr Neji had not opened the attached spreadsheet, the covering email itself was a red flag: after the search order had been discharged, why was Mr Joshi still sharing with Mr Neji "what FTI Consulting found"? The search order had been discharged for material non-disclosure, the plaintiffs had been ordered to

[10] Mr Suji's Affidavit at p 46.

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irretrievably delete data obtained by the search, and the plaintiffs had told the court that they had done so. What could Mr Joshi still be telling Mr Neji about "what FTI Consulting found", without reference to data from the search? In that context, Mr Neji ought reasonably to have known that Mr Joshi still had some data from the search, placing the plaintiffs in breach of the discharge order.

33 However, the plaintiffs' representative tasked with the conduct of the suit was not Mr Neji, but Mr Joshi, and later Mr Patel. Moreover, Mr Neji's liability is for *failing to act* to prevent contempt, rather than for *acting* in contempt (like Mr Patel). Mr Neji's culpability is thus lower, and I impose on him a fine of $15,000.

The plaintiffs

34 I do not accept that the plaintiffs should share in one fine, as suggested by counsel for the contempt respondents. Nor do I consider the breach "technical" or minor as in *Summit Holdings and another v Business Software Alliance* [1999] 2 SLR (R) 592 ("*Summit*"). In *Summit*, "there was nothing to show that BSA had acted otherwise than in good faith and on legal advice which turned out to be wrong" (*Summit* at [53]). Here, the plaintiffs did not avail themselves of legal advice, either at the time Mr Joshi sent P1 to his colleagues in April 2021, or when Mr Patel used it in drafting his AEIC in August 2023. Once P1 did come to the knowledge of the plaintiffs' lawyers on 2 October 2023, they responsibly and promptly raised it with the court the very next day, 3 October 2023. I commend the plaintiffs' lawyers, in particular lead counsel Mr Alvin Lim, for stopping the situation from getting worse.

35 I consider that a fine of $20,000 each to DLT and Dowser to be appropriate, and impose that.

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Conclusion

36 For the above reasons, I impose fines on the four contempt respondents as aforesaid. These fines are to be paid within 14 days. The parties have liberty to apply.

37 I also order the contempt respondents to pay the first defendant costs, to be fixed by me if not agreed. Unless the parties can agree on the quantum of those costs by 10 July 2024, they shall file and serve their respective costs submissions, limited to 8 pages (excluding any schedule of disbursements) by 24 July 2024.

Andre Maniam
Judge of the High Court

Lim Jun Hao Alvin (Chevalier Law LLC) for the plaintiffs;
Oommen Mathew, Lim Si Cheng, See Wern Hao (Omni Law LLC)
for the first defendant.

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