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

[2024] SGHC 254

Originating Claim No 719 of 2023
(Summons No 873 of 2024)

Between

Exterian Capital Pte Ltd

… *Claimant*

And

(1) Adrian Wong Jun Jie
(2) Josephine Louise Richardson Limited

… *Defendants*

GROUNDS OF DECISION

[Contempt of Court] — [Civil contempt]

Exterian Capital Pte Ltd
v
Wong Jun Jie Adrian and another

[2024] SGHC 254

General Division of the High Court — Originating Claim No 719 of 2023
(Summons No 873 of 2024)
Choo Han Teck J
24 June, 14 August, 2, 3 October 2024

9 October 2024

Choo Han Teck J:

1 This was the claimant's application for committal against the first defendant for contempt of this court's orders for his breaches of disclosure obligations pursuant to a domestic Mareva injunction ("the Mareva Injunction") and a proprietary injunction ("the Proprietary Injunction"). Both injunctions ("the Injunction Orders") were granted under HC/ORC 4975/2023 ("ORC 4975").

2 The claimant is a company incorporated in Singapore and is part of a larger group of companies under FM Global Logistics Holdings Bhd ("FM"). The first defendant purportedly represented himself to the claimant as a lawyer admitted to the Singapore Bar. The claimant claimed that the first defendant had also held himself out as the managing partner of a law firm in Thailand called SBC International Law Associates Co Ltd ("SBC"). He was also alleged to be

the Chief Executive Officer of Sheng World Limited ("Sheng World") which has the same business address as a Singapore company called Sheng World of Services Pte Ltd ("SWPL"). The first defendant had been the legal adviser, financial advisor and consultant to FM's subsidiary in Thailand (FM Global Logistics Co Ltd) since 2008. The claimant alleged that the first defendant had since been advising FM as well. The first defendant denied all the above in his Defence, save that he was the managing partner of SBC (and thus a lawyer qualified in Thailand) and that he was a consultant and advisor to FM since 2010 and then subsequently to various of FM's subsidiaries. It is not known if he was, in fact, an advocate and solicitor of the Singapore Bar.

3 The second defendant is a company incorporated in the Seychelles in 2017, and sold to the claimant in 2020. The claimant holds two shares, one by itself and one by a nominee (Ms Charwarrojdechakul).

4 FM had a 25% shareholding in a shipyard in Thailand called Yusob International Kantang Port Co Ltd ("the Shipyard") but increased its shareholding to 30.8% in 2018. The Shipyard ran into financial difficulties in 2020 and defaulted on the loan taken out with the Krungthai bank.

5 The claimant alleged that the first defendant advised the Shipyard to apply for a "rehabilitation plan" that would be approved by the Thai courts ("the Rehabilitation Plan"). Under this plan, an investor, "Unicorn Asset Management Co Ltd ("Unicorn") would be incorporated in which 49% of its shareholding would be held by a Seychelles company and the claimant would hold the remaining 51%. The claimant alleged that the first defendant procured various sums of payments, initially for the cause of incorporating the Seychelles company, which appeared to be the second defendant. Thereafter, four

payments totalling US$1,316,400 ("the Four Payments") were made to the second defendant on the first defendant's representation that the money was required for the Rehabilitation Plan.

6 It transpired that the money was not used for the Rehabilitation Plan and when the claimant asked the first defendant for an explanation, the first defendant was vague and elusive in his reply. The claimant subsequently discovered that the second defendant's shareholding in Unicorn had been diluted from 49% to 26.47% and then to 23.73%. This was done without the claimant's knowledge. All the money paid by the claimant was disbursed elsewhere and the claimant commenced HC/OC 719/2023 against the first defendant for fraud and negligence, and against the second defendant for unjust enrichment.

7 On 21 September 2023 the claimant wrote to the first defendant asking for the identity of the signatories to the second defendant's bank accounts, and where the money had gone, and shortly obtained the Mareva Injunction and the Proprietary Injunction in October 2023 against the first defendant. Under the Mareva Injunction, the disclosure obligations were as follows:

> 2. The defendants must inform the claimant in writing at once of all their assets in Singapore whether in their own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. The information must be confirmed in an affidavit which must be served on the claimant's solicitor within 7 days after the defendants have received notice of this Order.

Under the Proprietary Injunction, the disclosure obligations were:

> 2. Each of the 1st and 2nd Defendants shall disclose to the Claimant in writing within 7 days (or such other period of time that this Honourable Court may direct) after notice of the Order, full details of:

> a. The location at which, means by which and party by whom the Four Payments (whether in full or in part) are held, including full details of all bank accounts in which the Four Payments (whether in full or in part) are held;
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> b. All movable and immovable assets which were purchased using or which represent the Four Payments (whether in full or in part), including giving the value, location and details of all such assets, the identities of any and all legal and/or beneficial owner(s) of such assets, and any encumbrances on such assets; and
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> c. Furnish copies of all relevant documents, including bank statements and/or account ledgers, in respect of the above.

8 The first defendant did not respond even though he was notified of the Injunction Orders by email as early as 24 October 2023. The claimant obtained an order for substituted service on 29 January 2024 against the first defendant. He did not respond. The claimant then applied for committal proceedings. On 18 and 20 March 2024, the first defendant filed affidavits without fully answering the questions posed in the Injunction Orders.

9 The applicable law on civil contempt is as follows. Section 4(1)(*a*) of the Administration of Justice (Protection) Act 2016 (2020 Rev Ed) ("AJPA") provides that any person who intentionally disobeys or breaches any judgment, decree, direction, order, writ or any process of a court, commits a contempt of court. The threshold to make out the element of intention is low — the complainant need only show that the relevant conduct of the alleged contemnor was intentional and that he knew of all the facts which made such conduct a breach of the order. The complainant need not show that the alleged contemnor appreciated that he was breaching the order, and the reasons for disobedience are irrelevant to establishing liability: *PT Sandipala Arthaputra v ST Microelectronics Asia Pacific Pte Ltd and others* [2018] 4 SLR 828 at [47], [48] and [65]. Further, s 12(1)(*a*) of the AJPA provides that a person who commits

contempt of court shall be punished with a fine not exceeding $100,000 or with imprisonment for a term not exceeding 3 years or with both, if the power to punish for contempt is exercised by the General Division of the High Court.

10 The claimant's first point was that the first Defendant breached both the Mareva Injunction and the Proprietary Injunction by failing to disclose the required information within seven days of receiving notice of ORC 4975. The first defendant admitted that he did not disclose the information within the seven days. Nonetheless, he sought to defend himself by referring to the historical nature of this matter and the voluminous documents involved.

11 The first defendant's excuses did not absolve him of his contempt. The purpose of the seven-day duration was to grant the claimant the necessary information to decide, soon after the injunctions were granted, whether to apply for further steps to prevent the first defendant from acting contrary to the injunctions: see *Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2018] SGHC 267 at [134]. It was also to ensure that the first defendant had no time to dissipate his assets. The first defendant only began disclosing information on 18 March 2024. This was about five months after his solicitors emailed him the ORC 4975 on 24 October 2023. It was also one and a half months after he had received substituted service of ORC 4975. If he could not meet the deadline of seven days, he should have followed the proper process of applying to court to extend the deadline. The court could have then determined a reasonable time period for the first defendant to comply. Instead, the first defendant saw fit to blatantly disregard ORC 4975. In doing so, he prevented the claimant from knowing whether further steps were required. In the meantime, the first defendant would be free to dissipate his assets if he wished. In other words, the

first defendant stultified the purpose of the seven-day deadline imposed by the court. This amounted, quite clearly, to contempt.

12 The first defendant said that he did not disclose the information within the seven days because he intended to set aside the two injunctions. I rejected this explanation. An order of court must be obeyed until it is revoked or rescinded — it is no defence to contempt proceedings to allege that the order should not have been made: Mark S W Hoyle, *Freezing and Search Orders* (Informa, 4th Ed, 2006) at paragraph 9.17, cited in *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 at [82].

13 The first defendant nevertheless claimed that he had purged his contempt by way of his disclosures in his affidavits. I disagreed, as even if he had fully disclosed the required information, his extremely belated disclosures did not remove the prejudice suffered by the claimant. Nor did it cure his own flagrant disregard of the court's orders and processes.

14 The claimant's second point was that in any event, the first defendant's disclosures did not purge his contempt because they did not meet the standard required by the disclosure obligations pursuant to both injunctions under ORC 4975. I agreed with the claimant. The first defendant remained obliged to disclose at this standard despite the deadline of seven days having been long expired. His refusal to do so up until the hearing before me put him in continuing breach of ORC 4975, and was itself another instance of contempt.

15 As regards the Mareva Injunction, the first defendant averred that the only asset owned by him in Singapore was his DBS Account No. XXX-XXX-X41-5 ("the DBS Account"), and that its balance was S$110.72 on 18 March 2024. Against this, the claimant pointed out that the first defendant ought to

have disclosed his assets in Singapore as at the period in which he was mandated to disclose (namely, within seven days of when he received notice of ORC 4975) instead. The first defendant then averred that his only asset in Singapore on 20 October 2023 was the DBS Account with a balance of S$668.84.

16 In both cases, the first defendant provided only bare assertions with no bank statements in support. His counsel argued that the Mareva Injunction did not require him to disclose his bank statements. This argument was contrived. Once again, the purpose of the disclosure obligations under a Mareva injunction is to allow a claimant to see if he has to take further steps to prevent a defendant from disobeying that injunction. The disclosure obligations under the Mareva Injunction thus obviously required the first defendant to back up his assertions with bank statements and other supporting documents as part of the details of his assets. His refusal to disclose was a flagrant breach of the Mareva Injunction. The first defendant's refusal to disclose his bank statements (despite the claimant asking him to do so) not only failed to purge his contempt, but also demonstrated his continuing unwillingness to cooperate with the claimant and to obey the court's orders.

17 As for the Proprietary Injunction. the first defendant made two sets of disclosures relating to the Four Payments — one on 20 March 2024 and the other on 8 July 2024. These two sets of disclosures contained materially different information and explanations in relation to important areas, such as how the Four Payments were purportedly utilised. The first defendant claimed that he tendered the set of disclosures in his affidavit dated 8 July 2024 as a "fresh account" after seeing the second defendant's bank statements. I agreed with the claimant that the first defendant's explanation was misleading. As

someone in control of the movements of the Four Payments, the first defendant wielded the ability to account for the transactions in relation to the Four Payments even without the second defendant's bank statements. The first defendant's disclosures on 20 March 2024 were neither full nor frank, and they thus failed to purge his contempt.

18 As for the disclosures in the first defendant's affidavit dated 8 July 2024, he listed the bank accounts to which moneys from the second defendant's accounts were transferred, as well as explanations for these transfers. However, the claimant pointed out that the first defendant failed to provide supporting documents of various transactions relating to the Four Payments. The first defendant's counsel responded that the obligation to "furnish copies of all relevant documents, including bank statements and/or account ledgers in respect of the above" under paragraph 2(c) of the Proprietary Injunction applied only to paragraph 2(b) and not paragraph 2(a) of the same. Counsel seemed to suggest that "in respect of the above" should be interpreted as "in respect of the paragraph directly above", such that the first defendant was not obliged to provide supporting documents for the transactions relating to the Four Payments. He further submitted that any ambiguity should be resolved in favour of the first defendant. With respect, this argument was wholly without merit. If the court had intended the obligation under paragraph 2(c) to apply only to paragraph 2(b), it would have stated so. Moreover, the first defendant's interpretation was a poor attempt to ignore the spirit of the Proprietary Injunction. I therefore rejected the first defendant's unilateral interpretation of ORC 4975 favouring himself: see *Lee Shieh-Peen Clement and another v Ho Chin Nguang and others* [2010] 4 SLR 801 at [49]. Under the proper interpretation of ORC 4975, the first defendant failed to obey his disclosure obligations under the Proprietary Injunction, and thus remained in contempt.

19 Turning to the sentence to be imposed on the first defendant, the claimant's counsel asked for a fine of $60,000 to $70,000. He submitted that the grounds for a custodial sentence were not engaged because this was the first defendant's first time in contempt. The first defendant's counsel asked for a fine of $5,000 based on his submission that the contempt had been purged and that the breach was a "one-off breach" instead of a continuing one. I imposed a fine of $30,000, and a suspended imprisonment term of four weeks.

20 Custodial sentences are generally given where there was a continuing course of conduct and all other efforts to resolve the situation had been unsuccessful: *Tan Beow Hiong v Tan Boon Aik* [2010] 4 SLR 870 at [63]. The court also looks at whether there remains the need to coerce the contemnor to do a certain act: see *Mok Kah Hong v Zheng Zhuan Yao* at [103]. As I explained above, the first defendant's contempt was a continuing one. He did not disclose certain bank accounts, information and supporting documents as required under a proper interpretation of ORC 4975. His excuses for his non-disclosure were patently contrived and unmeritorious.

21 I was of the view that the first defendant deliberately delayed in complying with the disclosure requirements under the Injunction Orders — dragging out the proceedings by ignoring the claimant's reminders and not attending court. When he finally filed his affidavits, crucial information such as the bank statements of his bank account and proof relating to the Four Payments (including supporting documents and bank account statements) remained unanswered. The effluxion of time may have given the persons concerned time enough to dissipate the money. Furthermore, the respondent stated in his Defence that he was a practising lawyer in Thailand. He should have known better than to engage in delaying tactics and peddle untenable excuses for his

non-disclosure. This, too, pointed towards a custodial sentence: *Sembcorp Marine Ltd v Aurol Anthony Sabastian* [2013] 1 SLR 245 at [60]–[61].

22 For the purposes of sentencing, given the conduct of the first defendant, I was of the view that a fine of $5,000 was utterly inadequate. I imposed a fine of $30,000 to be paid within two weeks, with one weeks' imprisonment in default. I also imposed a four weeks' imprisonment term, suspended for four weeks. If the first defendant discloses the remaining information as required under the proper interpretation of the disclosure obligations under the Injunction Orders (and as listed at paragraphs 16 and 25 of Chan Ying Wei's affidavit dated 16 July 2024) within these four weeks, he will not need to serve the imprisonment term.

23 I will decide on costs after submissions from counsel.

- Sgd -
Choo Han Teck
Judge of the High Court

Gregory Vijayendran SC and Meher Malhotra (Rajah & Tann Singapore LLP) for the claimant
Alfred Lim Than Lin, Jaime Lye May-Yee, Sean Choong Guo Yao and Isabel Tia Hui Li (Meritus Law LLC) for the defendants.