IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1998] SGCA 60

CA 266/1997

Between

Hong Lam Marine Pte Ltd
Another

… *Appellant*

And

Koh Chye Heng

… *Respondent*

GROUNDS OF DECISION

Tort — Defamation — Absolute privilege; Civil Procedure — Striking out

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Hong Lam Marine Pte Ltd and Another v Koh Chye Heng

[1998] SGCA 60

CA 266/1997
Karthigesu JA; L P Thean JA; Yong Pung How CJ
23 September 1998

Judgment:

LP THEAN JA

(delivering the grounds of decision of the court): ***Background facts***

1.The first appellant (Hong Lam) is a company incorporated in Singapore. The second appellant (Lim) is a director of Hong Lam and holds all but one of the shares in Hong Lam. He is also a director of a company, Wyno Marine Pte Ltd (Wyno), and holds 60% of the shares in that company. The respondent was at all material times the managing director of Wyno. On 1 November 1991, the respondent convened a meeting of Wyno`s creditors (the creditors` meeting), at which he informed the creditors that Wyno was insolvent. He promised them that he would do his best to help the creditors to recover their debts from Lim expeditiously, as several of them had helped him in the past and he found it unfair to them if they did not get paid. He further told the creditors that Hong Lam`s directors had received `kick-backs` from Wyno and that the payments were unlikely to be reflected in Wyno`s accounts. What he said was recorded in

the minutes of the meeting, which were confirmed and signed by the creditors as well as by the respondent himself

2.The creditors subsequently by a letter dated 12 November 1991 promised the respondent that in consideration of his co-operation with them in recovering their claims against Wyno, they would not commence any civil proceedings against him. They also undertook to draw the attention of the relevant prosecuting authorities to the assistance he had rendered them, should criminal proceedings be brought against him.

3.On 22 November 1991, Wyno`s largest single creditor, Chong Lee Leong Seng Co Ltd (CLLS), petitioned for the winding up of Wyno in Companies Winding Up No 244 of 1991 (CWU No 244). CLLS also applied at the same time for appointment of provisional liquidators. In support of the application, one Lai Chong Meng (Lai), a director of CLLS, filed an affidavit alleging, inter alia, `highly irregular dealings` on the part of Lim and he produced a copy of the minutes of the creditors` meeting. The application was allowed and provisional liquidators were appointed on the same day pending the making of a winding up order. On 24 January 1992, the winding up order against Wyno was made and liquidators were appointed.

4.Subsequently, Wyno (in liquidation) commenced an action against Hong Lam and Lim in Suit No 2274 of 1993 (Suit No 2274) claiming damages for all losses incurred by Wyno. The respondent was brought in as a first third party in that suit, and on discovery the document containing the minutes of the creditors` meeting was disclosed in the list of documents available for inspection.

5.On 28 August 1996, Hong Lam and Lim (jointly referred to as `the appellants`) commenced this defamation action against the respondent. In their

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statement of claim, they averred that the respondent wrote and published or caused to be written and published the minutes of the creditors` meeting on 1 November 1991, and that the following words therein were defamatory of them:

> 7 The following were mentioned verbally by Mr Koh in the present [sic] of the creditors.
>
> 7.1 WM 102 & WM 103
>
> Akasaka Engine - approximately $70,000 as kick-back per engine was paid to Hong Lam`s directors.
>
> 7.2 WM 102
>
> Contract between Hong Lam and Wyno was signed five months later after WM 102 was being built.
>
> (It is within Mr Koh`s acknowledge [sic] that Hong Lam in turn contracted with Asian Eternal Shipping to build the vessel for $13.1m.)
>
> 8 Mr Koh said that he did ask for a set of Wyno`s accounts but he did not get it. There was also a payment of approximately $700,000 paid back to Hong Lam. Mr Koh further expressed that he did not think the kick-back and other payments to Hong Lam from Wyno would be reflected in the accounts anyway.

They sought damages, as well as an injunction restraining the respondent from further publishing or causing to be published the words complained of. The claim was resisted, and in the defence filed the respondent raised the defences of justification, absolute privilege and qualified privilege.

6.On 9 September 1997, the respondent by way of summons for further directions applied for an order that the statement of claim be struck out under O 18 r 19(1) of the Rules of Court and/or under the inherent jurisdiction of the court on the ground, inter alia, that the action was an abuse of the process of the court. The assistant registrar dismissed the respondent`s application. The respondent appealed to a judge in chambers. The appeal was allowed and the statement of claim was struck out and the action dismissed.

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7. **The appeal**

Against the decision of the learned judge in chambers this appeal was brought. We allowed the appeal and restored the order of the assistant registrar. We now give our reasons.

8.There were two issues in this appeal. The first was whether the publication of the words complained of was made on an occasion of absolute privilege. This was one of the defences to the claim for defamation raised by the respondent, which if made good, was a complete defence to the claim. The second issue was entirely different and had nothing to do with any of the defences to the claim. It arose in this way. The appellants obtained the minutes of the creditors` meeting from a copy thereof exhibited in the affidavit of Lai that was filed in support of the application for the appointment of provisional liquidators in CWU No 244. The question was whether it was an abuse of the court process for the appellants to make use of this document which came to their knowledge as a result of that disclosure in those proceedings.

9.On the first issue, counsel for the appellants submitted that no question of absolute privilege arose in respect of the respondent`s statements contained in the minutes of the creditors` meeting. He pointed out that the defamatory statements complained of were not made by the respondent in the course of judicial or quasi-judicial proceedings. The creditors` meeting of 1 November 1991 was a meeting held by the creditors to decide what action should be taken against Wyno and the appellants. It was not even a meeting held in connection with any judicial or quasi-judicial proceedings.

10.Counsel for the respondent, on the other hand, contended that the scope of absolute privilege should be extended to cover the statements contained in the

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minutes of the creditors` meeting. Counsel conceded that if the appellants had based their action on the words spoken by the respondent at the creditors` meeting and had pleaded slander, no defence of absolute privilege could arise. It was emphasised, however, that the appellants had based their action on the statements of the respondent as reduced into a written form, ie the minutes of the meeting, which was referred to in the affidavit of Lai filed in support of the application for the appointment of provisional liquidators. Thus, in the light of the rationale underlying the defence of absolute privilege in respect of statements made in judicial proceedings, namely, that witnesses should give evidence, whether orally or by way of affidavit, without fear of consequences to themselves or to others, it was submitted that this defence should be extended to the makers of statements relied upon by witnesses in their affidavits, as in this case by Lai in his affidavit.

11.We were unable to accept the arguments of the respondents. The appellants based their claim on the alleged defamatory statements made by the respondent as recorded in the minutes at the meeting of creditors of Wyno. In their statement of claim, the appellants averred that on or about 1 November 1991 the respondent attended the creditors` meeting and there he `wrote and published or caused to be written and published` the words complained of. Those words were attributed to the respondent and they were reduced into the form of minutes of the meeting and he was one of the signatories of the minutes. Thus the appellants are relying on the publication of the defamatory words in those circumstances. The learned judge in his grounds of judgment said at [para] 22:

> *Applying these principles, the first point to be made is that the defendant was obviously not speaking in the course of proceedings before a court or tribunal when he made those statements at the creditors` meeting convened by himself. Since the liquidators, provisional or otherwise, were not yet on the*

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> *scene, it could not be said also that the creditors` meeting was a matter incidental to judicial proceedings. The defendant therefore could not claim absolute privilege in making the statements at the creditors` meeting.*

In our opinion, the learned judge was right in his conclusion that there could not be any claim of absolute privilege in respect of the statements made by the respondent at the creditors` meeting.

12.However, the learned judge went on further and referred to Lai`s affidavit filed in CWU No 244, which referred to the minutes of the creditors` meeting, and he held that the absolute privilege extended to the respondent as the maker of the statements in the minutes relied upon by Lai in his affidavit. With respect, the appellants were not basing their claim on the publication of the words complained of on that occasion. Their claim was founded on an earlier publication, ie on 1 November 1991 or thereabouts. In our judgment, no question of absolute privilege arose in respect of the publication relied upon by the appellants.

13.We now turn to the second issue. It was not in dispute that the appellants came to know of the minutes from the copy thereof exhibited by Lai in his affidavit that was filed in the winding up proceedings. Arising from this disclosure the appellants initiated this action, and the question was whether it was an abuse of court process for the appellants to found an action of defamation on the alleged defamatory statements which they discovered in those proceedings. The learned judge held that it was. He applied the case of **Riddick v Thames Board Mills Ltd** [1977] QB 881 (which we shall discuss in a moment) with regard to the minutes disclosed in the affidavit of Lai, on the ground that Lim was very much involved in the winding up proceedings as he was a director of Wyno. Accordingly, he found that the document did not come to the appellants through a `wholly independent source`. Further, he rejected the

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appellants` argument that the disclosure of the minutes in question was through the affidavit of Lai filed voluntarily and not as a result of a disclosure in the process of discovery. He said at [para] 31-33:

> 31 The second plaintiff was also a director and majority shareholder of Wyno. Lai`s affidavit was filed in winding up proceedings commenced by a creditor of Wyno against the company. The second plaintiff was therefore very much involved in the proceedings which gave rise to the occasion for Lai`s affidavit. The second plaintiff was also a director and majority shareholder of the first plaintiff. In these circumstances, the first plaintiff cannot be said to be a total stranger to the winding up proceedings and Lai a wholly independent source. Similarly, the defendant here was the managing director of Wyno and was equally involved in the winding up proceedings.
>
> 32
>
> 33 The plaintiffs also raise the argument that disclosure by way of an affidavit is not disclosure by the process of discovery. I see no sensible distinction between documents disclosed generally as part of the process of discovery and those disclosed specifically by incorporation in affidavits. It is true, as the plaintiffs contend, that documents exhibited in affidavits are there due to a conscious choice to use them. However, the Riddick principle is premised not on whether a document is relied upon but on what comes to light as a result of the litigation between the parties. It need not be confined to discovery pursuant to O 24. What is so relevant as to find its way into an affidavit must surely be found in the list of documents exchanged in discovery anyway.

He came to this conclusion after considering the following cases: **Riddick v Thames Board Mills Ltd** [1977] QB 881; **Sony Corporation & Anor v Time Electronics** [1981] 3 All ER 376; **Sybron Corporation & Anor v Barclays Bank plc** [1985] Ch 299; and the Singapore case of **Sim Leng Chua v JE Manghardt** [1987] SLR 205 [1987] 2 MLJ 153 . It is necessary to consider whether these cases are applicable to the affidavit of Lai filed in the companies winding up proceedings.

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14.In ***Riddick*** , the plaintiff was dismissed from his employment in the defendant company. Two of the officers of the defendants treated the plaintiff very offensively in the dismissal. After informing the plaintiff that he was summarily dismissed, the two officers escorted him to a company`s car and there accompanied by a security officer he was driven to his own car. The plaintiff and his solicitor complained to the company about the dismissal and the manner in which it was effected. The chief personnel manager at the company`s head office then asked a colleague to ascertain the facts concerning the dismissal. That colleague made enquiries and gave a report in the memorandum to the chief personnel manager who read it and then filed it. The plaintiff sued the company for wrongful arrest and false imprisonment. In the course of discovery in that action, the memorandum was disclosed. The action was eventually settled. Subsequently, the plaintiff commenced another action against the company for defamation based on the contents of the memorandum and obtained judgment in his favour at first instance. The company successfully appealed to the Court of Appeal. The court held that a party who had disclosed a document on discovery was entitled to the protection of the court against any use of it otherwise than in the action in which it was disclosed and that the plaintiff therefore could not use the memorandum disclosed in the first action as the basis for the subsequent defamation action. Lord Denning MR said at pp 895-896:

> *Discovery of documents is a most valuable aid in the doing of justice. The court orders the parties to a suit - both of them - to disclose on oath all documents in their possession or power relating to the matters in issue in the action*
>
> *The reason for compelling discovery of documents in this way lies in the public interest in discovering the truth so that justice may be done between the parties. That public interest is to be put into the scales against the public interest in preserving privacy and protecting confidential information. The balance comes down in the ordinary way in favour of the public interest of discovering the truth, ie in making full disclosure*

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> *I proceed to hold the balance in the present case. On the one hand discovery has been had in the first action. It enabled that action to be disposed of. The public interest there has served its purpose. Should it go further so as to enable the memorandum of 16 April 1969, to be used for this libel action? I think not. The memorandum was obtained by compulsion. Compulsion is an invasion of a private right to keep one`s documents to oneself. The public interest in privacy and confidence demands that this compulsion should not be pressed further than the course of justice requires. The courts should, therefore, not allow the other party - or anyone else - to use the documents for any ulterior or alien purpose. Otherwise the courts themselves would be doing injustice. Very often a party may disclose documents, such as inter-departmental memoranda, containing criticisms of other people or suggestions of negligence or misconduct. If these were permitted to found actions of libel, you would find that an order for discovery would be counter-productive. The inter-departmental memoranda would be lost or destroyed or said never to have existed. In order to encourage openness and fairness, the public interest requires that documents disclosed on discovery are not to be made use of except for the purposes of the action in which they are disclosed. They are not to be made a ground for comments in the newspapers, nor for bringing a libel action, or for any other alien purpose*

15.In ***Sony Corporation v Time Electronics*** (supra), the plaintiffs obtained an ex parte order against the defendants for delivery up of counterfeit goods. While executing the order, the plaintiffs` solicitor discovered goods of another type on the defendants` premises which were also similar to those manufactured by the plaintiffs. He instructed one of his employees to make a test purchase of those goods, and the purchase was made. Having examined those goods, the plaintiffs then initiated another action seeking ex parte an order to restrain the defendants from trading in the second type of goods. Goulding J allowed the application and held that the new action was not founded on something disclosed as a result of the earlier order but on the evidence obtained on the test purchase, which was an independent source. He said at pp 377-378:

> *It is well established that a party who makes disclosure on discovery is entitled to the protection of the court against the facts or documents disclosed being used, otherwise than in the action in which disclosure took place, without special leave of the court*

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> *given on proper grounds: see* ***Riddick v Thames Board Mills Ltd*** *[1977] 3 All ER 677[1977] QB 881*
>
> *The new action is not founded on something that the court ordered to be disclosed in the earlier order. The real foundation of the present action is the evidence obtained on the test purchase. The observation by the solicitor of suspect goods, of the second class was merely a collateral matter in the execution of the order of 12 March and did not depend on that order for its justification. In other words a solicitor saw something that was there but it was not something that the court had ordered to be disclosed. He then obtained the evidence, which is sufficient in itself, by a test purchase.*

16.In ***Sybron Corporation v Barclays Bank plc*** (supra), the plaintiffs commenced an action in 1981 against the defendant bank (the 1981 action). After discovery had taken place, the plaintiffs decided to add other parties as defendants. In view of possible difficulties which might arise in relation to limitation, if those parties were added to the 1981 action, the plaintiffs decided to commence another action in 1983. The plaintiffs applied for leave in the 1983 action to refer to the documents discovered in the 1981 action. Scott J held that the plaintiffs could not make use of those documents or any information contained therein in any other proceedings without leave of the court having been first obtained, unless such information was from a wholly independent source. The learned judge said, at p 315:

> *It is a rule established by several recent cases, to which I must later refer, that documents disclosed by a party under compulsion of court process, such as discovery, cannot be used by the party to whom they are thereby disclosed for any improper purpose. An implied undertaking not to use the documents for an improper purpose is imposed by the court on that party. Breach of that undertaking would represent a contempt of court: see* ***Home Office v Harman*** *[1983] 1 AC 280.*

The learned judge later said at p 318:

> *The rule established by the authorities is usually expressed as a rule relating to documents and the use of documents. The rule must however apply to protect not only the documents*

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> *themselves but also the contents of those documents Plainly, in my judgment, the undertaking must apply to the information derived from the discovered documents whether it be information embodied in a copy or stored in the mind. Accordingly, references in this judgment to use of documents should be taken to include use of information derived from the documents.*

However, the learned judge found that the causes of action in both sets of proceedings were the same and the new action was nothing more than a joinder of additional parties, although such joinder arose from the discovery made in the earlier action. In the unusual circumstances, the learned judge granted leave to the plaintiffs to use the documents for the purposes of the 1983 action.

17. ***Riddick*** was followed and applied by Chan Sek Keong JC (as he then was) in ***Sim Leng Chua v JE Manghardt*** (supra). In that case, the plaintiff sued a company for breach of contract and for inducing another party to breach a contract. On discovery the plaintiff came across a letter signed by the defendant, who was then an officer of the company, written to a third party. The plaintiff then commenced an action against the defendant for defamation. The defendant applied to strike out the action on the ground that it was an abuse of the process of the court. He relied on the ***Riddick*** principle which, it was contended, was equally applicable, notwithstanding that he was not a party to the earlier action. After considering at length ***Riddick*** and several other cases, the learned judge applied the ***Riddick*** principle to the case before him and held that the action against the defendant was an abuse of the process of the court, and he struck it out.

18. ***Sim Leng Chua*** was approved by this court in **Stansfield Business International Pte Ltd & Anor v VCS Vardan** [1998] 1 SLR 641 . In that case, a solicitor, V, sued the defendant company and one of its directors for defamation. In the course of the proceedings on discovery various documents,

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including a letter of complaint against V to the Law Society of Singapore written by one of the directors of the defendant company, were disclosed. After the conclusion of that action, in which V obtained judgment against the defendant and its director, V applied by way of originating summons for discovery of all documents relating to the complaint to the Law Society under O 24 r 7A of the Rules of Court. The purpose of the application was to ascertain whether the defendant and its director had defamed V in their complaint to the Law Society. In opposing the application the defendant company by its director deposed to the fact that all the relevant documents V sought were already disclosed in the earlier action in the course of discovery, and invoked the ***Riddick*** principle. This was rejected and the application was allowed by the District Court, and on appeal, the High Court dismissed the appeal. The defendant and its director further appealed and this court allowed the appeal. It was held, inter alia, that the documents sought to be discovered were all the documents already discovered in the earlier action, and as the stated object of the application was to make use of those documents to sue the defendant and its director for defamation, the ***Riddick*** principle would prevent V from using the documents for that purpose. The intended use of those documents was for an `ulterior and improper purpose` and was not permissible. Delivering the judgment of the court, Karthigesu JA said:

> 20 In our judgment, too, the learned district judge and the learned judge erred in holding that the rule in ***Riddick*** `s case did not apply; see [para ] 16 above. With respect they both seem to have missed the point of appellants` counsel`s submission. The rule in ***Riddick*** `s case is founded on public interest. It is that `Public interest requires that documents disclosed on discovery are not to be made use of except for the purpose of the action in which they are disclosed` the rule in ***Riddick*** `s case prevents the respondent for using those documents to sue the appellants for defamation. Thus, obtaining the order for discovery, to use the words of Lord Denning in ***Riddick*** `s case,

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> was for an `ulterior and improper purpose`. The rule should not be used for such a purpose. It is an abuse of process.

19.In each of these cases, namely, ***Riddick*** , ***Sybron Corporation*** , ***Sim Leng Chua*** and ***Stansfield Business*** , the document in question was disclosed on discovery in the course of legal proceedings, ie under compulsion of court process, and the party to whom the document was disclosed was held to be subject to an implied undertaking to court not to use the document for any purpose otherwise than in the proceedings in which the document was disclosed. Such undertaking was held to extend to information derived from the disclosed document. The rationale for this rule was recently stated by Sir Nicolas Browne-Wilkinson V-C in ***Derby & Co Ltd v Weldon (No 2)*** The Times, 20 October 1988 as follows:

> *[D]iscovery in the course of an action is an interference with the right of privacy which an individual would otherwise enjoy in relation to his own documents. As a result of the public interest in ensuring that all relevant information is before the court in adjudicating on the claim in the action, that right of privacy is invaded and the litigant is forced, under compulsion by the process of discovery, to disclose his private documents. But, such invasion of privacy being only for the purpose of enabling a proper trial of the action in which the discovery is given, the court is astute to prevent a document so obtained from being used for any other purpose. As a result the law is well established that the recipient of documents disclosed under compulsion of court proceedings holds those documents subject to an implied undertaking not, without the consent of the court, to disclose such documents to any third party or use the documents for any purpose other than the action in which they were disclosed. I will refer to that undertaking as `the implied undertaking`. A breach of the implied undertaking is a contempt of court.*

20.More recently, in **Prudential Assurance Co Ltd v Fountain Page Ltd & Ors** [1991] 1 WLR 756[1991] 3 All ER 878, Hobhouse J said, at p 765:

> *The rational basis for the rule is that where one party compels another, either by the enforcement of a rule of court or a specific order of the court, to disclose documents or information whether that other wishes to or not, the party obtaining the disclosure is*

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> *given this power because the invasion of the other party`s rights has to give way to the need to do justice between those parties in the pending litigation between them; it follows from this that the results of such compulsion should likewise be limited to the purpose for which the order was made, namely, the purposes of that litigation then before the court between those parties and not for any other litigation or matter or any collateral purpose*

21.In our opinion, the ***Riddick*** principle applies to documents disclosed under compulsion of court process, whether by virtue of the enforcement of the rules of the court or by a specific court order. It has no application to documents voluntarily disclosed in legal proceedings; the implied undertaking does not apply to such documents. In ***Derby & Co Ltd v Weldon (No 2)*** (supra), Sir Nicolas Browne-Wilkinson V-C said:

> *The voluntary disclosure of documents in the course of interlocutory proceedings by a party does not come within the rationale which is the basis of the implied undertaking relating to documents disclosed on discovery. In relation to documents voluntarily disclosed the court has not invaded the privacy of the party. The party has, for his own purposes in defending a case, decided himself to use the documents rather than maintain his privacy. It is the party who has destroyed the privacy of the document, not the plaintiff or the court it is an unavoidable consequence of all litigation that a party who chooses to put in evidence, necessarily risks that such evidence becomes available to others. In my judgment the special protection given to documents disclosed under compulsion of discovery procedures does not apply to any wider class of documents.*

22.In **Hasselblad (GB) Ltd v Orbinson** [1985] QB 475, the plaintiffs brought an action against the defendant for defamation contained in a letter written by the latter on behalf of his company to the Commission of the European Communities at the invitation of the Commission. The Court of Appeal held, inter alia, that since the letter was not written to the Commission under any compulsion or on any implied condition that it should be used for the purposes of the proceedings before the Commission the ***Riddick*** principle had no application.

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23.In ***Prudential Assurance Co Ltd v Fountain Page Ltd & Ors*** , the plaintiffs instituted proceedings (the London proceedings) against four defendants in the High Court. Pursuant to directions of the court made under O 38 rr 2A and 37 of the Rules of Supreme Court, the plaintiffs were required to serve on the defendants witness statements and experts` reports. The action was eventually settled before trial, but the defendants retained the witness statements and the experts` reports. Subsequently, two insurance companies in Texas initiated proceedings against the fourth defendants claiming damages for, inter alia, tortious interference with contract and prospective business relations and negligent misrepresentation. Pursuant to letters of request issued by the Texan court witnesses were examined in London for the Texan proceedings. During the examination it was found that documents, which came into existence in the London proceedings, were being used and these included the witness statements and the experts` reports. The examiner then required the fourth defendants to apply to court for release of the implied undertaking not to use those documents. The fourth defendants applied to court for determination as to whether the witness statements and the experts` reports were subject to any restriction on their use other than in the London proceedings.

24.Hobhouse J held that as parties were at liberty to decide what material they wished to adduce in evidence, the witness statements and experts` reports could not be said to be served under any compulsion and were therefore not subject to the restriction as to use on the basis of an implied undertaking not to use the documents other than for the purpose of those proceedings in which they were disclosed. The learned judge said, at p 769:

> *From these authorities it is clear that there is no blanket restriction on the use of documents and information acquired in the course of litigation. Prima facie there is no restriction. The compulsion exception is confined to documents and information which a party is compelled, without any choice, to disclose.*

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> *Where a party has a right to choose the extent to which he will adduce evidence or deploy other material, then there is no compulsion even though a consequence of such choice is that he will have to disclose material to other parties. On the authority of the* ***Comfort Hotels*** *case and* ***Derby & Co Ltd v Weldon (No 9)****, witness statements and experts` reports served pursuant to the provisions of O 38 or directions given thereunder are not served under compulsion and are not protected by the duties or undertakings which the court implies where there is compulsion.*

25.The learned judge further held that such an obligation would be implied where, on a true construction of the rules of court under which a document was served, any rights of confidentiality or privilege in the document had been reserved. Reverting to the case before him, the learned judge held that there was no confidentiality attached to the experts` reports since under the rules once they had been served on the other party, that party was at liberty to use them; but as for the witness statements, under the rules they remained privileged until the party serving them decided to use them in court, and hence the party who had been served with the witness statements was subject to the implied duty owed to court not to use them for any purpose save at the trial of the action in which the statements were served.

26.In the case at hand, the appellants came to know of the minutes of the creditors` meeting through the affidavit of Lai in the winding up proceedings against Wyno, and Lim being a director and a shareholder of Wyno was not a `total stranger` to the proceedings. The minutes therefore did not come to the appellants from an independent source. But the fact remained that the document did not come to light as a result of any compulsion of court process, such as discovery. It was voluntarily produced by Lai in support of the application by CLLS for the appointment of provisional liquidators in the winding up proceedings. The appellants are not subject to any obligation to court, express or implied, not to use the document for any purpose save in the winding up

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proceedings against Wyno. Nor has the document any rights of confidentiality or privilege attached to it. The use of that document by the appellants for the purpose of this action was not an abuse of court process.

Karthigesu JA
L P Thean JA
Yong Pung How CJ

Scott Thillagaratnam and S Selvam (Ramdas & Wong) for the appellants
Tan Kok Quan SC and Roy Monoj Kumar (Roy & Partners) for the respondent

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