Kunal Gobind Lalchandani and Another v Konduri Prakash Murthy
[2005] SGHC 94

Case Number : Suit 915/2003

Decision Date : 13 May 2005

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Sugidha Nithi (Tan Rajah and Cheah) for the plaintiffs; Gopinath Pillai and Celina Chua (Tan Peng Chin LLC) for the defendant

Parties : Kunal Gobind Lalchandani; Govitex Enterprises Pte Ltd — Konduri Prakash Murthy

Civil Procedure – Extension of time – Application for extension of time for further arguments – Whether application should be granted – Section 34(1)(c) Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

13 May 2005

Lai Siu Chiu J:

The background

1 Kunal Gobind Lalchandani (the first plaintiff) is a director of Govitex Enterprises Pte Ltd (the second plaintiff). The second plaintiff is a trading company incorporated in Singapore. Konduri Prakash Murthy (the defendant) was employed as the general manager of the second plaintiff in December 1993 and in late 1995 he was also appointed its director. The defendant was removed as a director in May 2002.

2 The second plaintiff only became a party to the action after obtaining leave of court on 29 December 2004. This was after the hearing of the first plaintiff's (unsuccessful) application for summary judgment on 19 December 2003. The Amended Statement of Claim with the second plaintiff as a party was only filed on 7 February 2005.

3 On 25 February 2005, by way of *ex parte* Summons in Chambers No 1006 of 2005 ("the plaintiffs' application"), the second plaintiff applied for a Mareva injunction to restrain the defendant from removing or disposing of his Singapore assets up to the value of $4.5m. I heard and granted the application on 28 February 2005.

4 On 3 March 2005, by way of Summons in Chambers No 1121 of 2005 ("the defendant's application"), the defendant applied to set aside the Mareva injunction obtained by the second plaintiff. I heard and dismissed the defendant's application on 3 March 2005.

5 By a letter dated 11 March 2005, the defendant's solicitors wrote in for further arguments, pursuant to s 34(1)(*c*) of the Supreme Court of Judicature Act (Cap 322 1999 Rev Ed) ("the Act"). I rejected the request as it was not made within seven days as stipulated under s 34(1)(*c*) of the Act.

6 On 21 March 2005, by way of Summons in Chambers No 1483 of 2005 ("the defendant's second application"), the defendant applied for an extension of time of one day to apply for further arguments, pursuant to s 18 read with para 7 of the First Schedule to the Act. I heard and dismissed the defendant's second application with costs on 1 April 2005. I rejected the defendant's solicitors' request for further arguments made on 5 April 2005. The defendant has now filed an expedited notice of appeal (in Civil Appeal No 42 of 2005) against my refusal to grant an extension of time for further

arguments.

The pleadings

7 When the Writ of Summons was first filed (on 5 September 2003), the first plaintiff's claim against the defendant was for specific performance of a sale and purchase agreement dated 6 September 2002 ("the agreement") in relation to a property known as 28 Hoot Kiam Road, Singapore 249406 ("the property") which the defendant agreed to sell at $1.8m. The Statement of Claim pleaded that the defendant failed to complete the sale of the property as scheduled. Hence, on 18 July 2003, the first plaintiff's solicitors served on the defendant a notice to complete within 21 days. The defendant failed to comply with the notice.

8 It was only in the Amended Statement of Claim that the second plaintiff's claim emerged. The allegations were repeated and/or expanded upon in the affidavit of Gobind Jivatram ("the first plaintiff's father") filed on 25 February 2005 in support of the plaintiff's application. The first plaintiff's father is both a shareholder and director of the second plaintiff. In brief, the allegations were that the defendant breached his fiduciary duties as a director of the second plaintiff by misappropriating funds in the following manner:

(a) As the sole signatory of the second plaintiff's bank accounts from 1997 until his authority was revoked in December 2001, the defendant misused the second plaintiff's moneys:

(i) by paying the premium totalling $109,396.09 for insurance policies he had taken out for himself, his daughter, his clerk and a third party;

(ii) by causing the second plaintiff to pay $1,090,015 for goods purportedly purchased from CV Sinar Asia Trading, a sole proprietorship of the defendant, which goods were never delivered;

(iii) by using the second plaintiff's moneys to pay for his credit card expenses in excess of $27,000 as well his personal expenses totalling $54,806.11;

(iv) by using $1.6m of the second plaintiff's moneys to purchase the property as well as another property at 343 Upper Bukit Timah Road, #07-04, Singapore ("the second property").

(b) Even after his authority was revoked by a board resolution, the defendant continued to sign cheques for the second plaintiff totalling $21,924.95 in value.

(c) On or about 12 January 2002, the defendant intentionally destroyed the second plaintiff's financial records from 1997 to March 2001.

The total sums misappropriated by the defendant from the second plaintiff amounted to $3,591,286.00.

9 A further allegation made by the plaintiffs was that the agreement was an arrangement whereby the defendant would return part of the funds he had misappropriated from the second plaintiff. The first plaintiff was ready, willing and able to fulfil his obligations under the agreement but the defendant had breached his obligations thereunder in failing to complete the sale.

10 One of the factors which prompted the plaintiffs' application was the fact that the defendant

had transferred out his entire shareholding (668,205 shares) in a company called Northgate Holdings (S) Pte Ltd ("Northgate"), according to a search conducted in the Registry of Companies by the plaintiffs' solicitors on 6 January 2005. A further company search conducted on 22 February 2005 showed that a notice had been lodged by Northgate with the Registry of Companies and Businesses on 18 September 2004, which stated that the defendant was no longer a shareholder. After obtaining the Mareva injunction, the plaintiffs' solicitors discovered that the defendant had closed his two DBS bank accounts.

11 The affidavit of the first plaintiff's father also listed the defendant's assets in India known to the plaintiffs. These included three pieces of land in Bangalore, shares in two companies and life insurance policies.

12 The defendant, not unexpectedly, denied the plaintiffs' pleaded allegations and went further to add a counterclaim to his Defence. I should point out that on 19 December 2003, before the Amended Statement of Claim was filed, the defendant succeeded in obtaining unconditional leave to defend the first plaintiff's application for summary judgment, made by way of Summons in Chambers No 6660 of 2003 ("the O 14 application").

13 In his "show cause" affidavit ("the defendant's affidavit") filed to resist the O 14 application as well as in his Defence, the defendant raised numerous allegations by way of triable issues. In the defendant's affidavit and in the Amended Defence and Counterclaim, he admitted he had signed the agreement but alleged that by their inactivity between 30 November 2002 and 17 July 2003, the parties had mutually and impliedly agreed to abandon the agreement. The defendant alleged he was induced to believe from the first plaintiff's inaction that the first plaintiff no longer intended to claim any interest in the property. Consequently, the defendant was entitled to treat the agreement as abandoned for all purposes. The defendant relied on cl 29.4 of the Law Society of Singapore's Conditions of Sale 1999.

14 In the alternative, the defendant pleaded that he had been induced to enter into the agreement by duress whilst under the undue influence exerted by the first plaintiff's father, the first plaintiff and/or their servants and agents.

15 The defendant then alleged that he had seen documents that led him to believe that the second plaintiff was engaged in illegal activities and that the first plaintiff's father was behind the same. The defendant alleged that he confronted the first plaintiff's father with his aforesaid discovery in or about September 2001. In consequence thereof in middle or late December 2001, the defendant and the first plaintiff's father informed the second plaintiff's banks that the second plaintiff would be closing those banking facilities.

16 The defendant alleged that subsequently the first plaintiff's father informed him that the latter would resign as a director of the second plaintiff and would transfer his shares in the second plaintiff to the defendant. In consideration thereof the defendant would sell to the first plaintiff's father the property as well as the second property.

17 The defendant averred he signed the agreement for the property as well as another sale and purchase agreement ("the second agreement") relating to the second property. Both sales were to have been completed on or before 21 March 2002 or upon the first plaintiff's father obtaining approval from the Land Dealings Unit whichever occurred later.

18 The defendant alleged that the first plaintiff's father subsequently reneged on his promises mentioned in [16] above after the defendant had executed a share transfer form and share

agreement agreeing to purchase the shares of the first plaintiff's father in the second plaintiff for $10,000. Subsequently, through his solicitors, the defendant claimed he sent two notices to the first plaintiff's father (both dated 31 May 2002), stating that he withdrew his offer to purchase the shares of the first plaintiff's father and that the defendant had never received the sums of $600,000 and $700,000 acknowledged by him in the agreement and the second agreement respectively.

19 The defendant claimed he then tendered his resignation as a director of the second plaintiff on 15 April 2002. Thereafter (according to the defendant), he and his family were subjected to threats from the first plaintiff and the first plaintiff's father in Singapore as well as abroad, when the defendant (and his family) visited India in mid-July 2002. The pressure from the first plaintiff and the first plaintiff's father continued after the defendant returned to Singapore on or about 22 July 2002 and continued until April 2003. The defendant discharged his solicitors on or about 23 July 2002 when he felt he had no alternative but to accede to the first plaintiff's demands.

20 The defendant claimed he was coerced by the first plaintiff and/or the first plaintiff's father into executing: (a) a power of attorney in favour of the first plaintiff's maternal aunt, Indu Jaikishan Aswani; (b) the agreement; (c) an option to purchase in favour of one Chin Oi Ching dated 16 January 2003; and (d) a Warrant to Act with an authorisation to make payment in favour of Harjeet Singh & Co on or about 11 February 2003. However, after the pressure from the plaintiffs abated, the defendant sent an e-mail on 21 April 2003 to notify the plaintiffs' solicitors, M/s Harjeet Singh & Co, that he had been coerced into signing the above documents. By a deed of revocation dated 21 April 2003, the defendant revoked the power of attorney.

21 In his affidavit filed to support the defendant's application, the defendant contended that:

(a) the plaintiffs did not have a good arguable case;

(b) the plaintiffs had not demonstrated a real risk of dissipation of the assets; and

(c) the plaintiffs had applied for the injunction for a collateral purpose, *viz*, to obtain security from the defendant which they would not otherwise have and to get information on his assets to which they were not entitled.

The defendant's second application

22 The defendant's second application was supported by an affidavit filed by his solicitor, Gopinath Pillai ("Pillai"). In essence, Pillai's affidavit explained that the request for further arguments was made one day late because he and his two colleagues (Edmund Kronenburg and Celina Chua) were engaged in another court in the trial of Suit No 1238 of 2003 ("Suit 1238/2003") from 28 February 2005 to 11 March 2005. Further, the defendant was also attempting to obtain further documents to substantiate the arguments presented in his firm's letter dated 11 March 2005. Pillai was unable to finalise the arguments until late in the evening of 10 March 2005.

23 I noted from the court's records that Pillai together with Edmund Kronenburg and Adrian Ng were counsel for the defendants in Suit 1238/2003. However, Edmund Kronenburg was never involved in this suit and neither was Celina Chua involved in Suit 1238/2003. Pillai, in his subsequent letter dated 5 April 2005 requesting further arguments on the defendant's second application, had exhibited an extract from the notes of evidence of Suit 1238/2003 which showed he had on 11 March 2005 (in the morning at 10.00am), taken over cross-examination of a witness (assisted by Celina Chua) while Edmund Kronenburg and Adrian Ng returned to their office to deal with the core bundle of documents. However, I was not told what happened on 10 March 2005 in relation to the conduct of

Suit 1238/2003. Indeed, when I queried him (as reflected in the last page of the notes of arguments of 1 April 2005), Pillai informed me that Celina Chua was in office on the morning of 10 March 2005 sorting out the further arguments for this case with the defendant. The question then arises, why did Celina Chua not submit to court later that same day the letter requesting further arguments?

24 I agreed with counsel for the plaintiffs that Pillai (and/or Celina Chua) probably overlooked the deadline of 10 March 2005. This can be seen from his affidavit where Pillai deposed (in para 5):

> Not realising that the final date for the filing of the arguments was 11th March 2005, I gave instructions to file the arguments on the morning of Friday 12th March 2005.

I could not understand how counsel could have failed to realise the deadline in s 34(1)(*c*) of the Act; the subsection states:

> No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> …
>
> (c) subject to any other provision in this section, where a Judge makes an interlocutory order in chambers unless the Judge has certified, on application within 7 days after the making of the order by any party for further argument in court, that he requires no further arguments;
>
> …

It was a simple mathematical calculation; if a chamber application was heard on a Thursday (in this case on Thursday, 3 March 2005), the time for submitting a request for further arguments expired the following Thursday (*viz* 10 March 2005).

The law

25 I was of the view that the law applicable to the defendant's second application was that pertaining to filing of notices of appeal out of time (see *The Tokai Maru* [1998] 3 SLR 105). The tests (according to counsel for the plaintiffs) to apply would be those found in the UK cases of *Gatti v Shoosmith* [1939] 3 All ER 916 and *Palata Investments Ltd v Burt & Sinfield Ltd* [1985] 2 All ER 517, which were applied locally in *Nomura Regionalisation Venture Fund v Ethical Investments Ltd* ("the *Nomura* case") [2000] 4 SLR 46 (which also followed *Thamboo Ratnam v Thamboo Cumarasamy* [1965] 1 WLR 8), *Aberdeen Asset Management Asia Ltd v Fraser & Neave Ltd* ("the *Aberdeen Asset* case") [2001] 4 SLR 441 and *Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd* ("the *Denko* case") [2002] 3 SLR 357. I also took into account the rulings in *Vettath v Vettath* [1992] 1 SLR 1 and *Pearson v Chen Chien Wen Edwin* [1991] SLR 212 when I dismissed the defendant's second application. I now turn to the cases.

26 In *Gatti v Shoosmith*, the English Court of Appeal considered whether an application for leave to appeal out of time should be allowed owing to a misinterpretation of O 58 r 15 of the then Rules of the Supreme Court by one of the appellant's legal advisers. In allowing the application, Sir Wilfred Greene MR had this to say (at 920):

> The reason for the appellant's failure to institute his appeal in due time, was a mere misunderstanding, deposed to on affidavit by the managing clerk of the appellant's solicitors – a misunderstanding which, to anyone who was reading the rule without having the authorities in

mind, might very well have arisen. The period involved is a very short one, it is only a matter of a few days and the appellant's solicitors, within time, informed the respondent's solicitors by letter of their client's intention to appeal.

2 7 *Thamboo Ratnam v Thamboo Cumarasamy* was a Privy Council appeal from Malaysia. The appellant's solicitors applied for an extension of 14 days on 18 April 1962 in which to file the appellant's record of appeal as the period for filing had expired on 14 April 1962. In his affidavit, the appellant stated that on 13 April, he had instructed solicitors to act for him in the appeal, but that they had said that it would not be possible to file the record by the following day. The appellant explained that he had not instructed solicitors earlier or taken any other action since he had hoped that some compromise might be reached. An affidavit for the respondents stated that the appellant had at no time agreed to any compromise nor had he approached the respondents with a view to one. The Malaysian Court of Appeal refused the application and on appeal, the Judicial Committee upheld its decision. The Privy Councillors (Lords Hodson, Guest and Donovan) held that rules of court must *prima facie* be obeyed, and that to justify an extension of time for the filing of the record there must be material upon which the court could exercise its discretion, for otherwise a party would have an unqualified right to an extension which would defeat the purpose of the rules, which was to provide a timetable for litigation.

28 In *Palata Investments Ltd v Burt & Sinfield Ltd*, the English Court of Appeal had to consider an application under O 59 r 14(12) of the Rules of the Supreme Court 1965 for an extension of time for appealing beyond the time limit specified in O 59 r 4(1) of four weeks from the date in which the judgment or order of the court below was signed or entered or otherwise perfected. It was held that where the delay was very short and there was an acceptable excuse for it, the court would not, as a general rule, deprive the appellant of his right of appeal and in such a case, it would not be necessary for the court to consider the merits of the appeal.

29 I turn next to our own cases starting with *Pearson v Chen Chien Wen Edwin*. The case centred on an application to the Court of Appeal for an extension of time to appeal against a court order on ancillary matters, due to a misreading of the Rules of the Supreme Court 1970 (S 274/1970) by the appellant's solicitors. The notice of appeal was not filed and served under O 57 r 4 within one month of the date of the court order as the appellant's solicitors were under the mistaken impression that O 3 r 3, under which the period of the court vacation in December was excluded from the time of filing and service of any pleading, also applied to a notice of appeal. In dismissing the application, the Court of Appeal held, *inter alia*, that whether to grant an extension of time was a question of discretion and the four factors to consider were: (a) the length of the delay; (b) the reasons for the delay; (c) the chances of the appeal succeeding if time for appealing was extended and (d) the degree of prejudice to the would-be respondents if the application was granted.

30 The Court of Appeal similarly dismissed an application for an extension of time to file a notice of appeal out of time in *Vettath v Vettath*. There, the husband applicant had instructed solicitors to appeal against certain orders made in Divorce Petition No 1533 of 1987. On his solicitors' suggestion, the applicant had agreed to brief another solicitor as counsel for the appeal. Confusion arose as to which solicitor should file the notice of appeal, and the period of filing the notice of appeal expired without it being filed. Yong Pung How CJ, who delivered the judgment of the Court of Appeal, relied on the last paragraph in *Pearson v Chen Chien Wen Edwin* where it was stated (at 219, [20]):

> [I]t was clear that the solicitors in the present case made a bona fide mistake in the computation of time. But when an application is made to the court for an extension of time, the application should be on grounds sufficient to persuade the court to show sympathy to [the applicant]. No such grounds were shown in the present case …

31 In the *Nomura* case ([25] *supra*), the appeal was against this court's decision in granting an extension of time to the respondents to serve a notice of appeal (timeously filed) on the appellants out of time. In dismissing the appeal, the Court of Appeal followed the *ratio decidendi* in *Pearson v Chen Chien Wen Edwin*, *Gatti v Shoosmith* and *Palata Investments Ltd v Burt & Sinfield Ltd*.

32 The above three cases (and *Vettath v Vettath*) were again followed by the Court of Appeal in the *Aberdeen Asset* case ([25] *supra*), where it granted an extension of time to the appellants to file a notice of appeal out of time. The solicitors for the appellants mistakenly thought that time for filing a notice of appeal only began to run from the date the judge was deemed to have certified that he did not require further arguments. Again it was a case of solicitors misconstruing the rules. Chao Hick Tin JA, who delivered the judgment of the Court of Appeal, observed it was the first case where our courts had to construe O 57 r 4(*a*) in the light of O 56 r 2(2) of the Rules of Court (Cap 322, R 5, 1997 Rev Ed). He said (at [39]):

> But the court must nevertheless examine the overall circumstances to decide whether the discretion [to grant an extension of time] should, in fact, be exercised in favour of the applicant.

33 The *Denko* case ([25] *supra*) was very much in point with this case. The appellants filed two motions to the Court of Appeal:

> (a) for an extension of time prescribed by s 34(1)(*c*) of the Act to apply for further arguments to the judge in chambers; and
>
> (b) for an extension of time to file and serve a notice of appeal against the interlocutory order.

The Court of Appeal dismissed the motions and held that the appellant's application was more akin to an application for extension of time to file an appeal, given that its objective was to enable it to appeal against the order made on 19 February 2002. Therefore the stricter approach laid down in *The Tokai Maru* applied. In the *Denko* case, the delay in the appellant's solicitors' request for further arguments was 14 days. Chao Hick Tin JA, who delivered the judgment of the court, observed (at [13] and [14]):

> [T]here was only a one line cryptic explanation for the delay: 'oversight on (solicitors) and there was no fault on the part of (Denko)'.
>
> We noted that in the affidavit filed in support, Denko, other than stating that it was simply an 'oversight' on the part of the solicitors, did not offer any other explanation with regard to the 'oversight'. Section 34(1)(c) was enacted in 1993. It is a provision which has been in operation for some nine years and there is nothing in it which is complex or could give rise to a misunderstanding. Indeed, the substance of what is in s 34(1)(c) has been around for more than 30 years. In the 1970 Edition of Singapore Statutes, s 34(2) of the then [Supreme Court of Judicature Act] (Cap 15) read:
>
> > No appeal shall lie from an interlocutory order made by a Judge in chambers unless the Judge has certified, after application, within four days after the making of such order by any party for further argument in court, that he requires no further argument, or unless leave is obtained from the Court of Appeal or from the Judge who heard the application.

The decision

34 Counsel for the defendant (Pillai) repeatedly reminded the court that his firm's request for further arguments was submitted just one day late, unlike the 14 days' delay in the *Denko* case. I agree that the length of the delay was one of four factors to be taken into consideration and one day's delay, according to the authorities reviewed earlier, was a plus factor in the defendant's favour. So too was the fact that no prejudice would be suffered by the plaintiffs if I acceded to the request for an extension of time. However, I still had to consider the remaining two factors laid down in *Pearson v Chen Chien Wen Edwin* in making my decision. I was of the view that the defendant failed the second and third factors.

35 Earlier (in [23] and [24] above) I had found that the reasons given for the delay (albeit one day) in submitting the request for further arguments was unsatisfactory. As in the *Denko* case, counsel only gave a one-liner explanation: *viz*, he did not realise the deadline. I echo the words of Chao Hick Tin JA (see [33] above) that such an explanation without more does not suffice. It certainly did not move my sympathies.

36 As the defendant had not furnished an acceptable explanation for the delay, I went on to consider the third factor. Would the defendant have succeeded in persuading me to discharge the injunction if I had granted him an extension of time to present his further arguments? I doubted it for reasons which will be set out below.

37 The affidavit filed by the defendant in support of the defendant's application deposed that the plaintiffs did not have a good arguable case. He asserted that the claims against him were entirely false. I tested that assertion by comparing the defendant's affidavit with the affidavit of the first plaintiff's father filed in support of the plaintiffs' application as well as the first plaintiff's (fourth) affidavit filed in support of the application to amend the Statement of Claim. Unlike the defendant's affidavit, the affidavits of the first plaintiff and his father contained a wealth of documents to support the plaintiffs' application. It could not be said that the plaintiffs did not have an arguable case. I will only cite some examples by way of illustration.

38 The first plaintiff had alleged that the defendant was confronted with his misappropriation of the second plaintiff's funds on or about 18 December 2001, to which misdeeds he admitted a day later in addition to which the defendant drew up a list of the assets he had acquired using the misappropriated funds. The first plaintiff had produced a handwritten note[1] of the defendant as proof.

39 The first plaintiff and his father then alleged that after the signing of the agreement and the second agreement, the defendant, on or about 12 January 2002, arranged for the second plaintiff's financial records from 1997 to March 2001 to be destroyed. The financial records were stored with a storage and trucking company called Sin Chuan Seng Transport Co Pte Ltd ("SCS"). The plaintiffs exhibited,[2] *inter alia*, a copy of a delivery order from SCS dated 12 January 2001 in respect of the destruction of cartons acknowledged by the defendant on behalf of the second plaintiff. The two deponents alleged that the destroyed financial records covered the period after the defendant became the second plaintiff's director and until the end of the last accounting period and would have shown the defendant's misappropriation.

40 The defendant's response to such a serious allegation was a mere denial both in his affidavit and in his Defence and Counterclaim.[3] He pleaded that he played no part nor did he have any knowledge of the alleged destruction of the financial records.

41 Another serious allegation raised by the plaintiffs was the defendant's disposal of his entire shareholding in Northgate. The defendant's explanation was he never owned the 668,205 shares in

the first place as he held them on trust for the parent company (Northgate BPO Services Ltd) which was of the view that it was more advantageous for a Singaporean to hold at least 30% of the shares. He did not elaborate further. He added that when the parent company felt there was no longer any business advantage to his holding the shares on the latter's behalf, the shares were transferred back to the parent company by the defendant. The defendant did not produce any trust deed to support his statement but only two letters both dated 21 June 2004. One letter was from Northgate addressed to M/s N Rajan Associates (whom he described as the company's auditors and secretary) stating that the defendant held 668,250 shares beneficially on behalf of the parent company whilst the other letter, in similar terms, was from the defendant addressed to the parent company. The first letter was inadequate while the second letter was self-serving.

42 In the Defence and Counterclaim, the defendant claimed that he used the second plaintiff's moneys to settle his personal expenses and to pay the premium of various insurance policies with the concurrence of the first plaintiff's father. The sums were recorded as loans to him and no repayment had been demanded by the second plaintiff. Such a defence stretched incredibility to its limits. Even if entertainment expenses were reimbursable by the second plaintiff to the defendant because it was a perquisite of his employment (as its general manager), the question arose: Why would such perquisites extend to the company paying for the defendant's daughter's air-tickets to India, paying his personal income tax and paying the insurance premiums for his daughter, let alone that of his clerk and the defendant's acquaintance?

43 In relation to the closing of his DBS bank accounts, Pillai's oral explanation was that it arose as a result of the merger and takeover by DBS of POSB. I chided counsel as I knew for a fact (and so would or should the defendant and Pillai) that the merger took place much earlier; the two accounts had existed until August 2002.

44 It seemed to me that the defendant had no qualms about bending the truth. When he was confronted with cogent credible evidence that showed he had dissipated assets (Northgate shares and the closure of DBS bank accounts), he was untruthful. When he could not explain his conduct (in respect of the destruction of documents) he merely denied the plaintiffs' allegation. Contrary to his claim, the plaintiffs did not obtain the Mareva injunction for a collateral purpose.

45 Pillai's other explanation for the defendant's late request for further arguments was that the defendant was looking for documents in support thereof. I did not accept this as a valid excuse. If the documents indeed existed, they should have been produced earlier and I would have expected them to be exhibited to the defendant's affidavit to support the defendant's application.

46 Finally, I should point out that the defendant's application adopted an "all or nothing" stand. He only applied to discharge the Mareva injunction. If he failed in his application, he did not ask the court to vary the injunction order. He only has himself to blame for whatever predicament he has found himself in as a result of his application being unsuccessful.

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[1]In exhibit KGL-2.

[2]In KGL-5.

[3]Para 15.

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