Von Roll Asia Pte Ltd *v* Goh Boon Gay and others
[2015] SGHC 115

Case Number : Suit No 58 of 2012 (Summons No 4140 of 2014)

Decision Date : 27 April 2015

Tribunal/Court : High Court

Coram : Chan Seng Onn J

Counsel Name(s) : Campos Godwin Gilbert (Godwin Campos LLC) for the plaintiff; Raman Gopalan and Felicia Ang Xin Yi (KhattarWong LLP) for the second and fifth defendant.

Parties : Von Roll Asia Pte Ltd — Goh Boon Gay and others

Civil Procedure – Discovery

27 April 2015

Chan Seng Onn J:

Introduction

1 In Summons No 4140 of 2014 ("Summons 4140"), the plaintiff applied under O 24 r 16(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) for the defences of the 2nd (Semi-Solution Inc (Asia) Pte Ltd) and 5th (Lim Keng Huat) defendants to be struck out and for judgment to be entered against both these defendants. After hearing the parties, I granted the plaintiff's application and ordered accordingly. The 5th defendant has filed an appeal against my decision in Summons 4140. The 2nd defendant did not appeal. I now set out the grounds for my decision.

Background

2 In brief, part of the plaintiff's case against the defendants in Suit No 58 of 2012 ("the Suit") was in conspiracy to defraud. The plaintiff averred that the 1st and 5th defendants, who had an interest in the business of the 2nd, 3rd and 4th defendants, managed to procure sales of goods from the plaintiff to the 2nd, 3rd and 4th defendants. These goods were ordinarily sold directly from the plaintiff to its end customers. Having purchased these goods, the 2nd, 3rd and 4th defendants then sold these goods to the end customers themselves. The plaintiff thus claimed that it had been deprived of the full profits it would have earned had it sold the goods directly to these end customers.

3 During the course of the Suit, the plaintiff took out Summons No 1350 of 2013 ("Summons 1350") in order to obtain the chain of evidence relating to sales of the goods from the plaintiff to the 2nd, 3rd and 4th defendants and thereafter to the end customers. After hearing the parties, an assistant registrar ordered on 5 September 2013 that the 2nd, 3rd *and/or* 5th defendants provide the following, within five days from the date of the order ("Order of Summons 1350"):

> (a) The sales invoices *within the possession, custody or power of the 2nd and 3rd defendants* in respect of all the plaintiff's products purchased by them from the plaintiff and thereafter sold to the 4th defendant during the period of 2008 – 2011 ("Category A"). It was pertinent to note that although Category A referred to sales invoices in the possession, custody or power of the 2nd and 3rd defendants, I read this part of the Order of Summons 1350 more broadly to

encompass an obligation on the part of the 5th defendant to produce the Category A invoices if any of them were still within his possession, custody or power. This reading was possible because of the phrase "and/or" in the preface of the Order of Summons 1350 (see emphasis above).

(b) The sales invoices *within the possession, custody or power of the 5th defendant*, covering the period of 2008 – 2011, in respect of all of the plaintiff's products purchased by the 4th defendant from the 2nd and 3rd defendants and thereafter ultimately sold by the 4th defendants to the following customers of the plaintiff ("Category B"):

(i) Shanghai Turbine Generator Co Ltd (STGC);

(ii) Lear Automotive Electronics and Electrical;

(iii) Bosch Power Tools (China) Co Ltd;

(iv) Suzhou Keyang Power Tool Co Ltd;

(v) Shanghai Nanyang Electrical Machinery Co Ltd; and

(vi) SuZhou Gerber Precision Mechanical Manufacturing Co Ltd.

(c) The sales invoices *within the possession, custody or power of the 5th defendant*, covering the period of 2008 – 2011, in respect of all of the plaintiff's products purchased by the 4th defendant directly from the plaintiff and thereafter sold by the 4th defendant to the following customers of the plaintiff ("Category C"):

(i) Shanghai Turbine Generator Co Ltd (STGC);

(ii) Lear Automotive Electronics and Electrical;

(iii) Bosch Power Tools (China) Co Ltd;

(iv) Suzhou Keyang Power Tool Co Ltd;

(v) Shanghai Nanyang Electrical Machinery Co Ltd; and

(vi) SuZhou Gerber Precision Mechanical Manufacturing Co Ltd.

4 The appeal against the decision of the assistant registrar in Summons 1350 ((Registrar's Appeal No 330 of 2013) ("RA 330")) came before me and was dismissed.

5 The plaintiff subsequently applied vide Summons No 1413 of 2014 ("Summons 1413") for the defences of the 2nd, 3rd and 5th defendants to be struck out and for judgment to be entered against them pursuant to O 24 r 16 of the Rules of Court. This application was dismissed by an assistant registrar. The plaintiff then appealed against the assistant registrar's decision ((Registrar's Appeal 192 of 2014) ("RA 192")). Upon hearing the appeal, I made the following peremptory order ("Order of RA 192"):

That the 2nd , 3rd and 5th Defendants are to comply with the Order of Court of 5th September 2013 within 21 days of the date hereof failing which their Defences are to be struck off and judgment entered as prayed for.

It was not disputed that the 3rd defendant subsequently complied with its discovery obligations pursuant to the Order of RA 192.

6 The plaintiff then took out Summons 4140 against the 2nd and 5th defendants to strike out their defences and for judgment be entered against them pursuant to O 24 r 16(1) of the Rules of Court for non-compliance with the Order of RA 192.

7 The plaintiff claimed that the 2nd defendant had not complied with the Order of RA 192 since it had not given discovery of any Category A sales invoices (which related to goods purchased by the 2nd defendant from the plaintiff and thereafter sold to the 4th defendant). Category A sales invoices, which were ordinarily expected to be in the possession of the 2nd defendant, comprised (a) all the purchaser's copy of the sales invoices for goods bought from the plaintiff by the 2nd defendant; and (b) all the seller's copy of the sales invoices for the same goods sold by the 2nd defendant to the 4th defendant.

8 The plaintiff claimed that the 5th defendant had failed to comply with the Order of RA 192 by not giving discovery of Category B sales invoices (which related to goods purchased by the 4th defendant from the 2nd and 3rd defendants and thereafter sold to specified customers) and Category C sales invoices (which related to goods purchased by the 4th defendant from the plaintiff and thereafter sold to specific customers). Accordingly, Category B sales invoices, which were ordinarily expected to be in the possession of the 4th defendant, comprised (a) all the purchaser's copy of the sales invoices for goods bought from the 2nd and 3rd defendants by the 4th defendant; and (b) all the seller's copy of the sales invoices for the same goods sold by the 4th defendant to certain listed end customers (see [3(b)] above). Category C sales invoices, which were ordinarily expected to be in the possession of the 4th defendant, comprised (a) all the purchaser's copy of the sales invoices for goods bought directly from the plaintiff by the 4th defendant; and (b) all the seller's copy of the sales invoices for the same goods sold by the 4th defendant to certain listed end customers (see [3(c)] above).

9 The plaintiff further claimed that the 5th defendant had not complied with the Order of RA 192 by not giving discovery of a part (or a sub-set) of the Category A sales invoices (which related to goods purchased by the 2nd defendant from the plaintiff and thereafter sold to the 4th defendant). This part or subset of the Category A sales invoices would thus be limited to the purchaser's copy of the sales invoices for all the goods bought from the plaintiff by the 2nd defendant and the seller's copy of the sales invoices for the same goods sold by the 2nd defendant to the 4th defendant. In other words, the 5th defendant had also not given discovery of all the sales invoices that would normally be expected to be in the possession of the 2nd defendant for goods purchased by the 2nd defendant from the plaintiff and thereafter sold to the 4th defendant (see [3(a)] above).

The issues germane to Summons 4140

10 The 2nd and 5th defendants did not deny that absolutely no discovery was given in relation to the sales invoices mentioned above in [7]–[9]. However, they both claimed that they had not breached the Order of RA 192 because those invoices were not in their possession, custody or power. In relation to the subset of the Category A invoices which ordinarily should be in the possession of the 2nd defendant as set out at [9] above (hereinafter described as the "A_1 sales invoices"), the 5th defendant alluded to a practice of the 2nd defendant in which its staff (who would be observed to also be the staff of the 3rd defendant) routinely destroyed or threw away documents of the 2nd defendant which were useless (see [15] below). In addition to this, the 5th defendant claimed he was no longer answerable for the 4th defendant since judgment in default of appearance was entered against the 4th defendant under O 13 of the Rules of Court (in JUD 455 of 2013). This, according to

the 5th defendant, meant that the Category B sale invoices and Category C sale invoices (collectively, the "B and C sale invoices") (see [8] above), which were typically expected to be in the records and the possession of the 4th defendant, did not have to be disclosed by the 5th defendant.

11 Against this, the plaintiff argued that the 2nd and 5th defendants were not entitled to claim that the sales invoices were not in their possession, custody or power because this was a matter that had already been decided in Summons 1350 (and therefore RA 330), or in RA 192. I did not agree totally. I did not read any of the orders given in relation to the application in Summons 1350 (and therefore RA 330) to be predicated on a finding that the sales invoices in the respective categories were in the possession, custody or power of the 2nd and 5th defendants and that these sales invoices existed such that issue estoppel was made out. However, in RA 192 (arising from Summons 1413), it might arguably be inferred that the court had implicitly found that the sales invoices existed and that the 2nd and 5th defendants were simply being uncooperative in giving discovery; and as a result, a peremptory order was made in RA 192 for the production of the sales invoices within 21 days, failing which their defences would be struck out and judgment entered against them as prayed for by the plaintiff in Summons 1413.

12 In any event, at the hearing of Summons 4140, I allowed the 2nd defendant to fully argue that the A_1 sales invoices were not within its possession, custody or power and to explain what might have become of the said sales invoices. Similarly, I allowed the 5th defendant to argue that the A_1, B and C sales invoices were not factually in his possession, custody or power. If I had found for any reason that in fact each defendant did not have in its/his possession, custody or power the sales invoices ordered to be produced, there would not have been a contumelious breach of the orders for discovery since there was simply nothing to produce for discovery.

13 Therefore, it was first imperative to determine whether the A_1 sales invoices were in fact destroyed or thrown away. If they were destroyed or thrown away in the ordinary course of business well before any request was made by the plaintiff and if it could be established that it was not done deliberately to frustrate the discovery process, I would also not have ordered the defences of the 2nd and 5th defendants to be struck out and judgment entered against them. However, if I found that they were not destroyed or thrown away, I had then to consider if the A_1 sales invoices were in the possession, custody or power of the 2nd defendant such that by failing to give discovery of the A_1sales invoices, the 2nd defendant had breached the discovery orders made under Summons 1350 and RA 192 ("the Discovery Orders"). Next, I had to consider if the A_1 sales invoices were in the possession, custody or power of the 5th defendant such that by failing to give discovery of those same invoices, the 5th defendant had breached the Discovery Orders. As there was no suggestion by the 5th defendant that the 4th defendant had a practice of destroying records or documents, I merely had to consider if the B and C sales invoices (which were typically in the records of the 4th defendant) were in the possession, custody or power of the 5th defendant such that by failing to give discovery of B and C sales invoices, the 5th defendant had breached the Discovery Orders. Finally, I had to consider the consequences that ought to flow from any breach of the Discovery Orders, specifically, whether or not their defences ought to be struck out and judgment entered against them.

14 To summarise the foregoing, the questions which fell to be determined were:

(a) Whether the A_1 sales invoices were destroyed or thrown away;

(b) If the A_1 sales invoices were not destroyed or thrown away, whether the 2nd defendant

and/or the 5th defendant had the A_1 sales invoices in their respective possession, custody or power such that it/he breached the Discovery Orders by failing to give discovery of those invoices;

(c) Whether the 5th defendant had the B and C sales invoices in his possession, custody or power such that he breached the Discovery Orders by failing to give discovery of those invoices; and

(d) Whether the defences of 2nd defendant and/or 5th defendant should be struck out and judgment entered against them for non-compliance with the Discovery Orders.

First issue: Whether the A_1 sales invoices were destroyed or thrown away?

15 Paragraph 6 of the 5th defendant's affidavit affirmed on 18 July 2014 read as follows:

I spend most of my time in China where my main businesses are. The 2nd Defendants *shared* the office with the 3rd defendant. I was the director of the 2nd Defendants but I do not handle financial files personally. The staff that handled the account files in the office left the job early Feb 13 and her work pass was cancelled after she left. She left the company before the Plaintiffs filed the discovery application. I would like to stress that I am not physically present in Singapore most of the time. I *believe* that *my* staff that left had *cleared* the 2nd Defendants' files prior to her departure when she did housekeeping as the files were *useless* at that time. That is why I am unable to locate the documents after the ruling was passed by Justice Chan in Jan 14. I did try my best to search for the invoices. [emphasis added]

16 In another affidavit affirmed later on 19 September 2014, the 5th defendant stated that:

24. After the decision in Summons No. 1350 of 2013 on 5 September 2013 and after my appeal (Registrar's Appeal No. 330 of 2013) against the discovery order was dismissed on 8 January 2014, I checked once again whether any documents asked for would still be available. [I] looked through the documents which had been *retained* after the 2nd Defendant were [*sic*] sold. However, I could not locate the invoices which have been ordered to be discovered.

25. I cannot say with absolute certainty what has become of these invoices. However, my best explanation has been set out in paragraph 6 of my affidavit affirmed on 18 July 2014. The 2nd Defendant did not have a practice of storing and archiving all its documents (including invoices) and I *understand* that the staff do routinely *destroy* documents which were *useless*. I can state that the staff who handled the account files left the 2nd Defendant's employment sometime in early February 2013. She was a PRC and was working in Singapore under a work pass. Her work pass was cancelled after she left the Company's employment. [emphasis added]

17 I noted that in both the passages reproduced above, there was no express statement that the A_1 sales invoices were *in fact* destroyed or thrown away such that they were no longer in existence. The 5th defendant merely alluded to some "understanding" and "belief" of what might have happened to the A_1 sales invoices. I did not believe the 5th defendant's bare assertion of what *might* have happened to the sales invoices for various reasons.

18 First, I found that the assertion in relation to the practice of destroying and clearing or throwing away documents was a mere afterthought which was raised late in the day. In the 5th defendant's affidavit affirmed on 2 May 2013, he stated:

10. … *I cannot assist beyond providing documentation involving the 2nd and 3rd Defendants which I am happy to provide as per the directions of this Court. The 2nd and 3rd Defendants can provide invoices for the products sold to the 4th Defendants and subsequently sold to the 5 companies, provided that the Plaintiffs are more specific* ie if they inform the 2nd and 3rd Defendants what specifically they are looking for ie which goods and the dates of the relevant transactions. The 2nd and 3rd Defendants do not know which products were eventually sold to the 5 companies.

[emphasis added]

Further, a letter dated 29 January 2014 from the solicitors of the 2nd and 5th defendants to the plaintiff's solicitors stated as follows:

We refer to the Order of Court on the discovery that was obtained recently.

We are forwarding herewith a copy of the List of Documents that we have filed. You will note that it deals with invoices of products sold by the 3rd Defendants to the 4th Defendants.

By an oversight our client did not give us the invoices for products sold by the 2nd Defendants to the 4th Defendants. We will file another List of Documents shortly after we have obtained the copies of the invoices.

[emphasis added]

Similarly, a letter dated 28 March 2014 from the solicitors of the 2nd and 5th defendants to the plaintiff's solicitors stated:

2. As you know, we attended before the Assistant Registrar Edwin San on 27 March 2014, yesterday at 9.30 am for Summons No. 1413 of 2014 and mentioned the matter on your behalf.

3. We informed the court that the parties were seeking a 2 week adjournment of Summons 1414 of 2014 to 10 April 2014 because the 2nd, 3rd, and 5th, Defendants *have agreed to let the Plaintiff have certain documents relating to the application on or by 7 April 2014*.

[emphasis added]

19 I agreed with counsel for the plaintiff that the 5th defendant's own affidavit on 2 May 2013 and the two subsequent letters dated 29 January 2014 and 28 March 2014 from the solicitors of the 2nd and 5th defendants (see [18] above), intimated that the A_1 sales invoices were in existence and would be provided in due course as part of the respective parties' discovery obligations. There was no suggestion of the sales invoices being destroyed or thrown away such that they were no longer in their possession, custody or power. I also accepted the submission of counsel for the plaintiff (which was not disputed by counsel for the 2nd and 5th defendants) that the arguments of the defendants in resisting discovery in the Summons 1350 was focused on the relevancy of the sales invoices and not on the fact that they were destroyed or discarded such that they were not within their possession, custody or power to produce anymore. However, this was not the case when it came to Summons 1413 and RA 192. The 2 May 2013 affidavit and letters from the defendants' solicitors were well before any suggestion of the 2nd defendant's alleged practice of destroying or discarding

documents arose. I was thus of the opinion that the practice referred to by the 5th defendant was a mere afterthought which arose late in the day. I was not persuaded that the sales invoices were *in fact* destroyed or thrown away as was merely suggested by the 5th defendant by way of his belief that "[his] staff had cleared the 2nd Defendants' files prior to her departure when she did housekeeping as the files were useless at that time" or his understanding "that the staff do routinely destroy documents which were useless." It was also telling that the 5th defendant only suggested what might have happened to the sales invoices but did not expressly affirm in an affidavit that they were in fact destroyed or thrown away.

20 Second, the annual returns for the 2nd defendant for 2011 and 2012 which were filed with the Accounting and Corporate Regulatory Authority ("ACRA") on 7 March 2013, stated that Yang Bo (JM Glory International Pte Ltd) declared that the following had been verified with Tan Siew Gim, who was the sole director and shareholder of the 2nd defendant at the material time:

(a) an unaudited profit and loss account and balance-sheet made up to the date stated in the return which complied with the requirements of the Companies Act had been presented before the company in its annual general meeting ("AGM") (31 March 2012 and 1 March 2013 for the annual returns for 2011 and 2012 respectively); and

(b) the accounting and other records required to be kept by the company in accordance with s 199 of the Companies Act (Cap 50, 2006 Rev Ed) ("CA") had been so kept.

Section 199 of the CA reads:

199.—(1) Every company and the directors and managers thereof shall cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance-sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

(2) The company shall retain the records referred to in subsection (1) for a period of not less than 5 years from the end of the financial year in which the transactions or operations to which those records relate are completed.

Counsel for the plaintiff also pointed me to s 67 of the Income Tax Act (Cap 134, 2014 Rev Ed):

67.—(1) Subject to subsection (3), every person carrying on or exercising any trade, business, profession or vocation –

(*a*) shall keep and retain in safe custody sufficient records for a period of 5 years from the year of assessment to which any income relates to enable his income and allowable deductions under this Act to be readily ascertained by the Comptroller or any officer authorised in that behalf by the Comptroller; and

(*b*) shall, if the gross receipts from such trade, business, profession or vocation in the preceding calendar year exceeded $18,000 from the sale of goods, or $12,000 from the performance of services, issue a printed receipt serially numbered for every sum received in respect of goods sold or services performed in the course of or in connection with such trade, business, profession or vocation, and shall retain a duplicate of every such receipt.

21 I found it hard to believe that the A_1 sales invoices were destroyed either prior to 31 March 2012 or 1 March 2013 when the unaudited profit and loss account and balance-sheet had to be prepared for the AGMs held on 31 March 2012 and 1 March 2013. Furthermore, Tan Siew Gim had also verified that s 199 of the CA had been complied with in that company records that would sufficiently explain the transactions of the company were retained for a period of not less than five years. This was also similar to the requirement in s 67(1)(*a*) of the Income Tax Act. This again made it difficult for me to accept that none of the A_1sales invoices were retained but that they were all destroyed or thrown away after the AGMs on 31 March 2012 and 1 March 2013.

22 It was also noteworthy that the wife of the 5th defendant, Ng Shin Yin Anna ("Anna Ng"), who was the secretary of the 2nd defendant until 2011 and also the accountant of the 3rd defendant was not a babe in the woods such that she would allow important financial documents such as the A_1 sales invoices to be destroyed or discarded. In Anna Ng's affidavit dated 18 July 2014 at paragraph 3, she affirmed that she had financial records of the goods bought by the 3rd defendant from the plaintiffs and subsequently sold to the 4th defendant. She further stated that she had provided a list as well as all the requested sales invoices to the 5th defendant and had checked the payment received from the 4th defendant from the bank statements with the sales invoices she provided. She also added that "[b]ank statements are third party documents [and] [t]hey are reliable and an objective source for checking." I had also noted that she was a public accountant and had affirmed in her affidavit on 6 November 2014 that she did not state anywhere that "[she] was not aware that accounting documents are to be maintained". It would be extraordinary in my view for her, as a public accountant, to be ignorant of the fact that important accounting documents such as the A_1 sales invoices must be kept at least for the relevant periods required under the law. She was thus clearly not unaware of the importance of the sales invoices and it was inconceivable to me that the sales invoices of the 3rd defendant were kept while the A_1 sales invoices of the 2nd defendant were destroyed or thrown away under her watch.

23 Given the above, I rejected any suggestion by the 5th defendant that the A_1 sales invoices were either destroyed or thrown away by the staff of the 2nd defendant or the 3rd defendant.

Second issue: Whether the 2nd defendant had failed to give discovery of the A_1 sales invoices?

24 Given that I had found that the A_1 sales invoices were not destroyed or thrown away, I next found that these invoices were within the power of the 2nd defendant to produce.

25 In Tan Siew Gim's affidavit affirmed on 19 May 2014 she stated the following:

> 4. On *30 December 2011*, Lim Keng Huat, who is *the 5th Defendant* herein, *sold* and transferred 20,000 shares in *the 2nd Defendant to me*. At the time of transfer, the 5th Defendant was the sole director of the 2nd Defendant. After the transfer, I was appointed director and became the sole shareholder of the 2nd Defendant. …
>
> 5. *At all material times, no copies of invoices relating to sales concluded by the 2nd Defendant with the 4th Defendant before or at the time of transfer were handed over to me.* As such, I do not have possession of any sales invoices that the Plaintiff is seeking, namely invoices of the sale of the Plaintiff's products by the 2nd Defendant to the 4th Defendant.
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> 6. In the circumstances the 2nd Defendant is not in a position to furnish copies of invoices of the

sale of the Plaintiff's products by the 2nd Defendant to the 4th Defendant prior to the transfer of shares on 30 December 2011.

[emphasis added]

26 I interpreted the above passage to mean that no actual physical handover of the A_1 sales invoices was done during the sale of the 2nd defendant on 30 December 2011 to Tan Siew Gim by the 5th defendant, who was, prior to the sale, the sole shareholder and sole director of the 2nd defendant. The 2nd and 3rd defendants, who were at one point owned by the 5th defendant, had shared the same office premises. It was at the time of the sale that the registered address of the 2nd defendant changed. It also seemed that they had the same staff, who was the lady that the 5th defendant suggested as the person who cleared the useless documents of the 2nd defendant. It also seemed that this staff remained in the employment of the 3rd defendant (and thus the 5th defendant) after the sale of the 2nd defendant to Tan Siew Gim because of the detailed knowledge the 5th defendant had about her work pass being cancelled and her return home to a foreign land. This was in addition to the fact that he referred to her as "my staff" in his affidavits filed after the sale of the 2nd defendant. Nevertheless, even though the 2nd defendant might not have had physical possession or custody of those invoices, they would most certainly have been within the 2nd defendant's power to produce and thus the 2nd defendant had an obligation give discovery of them.

27 In *Wee Soon Kim Anthony v UBS AG* [2002] SGHC 206, a question arose as to whether a bank customer had the power to documents held by the bank such that he had to give discovery of those documents even though they were not in his physical possession or custody. Kan Ting Chiu J said (at [13]) "even if [the bank customer] did not have those documents with him, the banks would have them, and he could get them from the banks." In this regard, Kan J referred to decision of the House of Lords in *Lonrho Ltd v Shell Petroleum Co Ltd* [1980] 1 WLR 627 ("*Lonrho HL*"):

> 14. … In this case, the plaintiff Lonrho wanted discovery of documents in the possession of the defendant Shell Petroleum's subsidiary companies in Rhodesia and South Africa. The subsidiary companies refused to disclose the documents on the grounds that they cannot do that without ministerial licence.
>
> 15. The question was raised whether the documents were in Shell Petroleum's power for the purposes of O.24 of the Rules of the Supreme Court, which is similar to O.24 of our Rules of Court.
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> 16. Lord Diplock who delivered the judgment of the court stated at p 635
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> > (I)n the context of the phrase "possession, custody or power" the expression "power" must, in my view, mean a presently enforceable legal right to obtain from whoever actually holds the document inspection of it without the need to obtain the consent of anyone else. Provided that the right is presently enforceable, the fact that for physical reasons it may not be possible for the person entitled to it to obtain immediate inspection would not prevent the document from being within his power; but in the absence of a presently enforceable right there is, in my view, nothing in Order 24 to compel a party.
>
> and held that the documents were not in Shell Petroleum's power because Shell Petroleum could not have access without the ministerial licence.
>
> 17. In the present case, the plaintiff, as a customer or former customer of the banks, would have a right to the documents, subject to the payment of copying and other related charges.

28 The A_1 sales invoices were strictly the property of the 2nd defendant, a separate legal entity at law. Being the owner of these invoices, the 2nd defendant clearly had a presently enforceable right to obtain these invoices from whoever was in actual possession of these invoices without the need to obtain consent from anyone. The fact that the 2nd defendant was able to file the annual returns on the 7 March 2013 with ACRA for the years 2011 and 2012 showed that it was still within the power of the 2nd defendant to retrieve these sales invoices to prepare its annual returns. I could not see how the 5th defendant could have stopped the 2nd defendant from retrieving these documents. I thus found that it was within the power of the 2nd defendant to get these invoices back from the 5th defendant if the A_1 sales invoices were not handed over to the 2nd defendant by the 5th defendant when he sold the 2nd defendant to Tan Siew Gim. This meant that by not providing the A_1 sales invoices, the 2nd defendant was in breach of the Discovery Orders.

Third issue: Whether the 5th defendant had failed to give discovery of the A_1 sales invoices?

29 Having also accepted that at the time of sale of the 2nd defendant on 30 December 2011, no sales invoices were physically handed over to Tan Siew Gim (see [25] above), I concluded that it should naturally follow that the A_1 sales invoices remained either in the possession or custody of the 5th defendant. These invoices would have still remained in the premises that was previously shared by the 2nd and 3rd defendants or until the 5th defendant removed them himself. In fact, this conclusion was borne out by the affidavit of the 5th defendant where he said that he looked through the documents *retained* after the sale of the 2nd defendant. It was a clear admission that some of the documents of the 2nd defendant remained with him even after the sale of the 2nd defendant to Tan Siew Gim. This also corroborated the account by Tan Siew Gim that no invoices were physically handed over to her at the time of sale.

30 If the A_1 sales invoices were not destroyed or thrown away, there were two possible alternatives left. The first alternative was that the staff of the 2nd and/or 3rd defendant removed the sales invoices and took them with her when she had left the employment of the company and returned to the People's Republic of China sometime in early February 2013 (see [15] above). To me this was simply inconceivable. There was no reason for purely administrative staff to remove or take away documents which were simply of no use to them when they left the employment of a company. This would be all the more so, when the staff left the employment of a company to return home to a foreign land.

31 The second alternative was that the sales invoices were in the possession or custody of the 5th defendant himself. I also noted that the 5th defendant's affidavit affirmed on 18 July 2014 had stated that he was unable to locate the invoices after using his best efforts to search for them. In spite of this, I was of the opinion that it was more likely than not, bearing in mind that the A_1 sales invoices were not destroyed or thrown away, not handed over to Tan Siew Gim at the time of sale of the 2nd defendant in 2011 but retained by the 5th defendant and not removed or taken away by the administrative staff when she left the employment of the 2nd defendant in February 2013, that the A_1 sales invoices were in fact within the possession or custody of the 5th defendant.

32 I therefore found that by not providing the A_1 sales invoices, the 5th defendant was in deliberate breach of the Discovery Orders since those invoices were in his possession or custody.

33 There was some evidence which also suggested the 5th defendant's involvement with the 2nd defendant even after the sale. For instance, the 5th defendant's affidavit dated 2 May 2013, which was long after the sale of the 2nd defendants to Tan Siew Gim, stated that he was a Director of the

2nd defendant at all material times and was *duly authorised to depose that affidavit on behalf of the 2nd defendants*. In that affidavit, he also deposed to the fact that at the time of the affidavit (when he was no longer a director or shareholder of the 2nd defendant) the 2nd defendants could provide the invoices if the plaintiff was more specific (see above at [18]). It had to be borne in mind that this was all done with the benefit of legal advice. This was also not the only time when the 5th defendant deposed on behalf of the 2nd defendant. In his affidavit affirmed on 9 April 2014, the 5th defendant stated that no invoices were retained upon the sale to the 2nd defendant and at the time of the affidavit (when the 5th defendant was no longer a director or the shareholder of the 2nd defendant), the 2nd defendant was not in a position to furnish copies of invoices of goods bought by the 2nd defendant before the sale of its shares to the present owner. Even more curiously, the 5th defendant went on to assert that none of the other defendants (which included the 4th defendant) had any of these invoices. This was to me, to say the least, fishy and consistent with my finding below that the 2nd, 3rd and 4th defendants were previously controlled and operated by the 5th defendant as a group. I was also of the opinion that the 5th defendant continued to be involved in the 2nd defendant in some way even after the sale of the 2nd defendant to Tan Siew Gim. Viewed from this angle, it was not surprising that both the 2nd and 5th defendants engaged the same counsel.

34 That Tan Siew Gim did not see it fit to ensure that the 2nd defendant took proper physical possession and custody of the important accounting documents such as the A_1 sale invoices when she bought the 2nd defendant company from the 5th defendant would again not be too surprising since the 5th defendant appeared to have some continuing involvement in the 2nd defendant. However, it was somewhat peculiar to me that the same counsel represented them even though there was some element of finger pointing by the 2nd defendant to the 5th defendant. The 2nd defendant stated that it did not have the invoices since no documents were handed over by the 5th defendant during the sale of the 2nd defendant while the 5th defendant claimed that he did not have the documents as they might have been destroyed. Yet, the 2nd defendant was able to file its annual returns on 7 March 2013 with ACRA for the years 2011 and 2012, which would have required reference to the sales invoices. Given the positions taken by the 2nd and 5th defendants as their defences, it would have been natural to expect them to engage separate counsel, especially if they were truly unrelated. This was all the more so when there was a possibility of conflicting positions or interests at trial. I therefore had serious doubts as to whether the 5th defendant was truly unrelated to the 2nd defendant even after the sale of the 2nd defendant to Tan Siew Gim.

Fourth issue: Whether the 5th defendant had failed to give discovery of the B and C sales invoices?

35 In *Lonrho Ltd v Shell Petroleum Ltd* [1980] 1 QB 358 ("*Lonrho CA*") (which was affirmed by *Lonrho HL*), the English Court of Appeal stated, after noting that power meant an enforceable right to inspect documents or to obtain possession or control of the document from the person who ordinarily had it in fact, that in the context of a parent and a subsidiary company it was always a question of fact as to whether the parent had power over the subsidiary (as per Lord Denning MR at 371 and Shaw LJ at 376). To my mind, it was similarly a question of fact in this case whether the 5th defendant had the power to obtain the B and C sales invoices, which were typically expected to be in the records of the 4th defendant.

36 Further in *Lonrho CA*, Lord Denning MR when discussing power said at 371:

> … When there is a parent company with subsidiaries, is it or is it not the law that the parent company has the "power" over the documents of the subsidiaries when they are in another country?

> I would like to say at once that, to my mind, a great deal depends on the facts of each individual case. For instance, take the case of a one-man company, where one man is the shareholder - perhaps holding 99 per cent. of the shares, and his wife holding 1 per cent. - where perhaps he is the sole director. In those circumstances, his *control* over that company may be so complete - his "power" over it so complete - that it is his alter ego. …
>
> [emphasis added]

Similarly, Shaw LJ in *Lonrho CA* said at 376:

> There are no doubt situations, such as existed in *B. v. B. (Matrimonial Proceedings: Discovery)* [1978] Fam. 181, where on the established facts a company is so utterly subservient or subordinated to the will and the wishes of some other person (whether an individual or a parent company) that compliance with that other person's demands can be regarded as assured. Each case must depend upon its own facts and also *upon the nature, degree and context of the control* it is sought to exercise.
>
> [emphasis added]

The emphases in the above passages showed that another factor the court considered when determining if documents were within the power of a person/entity, apart from whether the right was enforceable without the need from consent from another party, was control.

37 There was no suggestion that the B and C sales invoices were for any reason not with the 4th defendant (a company incorporated in Shanghai, the People's Republic of China) or were destroyed. The 5th defendant claimed that 4th defendant and him were separate entities and that judgment having been entered against the 4th defendant he should not be made to answer for them. He also stated in his affidavit affirmed on 2 May 2013 that he did not have any documentation of the 4th defendant in his possession, custody or control and that he was no longer a director but was now a supervisor of the 4th defendant. Although, I noted that the 4th defendant and the 5th defendant were distinct at law, I was not convinced by the bare assertion that the 5th defendant did not have power over the documentation of the 4th defendant. I therefore found that he had power to obtain the B and C sales invoices.

38 In making the Order of Summons 1350, the assistant registrar had found that there was sufficient nexus between the 5th defendant and 4th defendant so as to order discovery of the sales invoices, as the documentary exhibits alluded to during the hearing clearly showed that the 5th defendant was "an important feature" in the 4th defendant.

39 I agreed with the assistant registrar. In the pleadings filed, the 5th defendant had admitted to being the named director and shareholder of the 4th defendant and was thereafter a supervisor. In the documentary evidence before me, filed in Goh Siew Hoon's affidavit dated 13 June 2013, it was clear to me that the 5th defendant was in control and managing the affairs of the 4th defendant. In fact, in an email dated 30 May 2010 (filed in Goh Siew Hoon's affidavit dated 13 June 2013 at pages 18–19), it was apparent that the 5th defendant was also in control of the 2nd, 3rd and 4th defendants and that they were operated as a group under him. In that email, he was directing the organisation of the group of companies.

40 In another email dated 22 January 2011 (filed in Goh Siew Hoon's affidavit dated 9 May 2013 at page 34) from the 5th defendant to the plaintiff, the 5th defendant stated "I will try to made [*sic*] payment for the 1st invoice by this coming week. For the remaining two invoices, we can only

schedule it after the CNY holiday. Hope it is alright for Vonroll." The first invoice referred to by the 5th defendant was one where the 4th defendant owed a sum of money to the plaintiff. The other two invoices referred to were sums due to the plaintiff by the 3rd defendant. It was telling that the 5th defendant was speaking of payments to be made by the 4th defendant in his own personal capacity (see emphasis above). He also did the same when speaking in respect of the 3rd defendant in that email. These were all evidence of the management and control that the 5th defendant exerted over the 4th defendant. There were numerous other emails adduced by the plaintiff (filed in the Goh Siew Hoon's affidavits dated 13 June 2013 and 9 May 2013) showing the 5th defendant's involvement in the affairs of the 4th defendant by scheduling meetings between himself and the employees of the plaintiff to discuss matters pertaining to the business of the 4th defendant. When I considered these documents cumulatively, I reached the same conclusion as the assistant registrar that the 5th defendant was "an important feature" in the 4th defendant, and to take things further, that he had power over the documents of the 4th defendant such that the 5th defendant had to give discovery of those documents.

41 Given the extent of control the 5th defendant exerted over the 4th defendant, I found that the B and C sales invoices were within the power of the 5th defendant to produce and therefore by not providing these invoices, the 5th defendant was in breach of the Discovery Orders.

Fifth Issue: Whether the defences of 2nd defendant and/or 5th defendant should be struck out and judgment entered against them for non-compliance with the Discovery Orders?

42 Having found both the 2nd and 5th defendant to have breached the Discovery Orders, I finally considered whether or not their defences ought to be struck out and judgment entered against them.

43 I was fully aware of the drastic effects of striking out a defence and entering judgment against the 2nd and 5th defendants since it in effect terminated their case and denied them their day in court. I was also fully aware that this draconian power under O 24 r 16 of the Rules of Court was not to be lightly invoked. This power could be invoked in cases involving an inexcusable breach of a significant procedural obligation (*Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 at [47] ("*Mitora*")). In *Mitora*, the Court of Appeal further noted that the breach of an "unless order" that compelled discovery would be susceptible to an order of striking out (*Mitora* at [47]). In exercising its discretion under O 24 r 16 of the Rules of Court, the court had to weigh up all the facts and circumstances of the particular case and then balance the interests of the applicant against the interests of the defendants and interest of the public (*Alliance Management SA v Pendleton Lane P and another* [2008] 4 SLR(R) 1 at [15]).

44 In *Manilal and Sons (Pte) Ltd v Bhupendra K J Shan (trading as JB International)* [1989] 2 SLR(R) 603 ("*Manilal*"), Chao Hick Tin JC (as he then was) dismissed the plaintiff's action for non-compliance with an "unless order" for discovery. Chao JC had found that the non-compliance with the order, if it was not deliberate, arose out of gross negligence on the part of the plaintiffs such that it amounted to wilfulness (at [64]). Chao JC said:

> 55 The effect of an "unless" order is explained in these terms in para 24/16/1 of *The Supreme Court Practice 1988*:
>
> > An 'unless' order spells out the consequences of failure to comply with its terms, and disobedience to such an order is likely to be held to be contumelious behaviour resulting in the dismissal of the action or striking out of the defence, and, in the case of dismissal of the action, may prevent the plaintiff from issuing a second writ notwithstanding that the limitation period has not expired.

45 In *Changhe International Investments Pte Ltd (formerly known as Druidstone Pte Ltd) v Dexia BIL Asia Singapore Ltd (formerly known as Banque Internationale A Luxembourg BIL (Asia) Ltd)* [2005] 3 SLR(R) 344 ("*Changhe*"), the Court of Appeal explained that in a case where a litigant's first action had been struck out for failure to comply with a peremptory order, and he brought a second suit based on that same cause of action, the second suit might be struck out as being an abuse of the process of the court unless the litigant could give a proper explanation to establish that his failure to comply with the peremptory order was not contumelious (at [11]). The Court of Appeal then went on to explain that disobedience to a peremptory order would generally amount to contumelious conduct.

46 The Court of Appeal in *Mitora* stated that the immediate purpose of "unless orders" was not to punish misconduct but to secure a fair trial in accordance with the due process of law (at [45]). The Court of Appeal provided further guidance on when the power of striking out may be invoked for breach of "unless orders":

> 35 It is self-evident that the breach of an "unless order" will automatically trigger its specified adverse consequences (see Jeffrey Pinsler SC, *Principles of Civil Procedure* (Academy Publishing, 2013) at para 01.032). The onus will then be on the defaulting party to demonstrate that the breach had not been intentional and contumelious so as to avoid those consequences. The *locus classicus* for this proposition is traceable to Sir Nicolas Browne-Wilkinson VC's decision in *In re Jokai Tea Holdings Ltd* [1992] 1 WLR 1196 ("*In re Jokai Tea Holdings*") at 1203B:
>
> > In my judgment, in cases in which the court has to decide what are the consequences of a failure to comply with an 'unless' order, the relevant question is whether such failure is intentional and contumelious. The court should not be astute to find excuses for such failure since obedience to orders of the court is the foundation on which its authority is founded. But if a party can clearly demonstrate that there was no intention to ignore or flout the order and that the failure to obey was due to extraneous circumstances, such failure to obey is not to be treated as contumelious and therefore does not disentitle the litigant to rights which he would otherwise have enjoyed.
>
> …
>
> 37 Indeed, even where it has been established that an intentional and contumelious breach of an "unless order" had been committed, the court must nevertheless determine what sanction should be imposed as a result. In *In re Jokai Tea Holdings*, Parker LJ opined at 1206 that:
>
> > I have used the expression 'so heinous' because it appears to me that there must be degrees of appropriate consequences even where the conduct of someone who has failed to comply with a penal order can properly be described as contumacious or contumelious or in deliberate disregard of the order, just as there are degrees of appropriate punishments for contempt of court by breach of an undertaking or injunction. Albeit deliberate, one deliberate breach may in the circumstances warrant no more than a fine, whilst another may in the circumstances warrant imprisonment.
>
> 38 The same passage was also cited with approval by this court in *Syed Mohd* at [24], *en route* to overturning the High Court's decision to uphold a striking-out order. It was also noted at [22] of *Syed Mohd* that in taking all circumstances of the case into account, the court must also include the prejudice suffered by the respondent.
>
> 39 The judicial philosophy espoused in these cases clearly reveals a tendency to be guided by considerations of proportionality in assessing breaches of "unless orders". …

The Court of Appeal concluded that on the facts of the case, it was not proportionate to strike out the appellant's statement of claim for breach of the "unless orders". The court balanced the appellant's repeated non-compliance against the fact that all the documents for which discovery had been sought, and which were within the appellant's possession, power or control, had subsequently been disclosed. The Court of Appeal noted that the respondent did not suffer from any irremediable prejudice due to the delay in the disclosure of documents and that its counterclaim remained intact, and as the documents sought did not have a clear connection to the respondent's defence in the main suit, his legal position would not have been compromised should both matters proceed to trial. This had to be balanced together with the fact that the appellant, as the assignee of the debt, was hamstrung by extraneous circumstances due to a third party's initial resistance to disclosing the documents, and that this obstacle appeared to have been removed by the time appeal came before the court (at [41]).

47 In *Teeni Enterprise Pte Ltd v Singco Pte Ltd* [2008] SGHC 115 ("*Teeni Enterprise*"), I declined to order striking out even though there was a breach of an "unless order". I explained as follows:

> 63 For the reasons given, enforcement of the unless order was clearly disproportionate, inappropriate and harsh in the light of all the facts and circumstances of this case and would not be in the interests of justice. Each case of a breach of a peremptory order must be decided on its own facts and on the facts, I found that the plaintiff and his counsel had made reasonable positive efforts to locate the missing documents and there was no evidence of any intentional and contumelious or contumacious non-compliance with the unless order, let alone of an extent that would justify the orders made by the AR. I agreed with the submission of plaintiff's counsel that the "draconian punishment" of allowing the "massive" counterclaim of over $1.2 million (based apparently in part on an alleged loss of profit of 25% from potential contracts as a result of this litigation) and the dismissal of the whole of the plaintiff's claim was disproportionate, taking into account the relatively trivial breach by the plaintiff which did not occasion any real prejudice to the defendant.
>
> 64 Clearly, the court must balance the need to ensure compliance with court orders which are made to be adhered to and not ignored, and the need to ensure that a party would not be summarily deprived of its cause of action or have default judgment entered against it without any hearing of the merits especially when the non-compliance or breach, having regard to all the relevant circumstances, was not so serious or aggravating as to warrant such a severe consequence: see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR 117 at [4]. The discretionary power to enforce the unless order according to its strict terms must therefore be exercised judiciously and cautiously after carefully weighing everything in the balance.

48 In *Kraze Entertainment (S) Pte Ltd v Marina Bay Sands Pte Ltd* [2014] 1 SLR 78 George Wei JC explained that there could even be different degrees of contumelious behaviour (at [43]). An evaluation as to how serious the contumelious behaviour was would depend on all relevant considerations including the procedural history of the suit. Even in cases where there was contumelious conduct but such conduct was at the bottom of the scale (such as where the plaintiff was able to demonstrate that whilst he was not prevented by extraneous circumstances from complying, there were substantial problems which made it objectively hard for him to promptly comply) the court would take into account other relevant factors in deciding whether or not to exercise its discretion to order a striking out (at [55(e)]).

49 It must at once be stated that Order of RA 192 was a peremptory order which clearly stipulated the consequences of non-compliance – the striking out of the defences and entering of judgment. As

was stated in *Manilal*, disobedience to a peremptory order would likely be held to be contumelious. It was thus incumbent upon the 2nd and 5th defendants to show that despite their non-compliance with the Order of RA 192, striking out should not be ordered due to it being disproportionate in the circumstances or because their disobedience was not so contumelious as to justify striking out.

50 Tan Siew Gim, who was duly authorised to depose on behalf of the 2nd defendant had stated that "[a]t all material times, no copies of invoices relating to sales concluded by the 2nd Defendant with the 4th Defendant (*ie* A_1sale invoices) before or at the time of transfer were handed over to me." While, I accepted that this meant that the 2nd defendant was not in possession of the A_1 sales invoices, nothing more was said about any reasonable efforts to locate those sales invoices or why Tan Siew Gim as the director and sole shareholder of the 2nd defendant could not exercise the 2nd defendant's power to obtain those sales invoices from the 5th defendant, who had sold the 2nd defendant to Tan Siew Gim.

51 Although, the 5th defendant stated that he did try his best to locate the A_1 sales invoices but could not find them, no other details were provided. To me, this was insufficient to constitute reasonable best efforts. At the very least, more details should have been provided apart from this bare assertion. Even more detrimental was the 5th defendant's silence as to any steps or any sort of effort expended in obtaining the B and C sales invoices from the 4th defendant. There was no suggestion that the 4th defendant had a practice of clearing documents. He merely asserted that he did not have those invoices in his possession, custody or power and that he was no longer answerable for the 4th defendant as judgment had been entered against them. The 5th defendant did not even bother to find out from the 4th defendant anything about the B and C sales invoices *ie* whether it still had the documents, and if not, then what had happened to the documents.

52 Since both defendants had not made any reasonable positive efforts (as was done by the plaintiff in *Teeni Enterprise*), and the affidavits were mostly silent on any efforts they used to locate or obtain the sales invoices in their possession, custody or power, they had not shown that their disobedience was not so contumelious as to justify the non-enforcement of the peremptory order I made in RA 192.

53 Further, I did not find that this was a disproportionate sanction as the 2nd and 5th defendants were given ample opportunities to comply with the discovery order which was first ordered on 5 September 2013 in Summons 1350. Instead of using reasonable efforts to obtain the sales invoices, they merely asserted that the sales invoices were not in their possession, custody or power. The plaintiff had stated its position as to why it was necessary for it to obtain these sales invoices in the affidavit of Goh Siew Hoon dated 13 March 2013. These invoices would have assisted the plaintiff in showing the loss of profits suffered by the plaintiff on account of the various sale transactions by the 2nd, 3rd and 4th defendants during the period of 2008 – 2011. It would also have aided the plaintiff in establishing that the 1st defendant had breached his fiduciary duties owed to the plaintiff and that this together with the conspiracy between the 2nd, 3rd, 4th and 5th defendants caused the plaintiff to suffer loss of profits. However, in order to calculate the loss of profits and damages, the plaintiff claimed that it needed the market price of these goods which were sold to the end customers. This would have been evidenced in the sales invoices sought by the plaintiff. It was also worth pointing out that the plaintiff's initial position was that the 2nd and 3rd defendants themselves had dealings with listed customers (see [3] above). However, during the course of the Suit, it learnt from the defendants' solicitor that the 2nd and 3rd defendants did not have dealings with the listed customers but had sold the goods to the 4th defendant who thereafter sold them to the listed customers. This was why the plaintiff sought discovery of the sales invoices for the sale of goods from the 2nd and 3rd defendants to the 4th defendants and then to the listed customers. I agreed with the plaintiff that these sales invoices were crucial to its case.

54 Faced with the 2nd and 5th defendants' non-compliance with the Discovery Orders in respect of this crucial element of the plaintiff's case, and without any explanation on their part as to why the non-compliance was not so contumelious, I was left with no choice but to enforce the Order of RA 192 in its exact and unambiguous terms, which I did not find to be a disproportionate sanction in the circumstances of the case. I therefore ordered that the defences of both the 2nd and 5th defendants be struck out and judgment entered against them pursuant to O 24 r 16 of the Rules of Court.

55 As an aside, parties embroiled in litigation have to bear in mind the important place discovery has in the administration of justice. Our entire system is premised, in most circumstances, on *all* relevant information being placed before the court so a just outcome between the parties can be achieved. In this regard, solicitors too have an important role to play. By way of an example, to underscore the point, r 58 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) provides:

> **Duty to cease to act**
>
> **58.** An advocate and solicitor shall cease to act for a client if —
>
> (*a*) the client refuses to authorise him to make some disclosure to the Court which his duty to the Court requires him to make;
>
> (*b*) the advocate and solicitor having become aware during the course of a case of the existence of a document which should have been but has not been disclosed on discovery, the client fails forthwith to disclose it; or
>
> (*c*) having come into possession of a document belonging to another party by some means other than the normal and proper channels and having read it, he would thereby be embarrassed in the discharge of his duties by the knowledge of the contents of the document.

The above is indicative of the serious nature of discovery obligations.

56 For completeness, I should add that if the A_1, B, or C sales invoices were deliberately destroyed or thrown away by the defendants subsequent to any requests for them by the plaintiff in order to thwart discovery and with the knowledge that those documents were relevant to the Suit, such behaviour should also not be countenanced and would in and of itself be a sufficient reason to justify striking out the defendants' defences and the entering of judgment against them.

Conclusion

57 In conclusion, I granted the plaintiff's application in Summons 4140 and ordered that the defences of the 2nd and 5th defendants be struck out and judgment entered against them. I also ordered that costs of $3,000.00 (inclusive of disbursements) be paid by the 2nd and 5th defendants to the plaintiff.