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

[2023] SGHCR 9

Suit No 1006 of 2021 (Summons No 1673 of 2023)

Between

H8 Holdings Pte Ltd

… *Plaintiff*

And

(1) RIC Dormitory (SG) Pte Ltd (formerly known as QFC Investment Pte Ltd)

(2) POP Holdings Pte Ltd

(3) Lee Boon Leng

(4) Leong Poh Choo

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure – Discovery of documents – Commercial sensitivity]

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H8 Holdings Pte Ltd
v
RIC Dormitory (SG) Pte Ltd (formerly known as QFC Investment Pte Ltd) and others

[2023] SGHCR 9

General Division of the High Court — Suit No 1006 of 2021
(Summons No 1673 of 2023)
AR Victor Choy
7, 12 July 2023

24 July 2023

AR Victor Choy:

Introduction

1 This was the Plaintiff's, H8 Holdings Pte Ltd ("**H8 Holdings**"), application against the 1st Defendant, RIC Dormitory (SG) Pte Ltd ("**RIC**"), for specific discovery ("**Application**") under O 24 r 5 of the Rules of Court (Cap 322, 2014 Rev Ed) ("**ROC 2014**"). H8 Holdings sought discovery of RIC's general ledger entries for the Financial Years ("**FY**") ended on 31 December 2017, 31 December 2018 and 31 December 2019 (collectively, "**General Ledgers**").

2 After hearing parties' submissions, I allowed the Application. I now set out the full grounds of my decision.

Background

3 H8 Holdings and the 2nd Defendant, POP Holdings Pte Ltd ("**POP Holdings**"), are shareholders of RIC. The 3rd and 4th Defendants ("**Lee and Leong**") are the only directors and shareholders of POP Holdings and are also the only directors of RIC.

4 The present suit was brought by H8 Holdings for *inter alia* a claim for oppression. H8 Holdings claimed that, despite its objections, Lee and Leong, as controllers of RIC, approved the issuance of 1,000,000 of its shares to POP Holdings on or about 26 June 2018.[1] H8 Holdings claimed that this effectively diluted its shareholding in RIC from 30% to 15%. H8 Holdings also claimed that these shares were obtained by POP Holdings at an undervalue.

5 Accordingly, one of the issues that arose and is to be determined at trial is whether the 1,000,000 shares of RIC obtained by POP Holdings on or around 26 June 2018 were obtained at an undervalue.[2] To determine this issue, parties appointed experts to perform a valuation of the shares of RIC held by H8 Holdings on or around 26 June 2018 ("**Shares**").[3] In this regard, H8 Holdings' expert requested the General Ledgers so that he can perform the valuation. RIC refused, and hence the Application.

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1 Statement of Claim (Amendment No. 5) at para 32.

2 Statement of Claim (Amendment No. 5) at para 32.

3 4th Affidavit of Han Jieling at pp 13-14.

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The parties' cases

6 H8 Holdings sought the General Ledgers on behalf of its expert, Mr Farooq Ahmad Mann of Mann & Associates PAC ("**Mr Mann**"). Mr Mann took the view that the General Ledgers would be relevant and necessary to his determination of the value of the Shares as they would:

(a) explain the closing balances as at 31 December 2017 and consequently the opening balances for 31 December 2018;

(b) allow for the reconstruction of accounts as at 26 June 2018;

(c) provide insight into how transactions are recorded such as sales; and

(d) act as a safeguard or check against any inaccuracies in the financial statements which are unaudited.

7 RIC disagreed. RIC took the view that discovery of the General Ledgers should be refused as:

(a) the General Ledgers were not relevant to the issue of whether the Shares were obtained at an undervalue;

(b) the General Ledgers were not necessary as Mr Mann could rely on the 2017 and 2018 Financial Statements ("**Financial Statements**") and management accounts ("**Management Accounts**") of RIC that have already been provided;

(c) there was delay in taking out the Application; and

(d) the General Ledgers contained commercially sensitive information.

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8 For the reasons set out below, I did not accept RIC's arguments.

The law on specific discovery

9 It is trite law that an order for specific discovery will be made only if the requested documents are relevant and necessary: see O 24 rr 5 and 7 of the ROC 2014.

10 The relevance of a document is determined by reference to the parties' pleaded cases and can either be:

(a) directly relevant – a document on which the party relies or will rely; where it could adversely affect his own or another party's case; or where it supports another party's case; or

(b) indirectly relevant – a document that may lead the applicant to a "train of inquiry resulting in his obtaining information which may" adversely affect his or another party's case or which may support another party's case.

(see O 24 r 5(3) of the ROC 2014; see also *EQ Capital Investments Ltd v Sunbreeze Group Investments Ltd* [2017] SGHCR 15 at [46(c)])

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11 If the requested documents are relevant, it must be shown that the documents are necessary either for disposing fairly of the cause or matter or for saving costs: O 24 r 7 of the ROC 2014. The burden rests on the party resisting discovery to show that disclosure is not necessary: *UMCI Ltd v Tokio Marine & Fire Insurance Co (Singapore) Pte Ltd* [2006] 4 SLR(R) 95 at [79].

12 With the above principles in mind, I turn to the Application.

Relevance of the General Ledgers

13 I first considered the issue of relevance.

14 This turns on the issue in dispute that forms the basis for seeking the requested documents. In the present case, the relevant issue is whether the 1,000,000 shares of RIC obtained by POP Holdings on or around 26 June 2018 were obtained at an undervalue.[4]

15 I was of the view that the General Ledgers were relevant to the issue as stated at [14] above, for the reasons explained below.

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4 Statement of Claim (Amendment No. 5) at para 32.

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The General Ledgers are relevant to the valuation of the Shares

16 Relying on the principle that relevance must be determined by reference to the parties' pleaded cases, RIC argued that the General Ledgers were irrelevant as they went towards challenging the accuracy and veracity of RIC's Financial Statements, the issue of which has neither been pleaded nor challenged by H8 Holdings.

17 In support of its argument, RIC referred to Mr Mann's letter to H8 Holdings' solicitors dated 28 May 2023 ("**Mr Mann's Letter**") setting out his reasons for requesting the General Ledgers. In particular, RIC refers to paragraph 8 of Mr Mann's Letter which stated:[5]

> There are also strong reasons for the completed and detailed General Ledgers as mentioned above to be made available since one of the prayers in the Statement of Claim is requesting an independent audit of [RIC's] financial accounts to be conducted to determine if the same is a going concern or not. This in turn is notedly connected to other prayers in the Statement of Claim. There is therefore a strong suggestion and reason to believe that the financial statements as drawn up by the Company and management may not be providing a true and fair view of the Company's financial position as at the valuation date and this in turn will certainly impact on the engagement objective of determining the proper valuation of your clients' minority stake as the valuation date.

5 4th Affidavit of Han Jieling at pp 17-18.

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18 RIC argued that, based on the paragraph above, the purpose of seeking the General Ledgers was to challenge the veracity of RIC's Financial Statements and not to determine whether the shares of RIC were obtained by POP Holdings at an undervalue. Accordingly, RIC submitted that discovery of the General Ledgers should not be allowed.

19 I disagreed with RIC.

20 The fact that a document is relevant to one issue does not preclude it from being relevant to another. Indeed, it would be odd if a document, that is relevant to one of the issues in the suit, is excluded simply because it is also relevant to another issue not raised in the suit. The key question must be whether, in determining the issue raised in the suit, a party will rely on the document or for the purposes set out in O 24 r 5 of the ROC 2014.

21 On the present facts, I was persuaded that the General Ledgers would be relied on by Mr Mann for the purpose of valuing the Shares and consequently to determine whether the shares obtained by POP Holdings were obtained at an undervalue.

22 Mr Mann had explained in his letter why he requested the General Ledgers and how they would assist him to determine the proper value of the Shares. In particular, paragraph 6 of Mr Mann's Letter stated: [6]

> Having noted that the valuation of [H8 Holdings'] minority shareholding is at the valuation date, we note that as against this, the financial statements are all dated as at 31 December. For a meaningful valuation to be conducted, it is important that the financial statement and financial information (including the management accounts) as at 30 June 2018 are in hand. This includes the entire detailed General Ledgers of [RIC] for the

6 4th Affidavit of Han Jieling at p 17.

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> financial years ended 31 December 2017, 31 December 2018 and 31 December 2019 which would cover the transactions up to and including 30 June 2018. The General Ledgers for the financial year ended 31 December 2017 would explain the closing balances as at 31 December 2017 and consequently the opening balances for 31 December 2018. The General Ledgers would also allow the 26 June 2018 and/or 30 June 2018 management accounts to be reconstituted and provide insight into how transactions are recorded especially for sales. The General Ledgers from July 2018 to 31 December 2019 would provide insight into what transactions took place after [H8 Holdings'] shares were diluted and in particular, whether any specific actions, resolutions or other transactions of [RIC] were carried out, put in place or timed after the dilution took place. Also, the importance of having the General Ledgers for the financial years ended 31 December 2017 to 31 December 2019 in hand is connected to the issue of the veracity of the financial statements for these financial periods. This is elaborated on below and in particular at paragraph 8.

23 In contrast, RIC did not put forth any evidence showing why it would be incorrect for Mr Mann to choose to rely on the General Ledgers in his valuation. Instead, RIC's argument is simply that Mr Mann had not explained how the General Ledgers would be relevant to the valuation, which I did not agree with. In my view, the reasons provided by Mr Mann as set out at paragraph 6 of his letter showed that the General Ledgers would assist Mr Mann in understanding the financial accounts and assessing the financial position of RIC, which would be relevant to the valuation of the Shares. As to whether the Financial Statements and Management Accounts would be sufficient for the purpose of the valuation, this is a question of necessity, which will be dealt with below.

24 Having considered the relevance of the General Ledgers, I returned to RIC's argument that the General Ledgers are intended to be relied upon to challenge the accuracy and veracity of RIC's Financial Statements, which RIC says is an issue that has neither been pleaded nor challenged by H8 Holdings. This appeared to have arisen from paragraph 8 of Mr Mann's Letter which has

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been reproduced at [17] above, as well as the second last sentence of paragraph 6 of Mr Mann's Letter which stated: [7]

> Also, the importance of having the General Ledgers for the financial years ended 31 December 2017 to 31 December 2019 in hand is connected to the issue of the veracity of the financial statements for these financial periods.

25 As I mentioned above, the fact that a document is relevant to one issue does not preclude it from being relevant to another. Reading paragraph 6 of Mr Mann's Letter as a whole (which has been reproduced in full at [22] above), it was clear to me that Mr Mann requested the General Ledgers to value the Shares. While mention was made of the veracity of the Financial Statements, the request was made with the view of getting a full picture of RIC's financial position and the intention to value the Shares accurately. The fact that it could *also* be used to challenge the veracity of the Financial Statements did not mean that it was irrelevant to the issue at hand.

26 As I was of the view that the General Ledgers would be relied on by Mr Mann to obtain a proper valuation of the Shares, the General Ledgers would be relevant to determining whether the shares obtained by POP Holdings were obtained at an undervalue.

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7 4th Affidavit of Han Jieling at p 17.

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The 31 December 2019 entries are relevant to properly value the Shares

27 RIC then sought to narrow the scope of discovery by excluding the ledger entries for FY ended on 31 December 2019 ("**2019 Ledgers**"). RIC argued that the 2019 Ledgers were irrelevant as the issue in question related to the value of RIC's shares as of 26 June 2018. In RIC's view, transactions which took place after 26 June 2018 had no impact on or relevance to the value of the Shares as at 26 June 2018 and that the request for the 2019 Ledgers was a fishing expedition.

28 In response, H8 Holdings submitted that the 2019 Ledgers were relevant as the valuation process was not a point valuation but an ongoing one. Being an ongoing valuation, Mr Mann would need to take into account subsequent transactions so as to get an accurate picture of the financial status of RIC and consequently provide a more accurate valuation of the Shares as at 26 June 2018. In support of its argument, H8 Holdings referred to paragraph 6 of Mr Mann's Letter which stated:[8]

> The General Ledgers from July 2018 to 31 December 2019 would provide insight into what transactions took place after [H8 Holdings'] shares were diluted and in particular, whether any specific actions, resolutions or other transactions of [RIC] were carried out, put in place or timed after the dilution took place.

[8] 4th Affidavit of Han Jieling at p 17.

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29 I accepted H8 Holdings' argument and Mr Mann's explanation. There could be transactions that took place after 26 June 2018 which might have a bearing on the value of the Shares as at 26 June 2018.

30 In the absence of evidence showing that to obtain an accurate value of the Shares:

(a) the valuation exercise must strictly be conducted on the basis of information up to and only 26 June 2018; and

(b) seeking the ledger entries up to FY ended on 31 December 2019 is manifestly excessive,

I was of the view that the 2019 Ledgers would be relevant to obtaining an accurate valuation of the Shares.

Necessity of the General Ledgers

31 I next considered the necessity of the General Ledgers.

32 In this regard, RIC argued that the General Ledgers, even if relevant, were not necessary because:

(a) Mr Mann could rely on the Financial Statements and Management Accounts, which have already been put into discovery; and

(b) the 2nd, 3rd and 4th Defendants' expert, Mr Tim Reid of M/s Baker Tilly Advisory Pte Ltd ("**Mr Reid**"), would not be relying on the General Ledgers in his valuation of the Shares.

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33 I considered each of these below.

The General Ledgers are necessary for an accurate valuation of the Shares

34 There was no dispute that the following documents have been disclosed to H8 Holdings:

(a) RIC's financial statements for FY 2017 to 2019; and

(b) RIC's Management Accounts (as at 31 May 2018 and 30 June 2018).

("**Disclosed Documents**")

35 RIC submitted that since H8 Holdings had not previously objected to the adoption and approval of the Financial Statements (for FY 2017 and 2018), the Disclosed Documents were sufficient for the purposes of the valuation of the Shares. Effectively, RIC was suggesting that Mr Mann should proceed with his valuation on the basis that the Financial Statements were true and accurate and it was therefore unnecessary for him to review the General Ledgers.

36 I did not agree.

37 While Mr Mann is appointed by H8 Holdings, as an expert, Mr Mann owes an overriding duty to the Court to assist the Court on the matters within his expertise: O 40A r 2 of the ROC 2014. To do so, it was fair for Mr Mann to seek documents which he believed would assist him in providing an accurate and meaningful valuation that would assist the Court.

38 In Mr Mann's view, the Disclosed Documents were insufficient for him to provide a meaningful or accurate valuation of the Shares. This is because the

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Financial Statements were unaudited and the Statement of Claim sought an independent audit of RIC's financial accounts to be conducted to determine if RIC was a going concern. Given these, Mr Mann believed that he may not have a full view of the financial position of RIC with only the Disclosed Documents, therefore making it difficult for him to provide an accurate and proper valuation of the Shares.

39 In view of the concerns that Mr Mann had arising out of the circumstances and pleadings of the parties, I was of the view that it was fair and necessary for Mr Mann to have sight of the General Ledgers to satisfy himself that he had the full picture of RIC's financial position, which would in turn assist him in providing a valuation to the Court that he believes is accurate.

H8 Holdings' expert is not bound to rely solely on material that the Defendant's expert chooses to rely on

40 RIC also argued that the General Ledgers were unnecessary as the Defendants' expert, Mr Reid, would not be relying on them in his valuation of the Shares.

41 This argument is without merit. However, in fairness to RIC, this argument arose because Mr Mann took issue with Mr Reid (being the 2nd, 3rd and 4th Defendants' expert) having been given unfettered access to RIC's financial information including the General Ledgers whereas he was not similarly given the same. Mr Mann took the view that the unequal access to

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information could leave his valuation report open to attack by Mr Reid and affect the credibility and weight of his report.[9]

42 All that being said, RIC's argument may be easily addressed.

43 Experts are generally free to choose the material that they intend to rely on. The fact that one expert chooses not to rely on certain material should not and cannot bind the hands of the other expert such that he or she is similarly not allowed to rely on the same. Of course, if parties agree or if the Court directs that certain material be excluded from consideration by the experts, that is a different matter.

44 In the present case, where no such agreement or directions from the Court exist, the mere fact that Mr Reid chooses not to rely on the General Ledgers should not preclude Mr Mann from relying on them in his valuation.

45 In any event, RIC's submission that Mr Reid is not relying on the General Ledgers stemmed solely from their understanding that he would not do so.[10] There was no evidence before me that Mr Reid has stated that he has chosen not to rely on the General Ledgers. Even if he did state so, Mr Reid could still change his mind subsequently and choose to rely on the General Ledgers, which RIC's counsel accepted. Accordingly, I do not agree that the General Ledgers are unnecessary simply because (and assuming that to be the case) Mr Reid had, for the moment, chosen not to rely on them.

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9 4th Affidavit of Han Jieling at p 17, para 7.

10 1st Affidavit of Leong Poh Choo at para 29.

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No inordinate delay

46 RIC also objected to the Application on the basis that there was substantial delay. In this regard, RIC argued that the issue of undervalue crystallised as early as 3 January 2023. Yet, H8 Holdings only issued substantive instructions to Mr Mann on 24 May 2023 and only took out the Application on 7 June 2023. As a result, RIC claimed that it had to incur additional costs.

47 I did not agree.

48 First, as counsel for RIC rightly conceded, delay *per se* is not a bar to an application for specific discovery. The key is whether the General Ledgers are relevant and necessary to determine the value of the Shares which, for the reasons set out at [13] to [39] above, I had found to be so.

49 Second, and in any event, I was not convinced that there was inordinate delay. To explain my view, it would be helpful for me to set out the relevant chronology of events as follows:

Date	**Event**
16 May 2023	Parties attended a Pre-Trial Conference where directions were given for the filing of Affidavits of Evidence-in-Chief ("**AEIC**"), including those of expert witnesses.

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Date	Event
19 May 2023 to 23 May 2023	Correspondences were exchanged between H8 Holdings' solicitors and solicitors for the 2nd, 3rd and 4th Defendants to discuss the scope of the expert's AEIC and the possibility of engaging a joint expert to save time and costs. Parties eventually agreed to appoint their own experts.[11]
24 May 2023	H8 Holdings' solicitors provided Mr Mann with a brief and reference material so that Mr Mann could provide his valuation of the Shares.[12]
28 May 2023	Mr Mann wrote to H8 Holdings' solicitors requesting the General Ledgers.[13]
29 May 2023	H8 Holdings' solicitors wrote to RIC's solicitors requesting the General Ledgers.[14]
5 June 2023	RIC's solicitors wrote to reject H8 Holdings' request for the General Ledgers.[15]
7 June 2023	H8 Holdings filed the Application.

11 4th Affidavit of Han Jieling at pp 8-12.

12 4th Affidavit of Han Jieling at p 16, para 1.

13 4th Affidavit of Han Jieling at pp 16-18.

14 4th Affidavit of Han Jieling at pp 20-21.

15 4th Affidavit of Han Jieling at p 22.

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50 From the above chronology, it was apparent that as of 19 May 2023, parties were exploring the possibility of appointing a joint expert to save time and costs and to reduce the scope of contested issues at trial. Once that was sorted out on 23 May 2023, and RIC had refused H8 Holdings' request for the General Ledgers, H8 Holdings took out the Application 2 days from RIC's refusal. The entire exchange from the time discussions began on the possibility of appointing a joint expert to the time the Application was filed took less than a month. This, in my view, did not amount to inordinate delay.

51 Even if I considered the time taken from the point when the issue of whether the shares were obtained by POP Holdings at an undervalue crystallised, which was in January 2023, I did not think that a delay of about 6 months should bar the Application. Counsel for RIC rightly conceded that it would be difficult for him to press this point further on the present facts.

Commercial sensitivity

52 As a final string to its bow, RIC argued that the General Ledgers should nevertheless not be disclosed as they contained commercially sensitive information. RIC submitted that this information could be used by certain representatives of H8 Holdings in another company that they were allegedly involved in, Joylicious Management Pte Ltd ("**Joylicious Management**"), to the detriment of RIC.

53 In the interest of saving time and costs, I directed counsel for both parties to consider whether agreement could be reached on the scope of disclosure of the General Ledgers with the appropriate redactions. However, as parties were unable to reach an agreement on the scope of disclosure, I proceeded to consider the extent to which the General Ledgers should be disclosed.

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The law on disclosure and the interest in protecting commercially sensitive information

54 It is generally accepted that parties should have unfettered access to all relevant and necessary documents to ensure a fair trial. At the same time, it is well-established that there is a need to ensure that documents that a party is compelled to disclose for the purposes of the proceedings are not misused by the party receiving the document (see *B2C2 Ltd v Quoine Pte Ltd* [2018] 4 SLR 67 at [16]; see also *Genk Capital Pte Ltd v Zhang Changjie* [2020] SGHCR 4 ("***Genk Capital***") at [9]). To strike the appropriate balance, the Courts rely on the *Riddick* principle or undertaking – that documents disclosed in discovery under compulsion must not be used for any purpose other than the action in which they are produced: *Ong Jane Rebecca v Lim Lie Hoa* [2021] 2 SLR 584 at [100].

55 However, the *Riddick* principle may not always be sufficient. Concerns remain in the minds of trade rivals or competitors locked in proceedings that documents that they disclose may contain commercially valuable or sensitive information such as customer names, price lists and data which may not be sufficiently protected by the *Riddick* undertaking. The reason for such concerns is a practical one. Once the documents containing commercially sensitive information have been seen, they cannot be unseen. Realistically, it would be difficult or impossible for a trade rival to segregate, in his mind, the information obtained through discovery from the information that he already has from being in the industry. There may be overlaps in both sets of information and it would be unfair for the receiving party to be prevented from pursuing businesses that he could have engaged in based on his prior knowledge, just because the same information was also disclosed in the course of proceedings. Practically, it would also be difficult for the disclosing party to enforce the *Riddick*

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undertaking as it may not be clear whether the information obtained through discovery was in fact used.

56 The interest in protecting commercially sensitive information and the reality that the *Riddick* principle may be inadequate in such situations find support in the case of *Mobil Oil Australia Ltd v Guina Developments Pty Ltd* (1995) 33 IPR 82. In that case, Hayne JA delivered the judgment of the Supreme Court of Victoria and said at pp 87-89:

> Where it is said that the documents are confidential, it may be accepted that the fact that the documents are confidential will not ordinarily be a sufficient reason to deny inspection by the opposite party. In most cases, the fact that the documents may not be used except for the purposes of the litigation concerned will be sufficient protection to the party producing them. But where, as here, the party obtaining discovery is a trade rival of the person whose secrets it is proposed should be revealed by discovery and inspection, other considerations arise.
>
> Once the documents are inspected by the principals of the trade rival the information which is revealed is known to the trade rival and cannot be forgotten. Confidentiality is destroyed once and for all (at least so far as the particular trade rival is concerned). To say that the trade rival is bound not to use the documents except for the purposes of the action concerned is, in a case such as this, to impose upon that trade rival an obligation that is impossible of performance by him and impossible of enforcement by the party whose secrets have been revealed. How is the trade rival to forget what internal rate of return the competitor seeks to achieve on a new investment of the kind in question? How is the party whose hurdle rate has been revealed to know whether the rival has used the information in framing a tender? Thus, if the trade rival may inspect the documents concerned, the confidentiality of the information in them is at once destroyed.

57 The question is then this: when should a party be allowed to refuse disclosure of relevant material on the basis that they contain commercially sensitive information?

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The law and methods of protecting commercially sensitive information

58 Generally, the mere fact that a document is confidential or commercially sensitive does not preclude the document from being subject to discovery and disclosure (see Jeffrey Pinsler S.C., *Singapore Court Practice* (LexisNexis, 2020) at [24/9/1]) ("***Singapore Court Practice***")). If the document is relevant and necessary, subject to claims of privilege or immunity, the document should be disclosed (see *Singapore Court Practice* at [24/9/1]).

59 It follows that mere allegations of commercial sensitivity are insufficient for a party to refuse disclosure: *Cigar Affair v Pacific Cigar Co* [2005] 3 SLR(R) 633 ("***Cigar Affair***") at [34]. If that was not the case, litigants could simply make unsupported allegations that documents sought should not be disclosed because they contain commercially sensitive information, notwithstanding their relevance to the proceedings.

60 I pause here to acknowledge that *Cigar Affair* was not a case involving a civil case on discovery of documents but one that related to the seizure of documents pursuant to search warrants under the Trade Marks Act 1998 (Cap 332, 1999 Rev Ed). Nevertheless, the general proposition that mere allegations of sensitivity should not *prima facie* disallow access to documents which are otherwise relevant, should be equally applicable in the context of civil discovery.

61 In my view, the onus is on the party claiming that the information in the document sought to be disclosed is commercially sensitive to show that the degree of commercial sensitivity or the impact of its disclosure would justify its exclusion from discovery notwithstanding its relevance and necessity to the proceedings. At the minimum, the party should set out (a) what in the document

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is commercially sensitive, (b) how the information is commercially sensitive, and (c) how the document, if disclosed to the other party, would cause prejudice to the disclosing party. If the Court is satisfied that the document contains commercially sensitive information *and* should be protected, the Court may limit the scope of disclosure.

62 In this regard, there are various ways that the scope of disclosure may be limited. Without setting out an exhaustive list of methods, the scope of disclosure of commercially sensitive documents may be limited by:

(a) redacting (or replacing with anonymised terms) the portions that are commercially sensitive (see *IDB Interactive Sdn Bhd v Online E-Club Management Sdn Bhd* [2020] 7 MLJ 349 at [48]); or

(b) allowing access to the document to only specific individuals (also known as "confidentiality clubs" or "confidentiality rings") (see *Genk Capital* ([54] above) at [11]).

63 Redaction is one of the most straightforward methods of limiting disclosure. Portions that a party claims to be commercially sensitive can be redacted so that the receiving party is still given access to the relevant document while ensuring that the disclosing party is not prejudiced by the disclosure of commercially sensitive information. In adopting this course, it is not unusual for the Court to first review the unredacted version of the document in the absence of the receiving party to consider the disclosing party's proposed redactions. This is particularly the case when there are disputes as to whether the disclosing party is indeed redacting commercially sensitive information.

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64 There may also be situations where the redaction of commercially sensitive information could leave gaps in the document making it difficult for the receiving party to make sense of the unredacted information. For example, where the document to be disclosed is the accounts of a company and the names of customers have been redacted, the receiving party may not be able to know whether certain transactions are attributed to the same customer. In those situations, where the names of customers are not critical to the proceedings, the redacted portions may be replaced with anonymised terms (for example, Customer A, Customer B) so that the receiving party is still able to meaningfully rely on the document.

65 Where, however, the information sought to be redacted or replaced is critical to the proceedings, redaction or anonymising the commercially sensitive information may not be feasible. In such situations, the Courts have considered ordering that the document be disclosed only to certain individuals (for example, to a party's legal advisors or experts) (also known as "confidentiality clubs" or "confidentiality rings") often with a confidentiality undertaking from these individuals not to disclose the document or information contained therein to individuals outside of the clubs or rings (see *Genk Capital* ([54] above) at [11]). Once proceedings have concluded, members of the confidentiality clubs or rings may be required to return or destroy the document. The problem with such an approach is that the receiving party's ability to conduct and prepare for trial may be hampered. If the receiving party, being the party to the proceedings, is excluded from the confidentiality club, it may not be able to properly instruct its legal advisors or experts who are likewise unable to take instructions on the conduct of the matter. This would result in the receiving party having to conduct its trial with blinkers on (see *Koger Inc v O'Donnell* [2009] IEHC 385 ("***Koger Inc***"). For that reason, while confidentiality clubs excluding all representatives

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of the receiving party could be ordered, it is unusual and there must be exceptional circumstances to justify the same before a Court would do so (see *Koger Inc*.)

66 With that, I turn back to the present case.

No evidence that alleged commercially sensitive information would be used by H8 Holdings' representatives

67 RIC is in the business of operating dormitories.[16] RIC's case is that the General Ledgers should not be disclosed as they contained commercially sensitive information such as the identities of RIC's customers and its historical prices ("**Information**").[17] RIC said that the Information, if disclosed, would be against the interest of RIC as (a) one of the shareholders of H8 Holdings, Mr Thia Tiong Siong (also known as "**Mr William**"); and (b) Joylicious Management, a company whose sole director and shareholder is Mr Han Shuikun ("**Mr Han**"), are in the same business as RIC.[18] RIC argued that the Information, if disclosed, would be used by Mr William and Joylicious Management to its detriment. In the alternative, RIC submitted that if the General Ledgers are to be disclosed, commercially sensitive information contained therein should be redacted.

68 Assuming that I accepted that the Information could be commercially sensitive, I did not accept RIC's arguments on how the Information, if disclosed to H8 Holdings, would be against RIC's interest.

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16 2nd Affidavit of Leong Poh Choo at para 34.

17 2nd Affidavit of Leong Poh Choo at para 36.

18 2nd Affidavit of Leong Poh Choo at para 36.

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69 First, it was RIC's bare assertion that Mr William is in the business of operating dormitories. Apart from a statement in its affidavit stating that Mr Wiliam is in the business of operating dormitories, there was nothing to suggest that Mr William was indeed in the business.[19] RIC's representative, Ms Leong Poh Choo ("**Ms Leong**") also stated in her affidavit that she believed that the shares that Mr Han holds in Joylicious Management were held on trust or as a nominee for Mr William.[20] However, apart from Ms Leong's bare assertion, there was similarly no evidence of any such arrangement.

70 Second, RIC referred to Joylicious Management which is not a party to the present suit and would not be entitled to discovery of the General Ledgers in this Application. In a desperate attempt to draw the link between H8 Holdings and Joylicious Management, RIC said (in addition to Mr Han holding the shares in Joylicious Management on trust or as a nominee for Mr William) that Mr Han is related to Ms Han Jieling, a director and shareholder of H8 Holdings.[21] H8 Holdings did not deny that Mr Han is Ms Han's brother. However, just because Mr Han and Ms Han are siblings did not necessarily mean that Mr Han would be in possession of information that Ms Han received as H8 Holdings' representative. There was no evidence before me that once Ms Han receives the General Ledgers, she would pass them on to Mr Han who would then use the same in furtherance of Joylicious Management's business, causing RIC to suffer prejudice.

71 Simply put, even if I accepted that the Information was commercially sensitive, there was no evidence before me to show how the General Ledgers,

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19 2nd Affidavit of Leong Poh Choo at para 34.

20 2nd Affidavit of Leong Poh Choo at para 35.

21 2nd Affidavit of Leong Poh Choo at para 35.

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if disclosed, would cause prejudice to RIC. For that reason, I was of the view that the General Ledgers should be disclosed to H8 Holdings without redaction.

72 For completeness, parties showed me a copy of the General Ledgers with RIC's proposed redactions at the hearing. H8 Holdings (in consultation with Mr Mann) submitted that the redacted version was insufficient for the purposes of the valuation as the information that remained unredacted was meaningless without context from the redacted portions.

73 In this regard, I considered reviewing the unredacted version of the General Ledgers to determine whether the information sought to be redacted was commercially sensitive and/or if the scope of redaction could be limited such that the redacted version of the General Ledgers would still be meaningful for the valuation. I also considered whether a confidentiality ring could be set up such that only certain individuals from H8 Holdings (such as H8 Holdings' legal advisors and Mr Mann) could have access to the unredacted General Ledgers. However, as I was not satisfied (for the reasons set out at [69] to [71] above) that Joylicious Management, a company that is not even a party to this suit, would have access to the information contained in the General Ledgers and use the same to RIC's detriment, I did not think it was necessary for me to go further to either consider the scope and extent of redaction or give directions for the formation of a confidentiality club

Conclusion

74 Having found that (a) the General Ledgers were relevant and necessary to determining the issue of whether the 1,000,000 shares of RIC obtained by POP Holdings on or around 26 June 2018 were obtained at an undervalue and (b) there was no evidence that the Information in the General Ledgers, if

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disclosed to H8 Holdings, would cause prejudice to RIC, I allowed the Application and ordered that the General Ledgers be put into discovery and be disclosed to H8 Holdings without redaction.

75 I also ordered costs of the Application fixed at S$6,500 (all inclusive) to be paid by RIC to H8 Holdings.

Victor Choy
Assistant Registrar

Walter Ferix Silvester (Silvester Legal LLC) for the plaintiff;
Chen Sixue (Sim Chong LLC) for the first defendant.

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