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

[2025] SGHCR 9

Originating Claim No 158 of 2024 (Summons No 299 of 2025)

Between

Tan Tse Haw

… *Claimant*

And

(1) Peh Tian Swee
(2) Vfix Auto Private Limited

… *Defendants*

Counterclaim of 1st Defendant

Between

Peh Tian Swee

… *Claimant in Counterclaim*

And

(1) Tan Tse Haw
(2) Vfix Auto Private Limited

… *Defendants in Counterclaim*

GROUNDS OF DECISION

[Civil Procedure — Rules of court — Non-compliance — Whether unless order should be made]
[Civil Procedure — Production of documents — Breach of production obligations — Whether unless order should be made]

TABLE OF CONTENTS

Tan Tse Haw
v
Peh Tian Swee and another

[2024] SGHCR 9

General Division of the High Court — Originating Claim No 158 of 2024
(Summons No 299 of 2025)
AR Chong Fu Shan
4 April 2025

30 April 2025

AR Chong Fu Shan:

Introduction

1 Unless orders have been described as a "potent tool for the efficient and prompt administration of justice": see *Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 ("*Mitora*") at [42]. Indeed, they are usually made to secure compliance in the face of serious and persistent defaults, while still giving the defaulting party a final opportunity to abide by the rules amidst the cut and thrust of litigation. Yet, due to the potentially heavy sanctions that usually follow from breaching those orders, they are made with circumspection and invariably involve the balancing of different interests.

2 In this application, the applicant (the "Applicant") sought, among other things, an order that unless the respondent (the "Respondent") complied with a production order (the "Production Order") within seven days, the Respondent's

Statement of Claim and Reply and Defence to Counterclaim would be struck out, and judgment entered against the Respondent in terms of the Applicant's counterclaim. I granted the application, while extending the time for compliance. As this application engaged several of the key considerations salient in applications of this nature, I provide the detailed grounds for my decision.

Facts

The parties

3 The Applicant is Mr Peh Tian Swee, who is the first defendant in HC/OC 158/2024 ("OC 158"). The Respondent, Mr Tan Tse Haw, is the claimant in OC 158. The second defendant in OC 158 is Vfix Auto Private Limited ("VAPL"). The Applicant is a shareholder and the sole director of VAPL, and the Respondent was an ex-employee of VAPL. He was also previously a director of VAPL until on or around 17 June 2021.

4 On 10 July 2023, the Respondent's employment with VAPL was terminated. Thereafter, on 11 March 2024, the Respondent commenced OC 158 against the Applicant and VAPL for minority oppression. The Respondent alleged among other things that the Applicant had excluded the claimant from the management of VAPL, and that the Applicant had mismanaged VAPL in a manner that had been oppressive and commercially unfair to the Respondent.

5 In the Applicant's Defence and Counterclaim, he pleaded that Applicant's claim in minority oppression was unmeritorious and alleged among other things that VAPL had lost its entire substratum because the Respondent had poached the employees of VAPL and had diverted business away from

VAPL to SG Truck Automotive Private Limited ("STAPL"), a company that the Respondent had set up on or around 20 March 2023.

The Production Order and RA 193

6 On 30 August 2024, the Applicant filed HC/SUM 2480/2024 ("SUM 2480") which sought, among other things, specific production from the Respondent. On 16 October 2024, an assistant registrar (the "Assistant Registrar") granted the Production Order, which obliged the Respondent to produce the following two categories of documents within 14 days of her order:

(a) The first category was in respect of "[a]ny letter issued by [STAPL] to the ex-employees of [VAPL] to engage their services" (the "Category 1 Documents"). In so ordering, the Assistant Registrar broadened the original request for "[a]ll letters of employment issued by STAPL to the ex-employees of VAPL".

(b) The second category related to "[a]ll quotations, job orders, invoices and/or statement of accounts issued by STAPL to the ex-customers and debtors of VAPL … from March 2023 to end-2023" (the "Category 2 Documents").

I will collectively refer to the Category 1 Documents and the Category 2 Documents as the "Documents".

7 The Respondent applied for a stay of enforcement of the Production Order and appealed against the Assistant Registrar's decision by way of HC/RA 193/2024 ("RA 193"), which was heard on 5 December 2024. In RA 193, the Respondent advanced two arguments, namely, that: the Documents were not material, and the Respondent was not the proper party against whom

to seek the Documents. He did not dispute the existence of the Documents nor claim that there was any ambiguity in the Production Order. After oral submissions were delivered, the court stood down, following which counsel for the Respondent informed the court that the Respondent was withdrawing the appeal. The request to withdraw RA 193 was granted and the Respondent was directed to produce the Documents by 6 January 2025.

The Respondent's failure to comply with the Production Order

8 On the evening of 6 January 2025, the Respondent's solicitors informed the solicitors for the Applicant that the Respondent was "still in the process of retrieving the relevant documents from [STAPL]", and that they would "be in a position to file [the Respondent's] supplementary list of documents by tomorrow, if not latest by Wednesday, 8 January 2025".[1]

9 Yet, on 8 January 2025, the Respondent's solicitors informed the Applicant's solicitors that the Respondent was "facing some difficulty in procuring the relevant documents from [STAPL]". The Respondent's solicitors "expect[ed] to be in a position to receive the documents by tomorrow, 9 January 2025", and to "provide the same to [the Applicant's solicitors] by Friday, 10 January 2025 along with [the Respondent's] supplementary list of documents".[2]

10 Such documents were, again, not forthcoming. On 10 January 2025, the Respondent filed his 2nd Supplementary List of Documents and his solicitors communicated by way of letter stating that they were "instructed that the [Respondent] d[id] not have any documents responsive to [the] Category 1 [Documents] in his possession, custody or control". The letter also stated, with

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1 Goh Jia Jie's Affidavit dated 5 February 2025 at p 54.

2 Goh Jia Jie's Affidavit dated 5 February 2025 at p 56.

respect to the Category 2 Documents, that there were "limitations to [STAPL's] internal systems that ma[d]e it unduly burdensome to print out copies of all the invoices and/or statement of accounts". Therefore, the Respondent had only produced a "compiled sales list" instead of the underlying documents.[3]

11 On 20 January 2025, the Applicant's solicitors responded to the Respondent's solicitors, requesting that the Respondent comply with the Production Order by 24 January 2025.[4] As there was no response to that letter, the Applicant's solicitors sought permission from the court to make this present application, which was granted on 27 January 2025. The Applicant's solicitors were directed to file this application by 5 February 2025.

12 On 3 February 2025, two days before this application was due to be filed, the Respondent filed his 3rd Supplementary List of Documents and produced some of the Category 2 Documents. Those were invoices issued by STAPL, and statement of accounts showing the transactions between STAPL and the ex-customers of VAPL, between *May 2023 and December 2023*. This was contrary to the Applicant's statement in his 3rd Supplementary List of Documents that invoices and statement of accounts from *March 2023 to December 2023* were produced.[5] It was also noteworthy that each invoice referred to another document termed a "job card", but these "job cards" were not disclosed (the Applicant would subsequently take issue with this). Further, the Respondent deposed by way of his Affidavit verifying his 2nd and 3rd Supplementary List of Documents that a search on STAPL's accounting software returned "zero

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3 Goh Jia Jie's Affidavit dated 5 February 2025 at p 58.

4 Goh Jia Jie's Affidavit dated 5 February 2025 at pp 104–107.

5 Schedule 1 of Claimant's 3rd Supplementary List of Documents filed 3 February 2025.

results" for job orders and quotations responsive to the description of the Category 2 Documents.[6] There were no further documents produced thereafter.

13 On 5 February 2025, the Applicant filed this application. At the time of the hearing on 4 April 2025, the following documents remained outstanding:

(a) the Category 1 Documents;

(b) invoices and statement of accounts issued to ex-customers and debtors of VAPL in March 2023 and April 2023; and

(c) quotations and job orders issued by STAPL to ex-customers and debtors of VAPL.

Parties' positions

The Applicant

14 In respect of the Category 1 Documents, the Applicant argued that it was incontrovertible that the Respondent had failed to provide full discovery of those,[7] and that the Respondent's deliberate and persistent refusal to disclose those amounted to suppression.[8] The Applicant contended that it was inconceivable that the Category 1 Documents did not exist given that the Respondent had admitted that STAPL had employed two ex-employees of VAPL, Mr Ong Wee Sieong ("Mr Ong") and Mr Chew Kean Guan ("Mr Chew"), who commenced employment with STAPL on or around

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6 Affidavit Verifying Claimant's 2nd and 3rd Supplementary List of Documents dated 4 February 2025 at paras 34–35.

7 Applicant's Written Submissions ("AWS") at para 13.

8 AWS at para 17.

27 September 2023 and 17 October 2023 respectively.[9] Mr Ong and Mr Chew are Malaysian, and the Ministry of Manpower (the "MOM") would have required STAPL to provide them with written employment letters or contracts, which was the case with VAPL.[10] Given that the documents were material to the Applicant's case that the Respondent poached the ex-employees of VAPL, the Applicant submitted that he would be severely prejudiced in running his case at trial if such documents were suppressed and withheld by the Respondent.[11]

15 In relation to the Category 2 Documents, while the Respondent had disclosed invoices and statement of accounts from May 2023 to December 2023 (see [12] above), the Applicant pointed out that such disclosure was belated and was only forthcoming after the Applicant had taken issue with the Respondent's non-compliance.[12] Further, it was contended that the Respondent failed to fully comply with the Production Order in the following aspects:

> (a) In respect of the quotations, the Respondent appeared to have carried out minimal effort in trying to produce the documents.[13] Moreover, the Respondent had never asserted in SUM 2480 and RA 193 that he did not have possession or control over the Category 2 Documents, or that those documents did not exist,[14] and he could not resile from his earlier position to avoid compliance.[15]

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9 AWS at para 15(2); S/N 18 of Claimant's Further and Better Particular dated 30 October 2024.

10 AWS at para 16(2).

11 AWS at para 17.

12 AWS at paras 18–19.

13 AWS at para 24.

14 AWS at paras 22(1) and 22(2).

15 AWS at para 23.

(b) Similarly, in respect of the job orders, the Respondent could not be allowed to resile from his earlier position by asserting that those did not exist.[16] The job orders were explicitly referred to in the invoices that were disclosed, notwithstanding that they were termed "job cards" in the invoices.[17] Those documents essentially contained a record of the work done on the vehicles,[18] and there could no misunderstanding on the Respondent's part as the same practice had been in place in VAPL.[19]

(c) Lastly, the Applicant argued that the invoices and statement of accounts for March and April 2023 were "conspicuously missing" and no explanation was provided by the Respondent.[20]

16 In the round, it was submitted that the Respondent would not comply with the Production Order unless compelled to do so and that the Respondent's continued suppression of the documents would severely prejudice the Applicant's case at trial.[21]

The Respondent

17 The Respondent submitted that he had complied with the Production Order, and that there had been no persistent default in compliance or contumelious behaviour.[22]

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16 AWS at para 26.

17 AWS at paras 28 and 34.

18 NE dated 4 April 2025 at p 9 lines 18–22.

19 NE dated 4 April 2025 at p 8 lines 10–15.

20 AWS at paras 39–40.

21 AWS at paras 41–42.

22 Respondent's Written Submissions ("RWS") at para 31.

18 Regarding the Category 1 Documents, the Respondent averred that he had in SUM 2480 taken the express position that there were no "letters of employment" issued by STAPL to the ex-employees of VAPL and had consistently submitted as such.[23] As for Mr Ong and Mr Chew (see [14] above), STAPL did not issue any letters or written employment contracts to them to engage their services as it was a small company which did not have detailed and formal processes and procedures.[24] Therefore, the employment agreements that Mr Ong and Mr Chew had entered into with STAPL were oral in nature.[25]

19 On the Category 2 Documents, the Respondent similarly submitted that he had complied with the Production Order and that there had been no persistent default or contumelious conduct.[26] He had attempted to comply by producing a sales list generated by an accounting software even though he did not produce the underlying documents.[27] Even if doing so was not compliant with the Production Order, any alleged breach was not so serious or aggravating to warrant an unless order.[28] Further, the Respondent submitted that he was not obliged to produce the job cards as the Production Order had not contained the term "job cards";[29] neither had the term been mentioned in SUM 2480 and RA 193.[30] In this regard, the Respondent contended that "job cards" and "job orders" were distinct, the former referring to documents which are internal and

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23 RWS at para 33.

24 RWS at para 49(a).

25 Tan Tse Haw's Affidavit at para 36.

26 RWS at para 50.

27 RWS at paras 53 and 57.

28 RWS at para 54.

29 RWS at paras 61–63.

30 RWS at paras 70–71.

administrative in nature,[31] while the latter referred to documents which are transactional documents issued by the service provider to the customer.[32]

20 Lastly, the Respondent submitted that the application lacked *bona fides* and was an attempt by the Applicant to expand the scope of the Production Order, which was prejudicial to the Respondent.[33] In any event, the sanction sought in the unless order for the Respondent's Statement of Claim and Reply and Defence to Counterclaim be struck out, and judgment be granted on the terms of the Applicant's counterclaim, was draconian and wholly disproportionate.[34]

Issues

21 There were several issues which arose for determination, which I directed counsel to address at the hearing. Those specific to the facts of this present application were:

(a) Whether there was evidence of suppression of the Category 1 Documents, contrary to the Respondent's contention that STAPL did not issue any letters to the ex-employees of VAPL to engage their services; and

(b) Whether the "job orders" referred to in the Production Order included the "job cards" referred to in STAPL's invoices, such that the Respondent was obliged under the terms of the Production Order to produce those.

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31 RWS at para 65.

32 RWS at para 64(a).

33 RWS at paras 74–75.

34 RWS at para 78.

22 Apart from those issues, I also directed counsel to address me on questions that are of general relevance in applications for unless orders, as follows:

(a) the centrality of the unproduced Documents to the Applicant's case;

(b) the nature of the Respondent's non-compliance; and

(c) the appropriate sanction that an unless order should carry if it were made.

These questions were framed with reference to the principles germane to an application for an unless order, on which I now elaborate.

Principles governing the making of unless orders

23 The provision in the Rules of Court 2021 ("ROC 2021") governing non-compliance with production orders is O 11 r 7, which provides as follows:

> **Non-compliance with production order (O. 11, r. 7)**
>
> **7.** If any party fails to comply with any order made by the Court under this Order, the Court may —
>
> (*a*) order that the action be dismissed or that the defence be struck out and judgment be entered accordingly;
>
> (*b*) draw an adverse inference or make any such order as the Court deems fit;
>
> (*c*) punish that party for contempt of court if the order has been served on that party's solicitor, but it is open to that party to show that that party was not notified or did not know about the order; or
>
> (*d*) order that that party may not rely on any document that is within the scope of the order unless the Court approves.

24 While not expressly stated in O 11 r 7, it is trite that the court has the power to make an unless order in the face of non-compliance with a production

order (*DFD v DFE and another* [2025] 3 SLR 362 ("*DFD*") at [61]). Consistent with the spirit of the ROC 2021, it cannot be gainsaid that the remedial toolkit of the court is not confined to the four examples listed in O 11 r 7 but can encompass other orders which are necessary and appropriate to ensure the just and expeditious disposal of the matter.

25 As the circumstances in which the court may be asked to make an unless order "are infinitely varied and distinctly fact-sensitive" (*Singapore Civil Procedure 2025* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell) ("*Singapore Civil Procedure*") at para 11/7/2), prior cases have provided instructive guidance on the exercise of this discretion. In *Mitora*, the Court of Appeal opined that unless orders are to be used sparingly and as a last resort when the defaulter's conduct is inexcusable, tailored as far as possible to the prejudice occasioned by non-compliance, and other means of penalising contumelious or persistent breaches should be considered, including cost consequences and the drawing of adverse inferences (*Mitora* at [45], see also *DFD* at [61]).

26 In *Grande Corp Pte Ltd v Cubix International Pte Ltd and others* [2018] SGHC 13 (at [80]), Lee Sieu Kin J summarised the following factors that have been considered in the context of O 24 r 16(1) of the Rules of Court (2014 Rev Ed), the predecessor provision to O 11 r 7 of the present ROC 2021:

> (a) Whether a fair trial remains possible, which may include an inquiry into whether the defaulting party's conduct shows that they are unlikely to pursue their claim honestly and fairly if the action is not struck out (*Lee Chang-Rung and others v Standard Chartered Bank* [2011] 1 SLR 337 ("*Lee Chang-Rung*") at [34]).

(b) Whether the defaulting party's delay has caused any "irremediable prejudice" to the other parties to the litigation (*Mitora* at [41]).

(c) Whether there has been any deliberate suppression of highly relevant documents (*Lee Chang-Rung* at [35]).

(d) Whether the defaulting party's conduct demonstrates a total disregard of the Rules of Court or orders of court (*Alliance Management SA v Pendleton Lane P and another and another suit* [2008] 4 SLR(R) 1 ("*Alliance Management*") at [9]). Factors relevant to this inquiry include whether the defaulting party has shown that it has taken any reasonable positive efforts to locate or obtain the documents which it is required to disclose (*Von Roll Asia Pte Ltd v Goh Boon Gay and others* [2015] 3 SLR 1115 ("*Von Roll*") at [52]), and whether the defaulting party has shown an "unrepentant attitude" (*Lee Chang-Rung* at [35]). Where an unless order requires a party to file a list of documents and an accompanying affirmation, that party's claim or action may be struck out if the list is "wilfully defective" and displays no evidence of conscientious effort to give proper discovery (see *Singapore Civil Procedure 2017* vol 1 (Foo Chee Hock gen ed) (Sweet & Maxwell, 2017) at para 24/16/1, citing *Ka Wah Bank Ltd v Low Chung-song & Anor* [1989] 1 HKLR 451).

27 In my view, because of the fact-sensitive nature of such applications, the weight to be given to each factor in every given case must be anchored to the general purposes behind the making of unless orders. If it were otherwise, litigants would simply cite factors that favour their respective positions, and there would be little basis for the court to prefer one factor over another: see a

similar observation by Goh Yihan JC (as he then was) in *SW Trustees Pte Ltd (in compulsory liquidation) and another v Teodros Ashenafi Tesemma and others (Teodros Ashenafi Tesemma, third party)* [2023] 5 SLR 1484 (at [18]–[19]), albeit in a different context. Rationalising the factors articulated in the caselaw with the overarching purposes of making an unless order is therefore useful in informing the exercise of the court's discretion.

Ensuring that the non-defaulting party is not unjustly prevented from pursuing its claim or defence

28 It is without doubt that the purpose of an unless order is not to punish misconduct but to secure a fair trial in accordance with due process of law (*Mitora* at [42] and [45]). The court's role in securing a fair trial may be likened to an umpire who ensures that all the parties abide by the rules, with the purpose of ensuring that no party is unjustly handicapped in their ability to pursue their claim or defence because of the default of another.

29 Much like how an umpire ensures that the playing field is level, an order to produce documents is one clear example of an order at the interlocutory stage that is "grounded in fair play in the conduct of litigation" (*Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd and another* [2024] SGHC 308 at [110]). These orders mitigate informational asymmetry between the parties by obliging parties to conduct their litigation with their "cards face up on the table", which enables the court to consider all that is relevant in reaching the right decision (*Teo Wai Cheong v Crédit Industriel et Commercial and another appeal* [2013] 3 SLR 573 ("*Teo Wai Cheong*") at [41]). Understood as such, the question of whether a production order has been complied with (and whether the court should take

further steps to secure compliance) is not simply a matter of procedural fairness, but one which engages the interest of substantive justice.

30 Where documents that are the subject of a production order are not disclosed, it is in all likelihood difficult for the defaulting party to contend that the non-production of such documents poses no prejudice to the non-defaulting party. This is because the requirement of materiality would have been satisfied in an earlier application granting the production order; and the materiality of such documents would be all the more evident where there has been an appeal upholding the production order, or where the defaulting party had abandoned its appeal against the production order in a manner which indicates its concession on the merits. Therefore, the making of an unless order to secure procedural compliance may, in appropriate circumstances, be a means of achieving the ideal of a "fair and just procedure that leads to a fair and just result" (see *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [8]). That said, there are varying degrees of materiality, and the strength of the interest that the non-defaulting party has in securing compliance with the production order, and the prejudice occasioned by any default, must accordingly be considered in that light.

Safeguarding the integrity of the administration of justice

31 Apart from ensuring that the non-defaulting party is not unduly prevented from pursuing its claim or defence, a related but distinct concern is the court's interest in upholding the integrity of the administration of justice by deterring further breaches of its rules and/or orders. It would make a mockery of the seriousness of court orders and undermine public confidence in the administration of justice if litigants can routinely disregard court orders without consequence. The principle that there is a public interest dimension to the

making of unless orders is well established and has been recognised by the Court of Appeal in *Mitora* (at [46]) and *Syed Mohamed Abdul Muthaliff and another v Arjan Bhisham Chotrani* [1999] 1 SLR(R) 361 ("*Syed Mohamed*") (at [15]).

32 There is also authority that this public interest may be given more weight relative to other considerations. In *Syed Mohamed*, the Court of Appeal cited the decision of the Court of Appeal of England and Wales in *Hytec Information Systems Ltd v Coventry City Council* [1997] 1 WLR 1666 ("*Hytec*"), where Ward LJ opined that the public interest to contain the twin scourges of delay and wasted costs weighs very heavily, and that any injustice to the defaulting party, though never to be ignored, comes a long way behind the other two (at 1674). Nevertheless, the Court of Appeal in *Syed Mohamed* qualified that each case must be decided on its own facts, and that Ward LJ's statement of principle should not be taken as an absolute rule (at [16]).

33 In my view, the weight to be given to the public interest in the administration of justice should be influenced (at least in part) by the nature of the defaulting party's conduct. It is axiomatic that there are degrees of non-compliance, and cases sit on a spectrum between procedural defaults of a technical complexion on one hand, and persistent defaults or contumelious conduct on the other: see *Saxo Bank A/S v Innopac Holdings Ltd* [2022] 3 SLR 964 (at [94(b)]) and *Kraze Entertainment (S) Pte Ltd v Marina Bay Sands Pte Ltd* [2014] 1 SLR 78 (at [43]).

34 As for what amounts to persistent default or contumelious conduct, I regard the concluding remarks by Auld LJ in *Hytec* (at 1677) as instructive:

> In my judgment, there is no need to confine the test to that of an intentional disregard of a court's peremptory order, whether or not it is characterised as flouting, contumelious, contumacious, perverse, obstinate or otherwise. Such an intent

> may be the most usual circumstance giving rise to the exercise of this jurisdiction. But failure to comply with one or a number of orders through negligence, incompetence or sheer indolence could equally qualify for its exercise. It all depends on the individual circumstances and the existence and degree of fault found by the court after hearing representations to the contrary by the party whose pleading it is sought to strike out.

These statements were cited by the Court of Appeal with approval in *Syed Mohamed*, and the court encapsulated the overarching principle as follows (at [14]):

> The crux of the matter is that the party seeking to escape the consequences of his default must show that he had made positive efforts to comply but was prevented from doing so by extraneous circumstances.

35 Consistent with this principle, the High Court in *Teeni Enterprise Pte Ltd v Singco Pte Ltd* [2008] SGHC 115 regarded it as relevant that the defaulting party in that case had made reasonable positive efforts to locate the missing documents and that there was "no evidence of any intentional and contumelious or contumacious non-compliance with the unless order" (at [63]). On the other hand, where there have been no reasonable positive efforts made to locate the documents, or if the breach was intentional or contumelious, concerns that the integrity of the administration of justice would be compromised would be more strongly engaged (see *Von Roll* at [52] and [55], and a similar observation by Goh Yihan J in *DNG FZE v PayPal Pte Ltd* [2024] SGHC 65 ("*Paypal*") at [99]).

Assessing the proportionality of the sanctions that would follow from breaching an unless order

36 The interests in ensuring that the non-defaulting party is not unjustifiably prevented from pursuing its case, and in safeguarding the integrity of the administration of justice, ultimately inform the question of whether the

sanctions that would follow from breaching an unless order would be a *proportionate* response to the defaulting party's breach. As the Court of Appeal in *Mitora* observed (at [39]), the cases reveal "a tendency to be guided by considerations of proportionality in assessing breaches of 'unless orders'". In my view, considerations of proportionality must similarly be applicable when the question before the court is *whether an unless order should be granted to begin with,* since unless orders are granted with the expectation that they "must mean what they say" (*Mitora* at [45])

37 It also bears emphasis that while the Court of Appeal in *Mitora* cautioned against the use of "a sledgehammer to crack a walnut" (at [44]), it is clear that the focus of this inquiry is not simply about whether the stipulated consequences of breaching the unless order are harsh, but whether those would be a proportionate and accordingly justifiable response to the breach in question. It follows that it is not enough for the defaulting party to aver that the consequences of an unless order are "draconian"; instead, the defaulting party in resisting an application for an unless order should seek to show that the stipulated sanction of the unless order sought would be a disproportionate response to the breach in question.

38 The severity of the sanctions that an unless order would carry may be adjusted on a sliding scale. In this regard, it may be relevant to inquire into whether there are alternative sanctions that would better achieve a proportionate outcome (*Mitora* at [46]). However, the fact that there are less severe consequences *available* in principle does not always mean that they are *appropriate* in the circumstances. While there may be consequences that are less onerous on the defaulting party in theory, the true question is whether, having regard to the interests in ensuring that the non-defaulting party is not unjustly prevented from pursuing its case, and in safeguarding the integrity of

the administration of justice, the consequences to be visited on the defaulting party if the unless order were breached would be disproportionate.

39 Where the interests in favour of making an unless order are sufficiently strong, such as in the quintessential scenario involving persistent default and contumelious conduct, the authorities suggest that the court would generally give short shrift to an averment by the defaulting party that it would be prejudiced if an unless order were granted with the sanction of striking out. In *Lee Kuan Yew v Tang Liang Hong and another and other suits* [1997] 1 SLR(R) 328, Lai Kew Chai J laid down the principle that the "[a]ll court orders must be obeyed promptly and punctiliously. A litigant who mocks a court of law cannot in principle be allowed to invoke the assistance or the adjudicative facilities of the court" (at [6]). Likewise, where there have been repeated breaches of court orders, it is not necessary to find that a fair trial is not possible from the non-defaulting party's perspective before the court may strike out the defaulting party's claim or defence: see *Alliance Management* at [10] and *Soh Lup Chee v Seow Boon Cheng* [2002] 1 SLR(R) 604 at [10]. In the context of the ROC 2021, a similar principle may be found in O 3 r 2(4)(*d*), which provides that where there is non-compliance, the court may "dismiss, stay or set aside any proceedings and give the appropriate judgment or order even though the non-compliance could be compensated by costs, if the non-compliance is inconsistent with any of the Ideals in a material way". In my view, the rationale for striking such a balance in favour of the non-defaulting party is clear: if the defaulting party has conducted itself as to deny the non-defaulting party of a fair trial, it is only fair for the court to also accord less weight to the defaulting party's asserted interest in pursuing its own case.

40 It is important to consider if the proposed alternatives to striking out would adequately address both the prejudice occasioned to the non-defaulting

party as well as the harm caused to the proper administration of justice. Where there is persistent default or contumelious conduct resulting in substantial prejudice to the non-defaulting party, an unless order with striking out as a sanction would be more readily regarded be an appropriate means of vindicating these two interests by securing compliance on the part of the defaulting party: see *Paypal* at [101]. This is because the question to be asked then is not solely confined to whether some other consequence – such as the drawing of an adverse inference – is sufficient to plug the gap in the non-defaulting party's claim or defence, but also whether it would run contrary to the proper administration of justice if stronger measures were not imposed to secure the defaulting party's compliance. Moreover, even if an unless order stipulating a heavy sanction (*eg*, a striking out) were made, the defaulting party is given yet another chance to avoid the onerous consequences stipulated. In this regard, consistent with the guidance in *Mitora* to consider alternatives (at [45(c)]), it is also open to the court to grant a longer timeframe for the defaulting party to have a fair and final opportunity at compliance before the consequences of the unless order would follow.

41 Finally, in making an unless order, the court is not invariably bound to impose the *least onerous possible sanction* on the defaulting party if the unless order were breached. As the weight given to the different considerations in the exercise of the court's discretion cannot be measured with exactitude, what is important is that the court does not *indiscriminately* impose unless orders carrying the sanction of a striking out: see *Mitora* at [46]. In my view, there is no fetter on the court's discretion to make an unless order even if it carries the sanction of a striking out, provided that doing so is not wholly disproportionate when juxtaposed with the defaulting party's breach.

Summary

42 In summary, the court's discretion in making an unless order can be resolved into three broad considerations:

(a) First, to ensure that the non-defaulting party is not unjustly prevented from pursuing its case. Where production orders are not complied with, the prejudice caused to the non-defaulting party may be assessed in light of the degree of materiality of the documents not produced (see [28]–[30] above).

(b) Second, to safeguard the integrity of the administration of justice. The weight to be given to this consideration should be influenced at least in part by the nature of the defaulting party's conduct, with cases sitting on a spectrum between procedural defaults of a technical complexion on one hand, and persistent defaults or contumelious conduct on the other. In determining the nature of defaulting party's breach, it is relevant to consider it the defaulting party had made reasonable positive efforts to comply, and the extent of such efforts (see [31]–[35] above).

(c) Third, the stipulated sanctions in the unless order should not be a disproportionate response to the defaulting party's breach.

(i) Where the interests in favour of making an unless order are sufficiently strong, such as in the quintessential scenario involving persistent default or contumelious conduct, it is important to consider if the proposed alternatives to striking out would adequately address both the prejudice occasioned to the non-defaulting party and the harm caused to the proper administration of justice. Where there is persistent default or

contumelious conduct resulting in substantial prejudice to the non-defaulting party, an unless order with striking out as a sanction would be more readily regarded be an appropriate means of vindicating these two interests by securing compliance on the part of the defaulting party (see [40] above).

(ii) Even if an unless order stipulating a heavy sanction (*eg*, a striking out) were made, the defaulting party is given yet another chance to avoid the onerous consequences stipulated (see [40] above).

(iii) Finally, in its assessment of proportionality, the court is not invariably bound to impose the *least onerous sanction* on the defaulting party in making an unless order. As the weight given to the different considerations in the exercise of the court's discretion cannot be measured with exactitude, what is important is that the court does not indiscriminately impose unless orders carrying the sanction of a striking out (see [41] above).

It was appropriate to make an unless order with the sanction of striking out

43 In my judgment, it was appropriate to make an unless order for the Respondent's Statement of Claim and Reply and Defence to Counterclaim to be struck out, and to have judgment entered in terms of the Applicant's counterclaim, if the Production Order was not complied with within 21 days of my order.

The Documents formed a central plank of the Applicant's case

44 From the Applicant's Defence and Counterclaim, it was clear that the Documents formed a central plank of the Applicant's case that there was poaching of VAPL's ex-employees by the Respondent, and that this was a key factual assertion in support of both the Applicant's *defence* and his *counterclaim*. For ease of reference, I will term this as the "Key Assertion".

45 As a defence, the Applicant made the Key Assertion in response to the Respondent's claim for minority oppression. In essence, the Respondent had pleaded, among other things, that the Applicant had kept the Respondent locked in VAPL against his will[35] and that the relationship between the parties had broken down.[36] The Applicant, on the other hand, contended that it was the Respondent who had acted unreasonably by setting up STAPL, diverting the business of VAPL, and poaching its employees, thereby "causing the operations of VAPL to ground to a halt".[37]

46 The Applicant similarly pleaded the Key Assertion in his counterclaim.[38] In this regard, I can do no better than to quote the concluding words of the counterclaim:

> 124. In other words, *due to the [Respondent's] diversion of VAPL's business, customers and employees*, VAPL has lost its entire business and, accordingly, the entire substratum of VAPL and its shareholders. VAPL is no longer an operating business, and has no means to generate any further revenue or benefits for its shareholders. As such, an order should be given for VAPL to be wound up by an order of this Honourable Court. [emphasis added]

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35 Statement of Claim at para 49.

36 Statement of Claim at paras 50–51.

37 Defence and Counterclaim (Amendment No. 1) at para 110.

38 Defence and Counterclaim (Amendment No. 1) at paras 75 and 122–123.

This quoted paragraph encapsulates the Key Assertion as being the central basis of the Applicant's counterclaim, grounded on the loss of VAPL's substratum.

Category 1 Documents

47 The Category 1 Documents, which related to "any letter[s] issued by [STAPL] to the ex-employees of [VAPL] to engage their services" (see [6(a)] above), were directly material to the Key Assertion. Indeed, in ordering the production of the Category 1 Documents, the Assistant Registrar found that those documents were "*material as to whether the* [*Respondent*] *poached the* [*Applicant's*] *employees*" [emphasis added], and that "the [Respondent] in his Reply and Defence to Counterclaim [had] suggest[ed] that such employees may have provided services to STAPL".[39] There was no challenge to this finding.

48 However, quite aside from the materiality of the Category 1 Documents, the Respondent made a separate contention in this application that the Category 1 Documents did not exist. The significance of this argument appeared to go towards both the weight I should give to the centrality of the Category 1 Documents, and my assessment of the nature of the Respondent's default. Yet, the issue of non-existence was not raised at RA 193 even after the Assistant Registrar in SUM 2480 ordered the production of "*any letter*[*s*] issued by [STAPL] to the ex-employees of [VAPL] to engage their services" [emphasis added], which was drafted broadly to include a wider range of written documentation than what was originally sought in SUM 2480. Instead, it was only *after RA 193* that the Respondent belatedly alleged that the employment agreements that STAPL entered into with the former employees of STAPL, particularly Mr Ong and Mr Chew, were entirely oral in nature.

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[39] NE dated 16 October 2024 p 6 lines 13-16.

49 I was unpersuaded by that explanation, at least based on what was available on the record. While there was no dispute that STAPL was a small company,[40] it was difficult to believe that Mr Ong and Mr Chew, being Malaysian citizens, would have been content to work for STAPL for over a year (since around September 2023 and October 2023 respectively) solely on the basis of an oral agreement. When I queried counsel for the Respondent, Mr Thaddeus Oh ("Mr Oh") on what the terms of the oral agreements were, he referred me to the MOM's work permit approval for Mr Ong,[41] which only listed the monthly salary, the working hours and number of workdays every week, and the rate of overtime pay. As I observed at the hearing, the purported terms of that oral agreement appeared to be very bare, and it was questionable why they would be content to work for STAPL on such bare terms, without any indication of the leave benefits, medical benefits, or other rights which they were entitled to under their previous employment contracts with VAPL.[42] When asked if there was any explanation for this, Mr Oh candidly conceded that there was none on the record.[43] Further, when applying for a work permit for Mr Ong and Mr Chew, the MOM would have required STAPL to send Mr Ong and Mr Chew a copy of their employment contract.[44] While I did not regard this as determinative in and of itself as there was no evidence that the MOM policed compliance in that regard, it contributed to the inherent implausibility of the Respondent's position that there were no letters or indeed any written record of Mr Ong's and Mr Chew's employment contracts with STAPL.

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40 Leng See Yong's Affidavit dated 20 March 2025 at para 7.

41 NE dated 4 April 2025 at p 18 lines 23–26; Tan Tse Haw's Affidavit dated 19 February 2025 at p 276.

42 NE dated 4 April 2025 at p 18 line 28 and p 19 lines 8–12.

43 NE dated 4 April 2025 at p 19 lines 12–14.

44 Tan Tse Haw's Affidavit dated 19 February 2025 at p 274.

50 Accordingly, the materiality of the Category 1 Documents was a factor that I gave weight to in deciding whether to make an unless order. It also informed my assessment of the nature of the Respondent's default, which I will elaborate on subsequently.

Category 2 Documents

51 Turning to the Category 2 Documents (see [6(b)] above), the main documents in focus at the time of the hearing of this application were the quotations and the job orders issued by STAPL to the ex-customers and debtors of VAPL from March 2023 to the end of 2023, which were not produced. Additionally, the Applicant also took issue with the non-disclosure of the invoices and the statement of accounts issued in March 2023 and April 2023[45] (see [13] above).

52 It was perhaps telling that some of the Category 2 Documents which had the closest bearing on the Key Assertion were not disclosed. As counsel for the Applicant, Mr Goh Jia Jie, cogently argued at the hearing, the issuance of quotations by STAPL when the Respondent was concurrently employed at VAPL would reveal that the Respondent was actively poaching customers of VAPL before his termination on 10 July 2023.[46] Likewise, any invoices or statements of accounts in March 2023 and April 2024, when the Respondent was still employed at VAPL, were conspicuously missing.

53 I found the job orders to be highly material as well. To recapitulate, there was some dispute as to what those documents were, which arose when the Respondent disclosed some invoices which made reference to what STAPL

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45 AWS at paras 39–40.

46 NE dated 4 April 2025 p 29 lines 11–14.

internally labelled as "job cards" (see [12] above). The Applicant took the position that the "job cards" should have been disclosed as they were in substance the "job orders" which fell within the scope of the Production Order (see [15(b)] above), whereas the Respondent argued that job cards were a different type of document from job orders, the former being internal administrative documents and the latter being documents which were external and transactional in nature (see [19] above).

54 However, by the time of the hearing, it was clear that the position which the Respondent took was factually unsustainable. It was flatly contradicted by the evidence of one Mdm Leng See Yong ("Mdm Leng"), a director of STAPL and the wife of the Respondent, who deposed on affidavit that the practice of STAPL was for those job cards to be attached to the invoices, and issued together *to STAPL's customers*.[47] This completely undermined the Respondent's position that the job cards were purely internal and administrative in nature. It was also significant that Mr Oh did not challenge the veracity of Mdm Leng's evidence when a direct question was posed to him at the hearing.[48] Likewise, it was not in doubt that the same practice applied in VAPL,[49] and the Respondent would have been aware of this practice.

55 Each job card contained a comprehensive record of the customer's order and would state, among other things, the customer's name; the vehicle number; the make/model of the vehicle; the date the vehicle was sent to the workshop; the customer's complaint/remark; and the mechanic who was in charge of the

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47 Leng See Yong's Affidavit dated 20 March 2025 at para 5.

48 NE dated 4 April 2025 p 22 lines 2–6.

49 Jessica Soon's Affidavit dated 13 March 2025 at para 6(d); NE dated 4 April 2025 at p 22 lines 8–12.

work done to the vehicle.[50] Further, there was no evidence that STAPL used a document labelled "job orders" which served a different function from its "job cards", that might possibly give rise to any confusion. Therefore, the Respondent would have understood "job orders" as referring to documents that contained a record of the customers' orders, and this matched the description of the "job cards". Consistent with this finding, no challenge pertaining to any ambiguity in the term "job orders" was advanced by the Respondent at both SUM 2480 and RA 193 (see [7] above), despite the Respondent's belated assertion to the contrary in this application.

56 The job orders were central to the Applicant's Key Assertion as those would show, beyond what the invoices would contain, the time when a vehicle entered and left the workshop, and the mechanic who worked on the vehicle (as mentioned in the preceding paragraph). This would have a direct bearing on the question of whether there had been diversion of business and the poaching of employees *when the Respondent was employed at VAPL*. I also agreed with Mr Goh's argument that the job orders were all the more important given that the Respondent had only disclosed invoices from May 2023 onwards. If there were invoices issued in May 2023, it would in high likelihood suggest that there was work done *prior to that date*, particularly when the Respondent was still employed at VAPL.[51] The job orders would go precisely towards proving that critical fact.

57 I therefore concluded that the Documents were highly material, being evidence potentially in support of the Key Assertion which formed a central

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50 Jessica Soon's Affidavit dated 13 March 2025 at para 5.

51 NE dated 4 April 2023 at p 29 lines 29–32 and p 30 lines 1–2.

plank of the Applicant's case. This gave rise to a strong interest in ensuring that the Respondent complied with the Production Order.

The Respondent persistently disregarded his production obligations

58 Another factor that operated in favour of the making of an unless order was the Respondent's persistent disregard for his production obligations, which strongly engaged the interest of safeguarding the integrity of the administration of justice.

59 It was clear that since the time of the Production Order on 16 October 2024 and the time RA 193 was heard on 5 December 2024, the Respondent had some five months between the hearing of RA 193 and the present application to comply with the Production Order. Yet, despite the ample time and opportunity the Respondent had, there was little evidence of any reasonable efforts made towards compliance. Even on the Respondent's own account, it appeared that he did little more other than to run a search on STAPL's accounting software.[52] There was also no evidence of the parameters of his searches, the search terms that he used, or other information that would have indicated that there were reasonable efforts undertaken. And even assuming *arguendo* that some concession might be made for the Respondent's personal limitations, he could have engaged the help of a third party, such as his solicitors, to assist him in complying with the Production Order during those five months.

60 Moreover, by the time of this application was heard, the Respondent had claimed that many of the Documents did not exist. However, this was not raised at the time of SUM 2480 and/or RA 193, despite the Respondent being in a

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[52] Claimant's Affidavit Verifying Claimant's Second and Third Supplementary List of Documents filed on 4 February 2025 at paras 34–35.

position where he could have been reasonably expected to be readily apprised of whether those documents existed or not. For instance, if the Category 1 Documents did not exist, the Respondent could have easily raised this point at RA 193, but he did not do so (see [7] above). Much in the same way, it was only after SUM 2480 and RA 193 that the Respondent contended that the "job orders" did not exist, and that they were different from the "job cards" which he was not obliged to produce (see [12] and [19] above). The change in the Respondent's position in this present application suggested either an unwillingness to comply or his acquiescence in or indifference to leading the Applicant (and the court) on a wild goose chase.

61 In truth, the Respondent appeared content to comply with the Production Order to the extent that he wished, and took steps towards compliance only when faced with the possibility of sanction by the court. It will be recalled that when the Respondent filed his 2nd Supplementary List of Documents together with a letter from his solicitors on 10 January 2025 (which was already past the court-imposed deadline of 6 January 2025), he only disclosed a *single document* in respect of the Category 2 Documents, which was a "compiled sales list" instead of the underlying documents that he was obliged to produce. He cited "limitations" to STAPL's internal systems that purportedly made it "unduly burdensome to print out copies of all invoices and/or statements of accounts" (see [10] above). When the Applicant's solicitors initially offered an extended deadline of 24 January 2025 and requested the Respondent's compliance by that time, the Respondent did not respond (see [11] above). It was after the Applicant obtained permission from the court to make this application that the Respondent filed his 3rd Supplementary List of Documents; and even so, such disclosure was selective, which necessitated the present application (see [12]–[13] above).

62 Accordingly, I found that the Respondent's conduct evidenced a persistent disregard for his production obligations. Having regard also to the centrality of the Documents, the facts weighed heavily in favour of the granting of the unless order sought, subject to concerns of proportionality.

An unless order was made while giving more time for the Respondent to comply

63 In my judgment, it was proportionate in the circumstances to make an unless order which, if breached, would result in the striking out of the Respondent's Statement of Claim and his Reply and Defence to Counterclaim, and allow for judgment to be entered in terms of the Applicant's counterclaim. I so ordered, while giving more time for the Respondent to comply with the Production Order.

64 While there was a strong interest in securing the Respondent's compliance with the Production Order, I was of the view that it was appropriate to give the Respondent more time to comply, especially since a key part of Mr Oh's submission was that the Respondent did his best to comply but just needed more time.[53] While the application initially sought a deadline of seven days from the date of the unless order (if granted), I gave the Respondent a more generous timeline of 21 days as it would be a final opportunity for him to comply with his production obligations. Mr Goh also stated at the hearing that he had no objections with giving the Respondent more time.[54]

65 In light of this extended deadline, which was already in addition to the five months that the Respondent had since the hearing of RA 193, I did not

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53 NE dated 4 April 2025 at p 11 lines 28–29.

54 NE dated 4 April 2025 at p 30 lines 19–23.

regard the sanctions to be visited on the Respondent to be disproportionate if, by that time, the Respondent is still unable to provide any good reason for why he still has not complied with the Production Order. Proceedings cannot be held in abeyance indefinitely because of the Respondent's defaults. If the Respondent persistently refuses to abide by the standards of fair play without good reason, in a manner that unjustly prevents the Applicant from advancing his case, it is not unjust for him to be disqualified from pursuing his claim and defence to counterclaim any further, and for judgment to be entered against him in terms of the Applicant's counterclaim. In any event, if the Respondent has good reasons for his non-compliance even after the extended period, it is open to him to make the appropriate application in respect of the consequences that should follow, but that is quite apart from whether an unless order should be made in light of the evidence before me in this application.

66 For completeness, I disagreed with Mr Oh's submission that the appropriate sanction for breaching the unless order should be the drawing of an adverse inference.[55] The obvious difficulty in that course of action was that it was unworkable. The power to draw an adverse inference is in the sole discretion of the judge hearing the trial of the action or the court hearing any appeal thereafter.

Conclusion

67 The facts of this application revealed a sufficiently strong interest in ensuring that the Applicant was not unjustly prevented in pursuing his case, and in safeguarding the integrity of the administration of justice. Given the

[55] NE dated 4 April 2025 at p 25 line 8.

Respondent's persistent default and the additional time that would be given for his compliance, an unless order was a proportionate last resort.

68 I therefore granted the application and ordered the Respondent to comply with the Production Order within 21 days of the date of my decision, failing which the Respondent's Statement of Claim and Reply and Defence to Counterclaim would be struck out, and judgment would be entered against the Respondent in terms of the Applicant's counterclaim. I also fixed costs at $6,200 (all-in) to be payable by the Respondent to the Applicant.

69 Finally, it leaves me to record my gratitude to Mr Goh and Mr Oh for their helpful submissions, which were fairly and forcefully put forth.

Chong Fu Shan
Assistant Registrar

Goh Jia Jie (FC Legal Asia LLC) for the applicant;
Oh Zhen Hao, Thaddeus (Hu Zhenhao) and Farahna Alam (Withers KhattarWong LLP) for the respondent.
