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

[2025] SGHC 113

Originating Claim No 158 of 2024 (Registrar's Appeal No 85 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 — Production of documents]
[Civil Procedure — Rules of court — Non-compliance]

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Tan Tse Haw
v
Peh Tian Swee and another

[2025] SGHC 113

General Division of the High Court — Originating Claim No 158 of 2024
(Registrar's Appeal No 85 of 2025)
Chua Lee Ming J
30 May 2025

24 June 2025

Chua Lee Ming J:

Introduction

1 This was the claimant's appeal against an order made by the Assistant Registrar ("AR") in HC/SUM 299/2025 ("SUM 299") on 4 April 2025 that the claimant's Statement of Claim and Reply and Defence to Counterclaim be struck out and judgment be entered in terms of the Defence and Counterclaim (Amendment No. 1) unless the claimant complied with an order of court dated 16 October 2024 for the production of certain specific documents.

Background facts and procedural history

2 The claimant and the first defendant are equal shareholders in the second defendant (the "Company"). The Company was in the business of repair and

maintenance of motor vehicles. The claimant was employed by the Company until 10 July 2023 when his employment was terminated.

3 The claimant commenced the present action for oppression under s 216 of the Companies Act 1967 (2020 Rev Ed). The claimant alleged that the first defendant had (a) excluded him from the management of the Company, and (b) mismanaged the Company.

4 The first defendant counterclaimed and sought an order that the Company be wound up on the ground that there had been a complete loss of substratum. The first defendant alleged that the Company's operations had grounded to a halt because the claimant had, among other things, poached the employees of the Company and diverted business away from the Company to SG Truck Automotive Pte Ltd ("STAPL"), a company that the claimant had set up on 20 March 2023.

5 On 16 October 2024, an AR granted the first defendant's application for production of specific documents and ordered the claimant to produce the following documents (the "Production Order"):

(a) Any letters issued by STAPL to ex-employees of the Company (including nine named persons) to engage their services ("Category 1").

(b) All quotations, job orders, invoices and/or statement of accounts issued by STAPL to the ex-customers (including 31 named customers) and debtors of the Company from March 2023 to end 2023 ("Category 2").

6 The claimant appealed against the Production Order. The High Court heard the appeal, but the claimant withdrew the appeal before the High Court

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gave its decision. The High Court directed the claimant to comply with the Production Order by 6 January 2025. The claimant subsequently informed the first defendant that he would file his supplementary list of documents by 8 January 2025; the claimant then extended this deadline to 10 January 2025.

7 On 10 January 2025, the claimant filed his 2nd Supplementary List of Documents (the "C2SLOD") in which he disclosed only STAPL's "compiled sales list" in relation to 19 of the 31 customers named in Category 2 of the Production Order. Paragraph 3 of the C2SLOD stated that the claimant did not have any documents in his possession, custody or power other than the documents disclosed.

8 The claimant's solicitors' letter to the first defendant's solicitors dated 10 January 2025 stated that:

> (a) the claimant did not have any documents responsive to Category 1 in his possession, custody or control; and
>
> (b) with respect to Category 2, the claimant had produced a compiled sales list because it was unduly burdensome to print out copies of all the invoices and/or statement of accounts due to limitations to STAPL's systems.

9 On 27 January 2025, the court granted the first defendant permission to make an application for an unless order. The first defendant was directed to file the application by 5 February 2025.

10 On 3 February 2025, the claimant filed his 3rd Supplementary List of Documents (the "C3SLOD") in which he disclosed invoices issued by STAPL to ex-customers of the Company and statements of accounts between STAPL

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and ex-customers of the Company. The invoices were described as invoices "issued by STAPL … from March 2023 to end 2023". The list did not include any invoice dated March or April 2023. The statements of accounts were described as statements of accounts "for transactions from March 2023 to end 2023". All the statements of accounts were dated 28 January 2025.

11 On 4 February 2025, the claimant filed his affidavit verifying the C2SLOD and the C3SLOD (the "claimant's 4th Affidavit"). In his 4th Affidavit, the claimant verified the statements made in the C2SLOD and C3SLOD and stated the following:

(a) Paragraph 3 of the C2SLOD (see [7] above) was a genuine and inadvertent error.

(b) In the C3SLOD, the claimant had disclosed all documents responsive to the description of the Category 2 documents that were within his possession and control.

(c) The claimant did not have access to the records of the Company, and he was unable to recall the names of all of the Company's ex-customers and debtors. In the circumstances, the claimant had requested STAPL to carry out a search of its accounts based on the Company's ex-customers and debtors disclosed by the first defendant to the claimant.

(d) The claimant would carry out a similar search for other ex-customers and debtors of the Company that the first defendant could name and provide reasonable evidence that they were ex-customers and debtors of the Company.

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(e) There were no quotations or job orders responsive to the description of the Category 2 documents that were in the claimant's possession or control. A search of STAPL's accounts using its accounting software had returned zero results.

(f) The claimant had taken sufficiently reasonable steps to discharge and had discharged his discovery obligations with respect to Category 2 documents.

(g) With respect to the Category 1 documents, STAPL had employed only two former employees of the Company. STAPL did not issue any employment or other letters to engage their services. In the circumstances, the claimant did not have any documents responsive to the description of the Category 1 documents in his possession or control.

The claimant's position was consistent with what was stated in his solicitors' letter to the first defendant's solicitors dated 3 February 2025.

12 On 5 February 2025, the first defendant filed SUM 299, seeking an order that the claimant's Statement of Claim and Reply and Defence to Counterclaim be struck out and judgment be entered in terms of the Defence and Counterclaim (Amendment No. 1), unless the claimant complied with the Production Order within seven days.

13 On 4 April 2025, the AR granted the defendant's application except that the claimant was given 21 days to comply with the Production Order. The AR's grounds of decision are set out in *Tan Tse Haw v Peh Tian Swee and another* [2025] SGHCR 9 (the "GD").

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14 On 18 April 2025, the claimant filed the present appeal against the AR's decision. On 30 May 2025, I heard the appeal and allowed it.

My decision

15 The AR's unless order necessarily had to be premised on an anterior finding that the claimant had failed to comply with the Production Order. That was the critical question before me – whether the claimant had failed to comply with the Production Order.

16 In *Lutfi Salim bin Talib and another v British and Malayan Trustees Ltd* [2024] 5 SLR 86 ("*Lutfi*") (at [32]), I decided that for the purposes of deciding an application made under O 11 r 3(1) of the Rules of Court 2021 ("ROC"), a respondent's opposing affidavit and any subsequent affidavits filed in response to a previous order under O 11 rr 3(1) or 3(2) ROC are conclusive unless it is plain and obvious from the documents that have been produced, the respondent's affidavits or pleadings, or some other objective evidence before the court, that the requested documents (a) must exist or have existed, (b) must be or have been in the respondent's possession or control, or (c) are not protected from production (the "plain and obvious test").

17 In *Lutfi*, I was dealing with an application under O 11 r 3(1) ROC, which deals with the court's power to order a party to produce a specific document or class of documents. However, in principle, the plain and obvious test must apply in equal measure when a court has to decide whether a party has complied with a production order made under O 11 r 3(1) ROC for the purposes of deciding an application for an unless order. Perhaps all the more so, given the draconian nature of unless orders.

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18 As I explained in *Lutfi* (at [33]), at this interlocutory stage of the proceedings, the court cannot resolve a dispute as to the sufficiency of affidavits relating to production of documents based on contentious affidavits. Thus, to successfully show non-compliance with a production order, it needs to be plain and obvious from the documents, pleadings, affidavits or some other objective evidence that documents that have been said to not exist, do in fact exist.

19 Where the plain and obvious test cannot be met, the requesting party who wishes to challenge the producing party's affidavits (filed in response to a production order) should wait for the trial and cross-examine the producing party during the trial. If appropriate, he can then submit that the relevant production order has not been complied with and that the court should draw adverse inferences against the producing party.

20 In the present case, the effect of the claimant's 4th Affidavit (read with the C2SLOD and C3SLOD) was that the claimant had stated on affidavit that:

(a) there were no documents in his possession or control that were responsive to the description of Category 1 documents; and

(b) there were no documents in his possession or control that were responsive to the description of Category 2 documents other than those that he had disclosed.

21 The claimant's position as stated in his 4th Affidavit read with the C2SLOD and C3SLOD was therefore conclusive unless it was plain and obvious that the documents (that the respondent alleged had not been disclosed) did in fact exist. The "plain and obvious" threshold is a high one.

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Category 1 documents

22 Category 1 documents referred to letters issued by STAPL to ex-employees of the Company to engage their services, including nine named persons (see [5(a)] above). The claimant's 4th Affidavit stated that he did not have any documents responsive to this description in his possession or control because STAPL had employed only two former employees of the Company and STAPL did not issue any employment or other letters to engage their services (see [11(g)] above). Before me, the first defendant confirmed that he was seeking production of the employment contracts of these two ex-employees of the Company.

23 The first defendant took issue with the claimant's position that there were no employment contracts. The question was whether it was plain and obvious that the employment contracts did exist.

24 In the GD, the AR did not refer to *Lutfi* or the plain and obvious test. The parties did not appear to have referred the AR to *Lutfi* or made submissions on the plain and obvious test.

25 The AR described the claimant's contention (that the Category 1 documents did not exist) as being inherently implausible (GD at [49]). The AR gave the following reasons (GD at [48]–[49]):

(a) the claimant did not raise the non-existence of the documents until after the appeal against the Production Order had been disposed of;

(b) despite the fact that STAPL was a small company, it was difficult to believe that the two ex-employees of the Company would have been

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content to work for STAPL solely on the basis of an oral agreement which comprised bare terms; and

(c) when applying for work permits for the two ex-employees of the Company, the Ministry of Manpower ("MOM") would have required STAPL to send to those employees copies of their employment contracts.

26 In my view, the plain and obvious test was not satisfied. It could not be said to be plain and obvious from the above reasons that the Category 1 documents existed. It was not implausible that being a small company, STAPL employed the two ex-employees of the Company without any written employment contracts. Even the reliance on the MOM's requirement that STAPL should send copies of employment contracts to the employees was equivocal. The AR himself did not think this was determinative in and of itself since there was no evidence that the MOM policed compliance in this regard (GD at [49]). Further, there was also no evidence that an employment contract had to be produced to MOM when making an application for a work permit. The evidence merely showed that the employee's written consent to the work permit application was required and that the employment contract was an example of such written consent.

27 Accordingly, the claimant's 4th Affidavit (read with the C2SLOD and C3SLOD) was conclusive as to the non-existence of the Category 1 documents and the unless order should not have been made with respect to these documents.

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Category 2 documents

28 Category 2 documents referred to all quotations, job orders, invoices and/or statement of accounts issued by STAPL to the ex-customers (including 31 named customers) and debtors of the Company from March 2023 to end 2023 (see [5(b)] above).

29 In the C3SLOD, the claimant disclosed invoices issued by STAPL to ex-customers of the Company and statements of accounts between STAPL and ex-customers of the Company (see [10] above). In his 4th Affidavit, the claimant stated that: (a) there were no quotations or job orders responsive to the description of the Category 2 documents that were in the claimant's possession or control; and (b) he had disclosed all documents responsive to the description of the Category 2 documents that were within his possession and control (see [11(b)] and [11(e)] above).

30 The first defendant took issue with:

(a) the claimant's position that there were no quotations or job orders in the claimant's possession and control; and

(b) the fact that no invoices or statements of accounts issued in March 2023 and April 2023 had been disclosed, although the Production Order required the claimant to disclose invoices and statements of accounts issued from March 2023 to end 2023 (see [5(b)] above).

31 In addition, the first defendant took issue with the fact that the claimant had not disclosed "job cards" that were referred to in some of the invoices disclosed by the claimant.

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32 The questions that arose were whether it was plain and obvious that:

(a) the quotations and job orders issued by STAPL to the ex-customers and debtors of the Company from March 2023 to end 2023 did in fact exist; and

(b) the invoices and statements of accounts issued in March 2023 and April 2023 did in fact exist.

33 The question relating to the job cards was different. The claimant's contention was that job cards were different from job orders and that he was not required to disclose job cards because the Production Order referred to job orders and did not include job cards.

34 With respect to the quotations, the AR's view was that these were material and had not been disclosed (GD at [52]). The GD did not explain why it was plain and obvious that the quotations did in fact exist. In fact, there was no evidence showing it to be plain and obvious that the quotations did exist.

35 As for the invoices and statements of accounts issued in March 2023 and April 2023, the AR simply noted that they were conspicuously missing (GD at [52]). However, the fact that these invoices and statements of accounts were not disclosed begs the question whether they did in fact exist. The claimant had stated on affidavit that he had disclosed all Category 2 documents that were within his control and possession. The GD did not explain why it was plain and obvious that the invoices and statements of accounts issued in March 2023 and April 2023 did in fact exist.

36 Before me, the first defendant submitted that there was evidence showing that STAPL was operating in April 2023. However, that did not make

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it plain and obvious that STAPL had issued invoices or statements of accounts *to the Company's ex-customers* in March or April 2023.

37 With respect to the job orders, the first defendant's position before the AR was that the job cards should have been disclosed as they were in substance the "job orders" referred to in the Production Order (GD at [53]). However, the claimant argued that job cards were internal administrative documents and therefore different from job orders which were external and transactional in nature.

38 The AR concluded that the claimant's position was factually unsustainable because a director of STAPL had deposed on affidavit that the practice of STAPL was for job cards to be attached to the invoices and issued to STAPL's customers (GD at [54]). However, the fact that job cards were attached to the invoices that STAPL issued to its customers did not mean that "job cards" were therefore the same as "job orders".

39 The AR went on to conclude that the claimant would have understood the term "job orders" to refer to documents that contained a record of the customers' orders and that job cards fell within this description (GD at [55]). It was not clear what was the basis for this conclusion. The claimant's evidence was that he understood "job orders" to be different from "job cards".

40 The term "job orders" was not defined in the Production Order, which did not expressly include "job cards". Before me, the first defendant accepted that there was an issue as to interpretation of the term "job order". The obligation was on the first defendant (as the requesting party) to describe clearly the documents that he sought production of. Any lack of clarity over the term "job order" in the Production Order ought to be resolved in favour of the

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claimant (as the producing party). I also noted that the evidence given on behalf of the first defendant showed that the Company also issued invoices that referred to "job cards". The first defendant was therefore aware of the term "job card". The first defendant could have included "job cards" in his application for production of documents but did not.

41 In my view, it could not be said that the claimant failed to comply with the Production Order with respect to "job orders".

42 Even if one accepted the AR's view that the job cards fell within the scope of Category 2 of the Production Order, in my view, the unless order was still unnecessary. First, the interpretation of the term "job order" was in dispute. As stated earlier, the claimant understood "job orders" to be different from "job cards". It was not plain and obvious that he knew that they were the same. The lack of clarity as to whether "job orders" included "job cards" ought to be resolved in favour of the claimant. Under these circumstances, an unless order was not warranted.

43 Second, before me, the first defendant confirmed that he was seeking production of the job cards referred to in the disclosed invoices. However, in principle, the first defendant was entitled to inspect and/or be provided with copies of not only the disclosed invoices but also the job cards referred to in these invoices. Before me, the claimant accepted this principle. The mere fact that the claimant did not separately disclose the job cards would not prejudice the first defendant.

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Conclusion

44 For the above reasons, I allowed the appeal and set aside the AR's order. I ordered the first defendant to pay costs here and below fixed at $10,200 inclusive of disbursements.

Chua Lee Ming
Judge of the High Court

Deborah Evaline Barker SC, Oh Zhen Hao, Thaddeus (Hu Zhenhao), Tan Sheng An Jonathan and Farahna Alam (Withers KhattarWong LLP) for the claimant;
Foo Maw Shen, Chu Hua Yi and Goh Jia Jie (FC Legal Asia LLC) for the first defendant.

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