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

[2026] SGHC 226

Originating Application No 953 of 2025 (Summonses Nos 1960 and 2475 of 2026)

Between

Sun Hongmin

… *Claimant*

And

(1) Wo Wei Dong
(2) Zeng Lixin
(3) The Sub Rosa Capitol Pte Ltd

… *Defendants*

JUDGMENT

[Contempt of Court — Civil contempt — Breach of undertaking given to court]

TABLE OF CONTENTS

INTRODUCTION **1**

FACTS **2**

APPLICABLE LAW **4**

APPLICANT'S CASE **5**

MY DECISION **6**

"PROCESS OF COURT" UNDER SECTION 4(1)(A) AJPA 6

EXPRESS UNDERTAKING 10

IMPLIED UNDERTAKING 13

CONCLUSION **21**

Version No 1: 29 Oct 2026 (14:56 hrs)

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Sun Hongmin
v
Wo Wei Dong and others

[2026] SGHC 226

General Division of the High Court — Originating Application No 953 of 2025 (Summonses Nos 1960 and 2475 of 2026)
Mavis Chionh Sze Chyi J
26 August 2026

29 October 2026 Judgment reserved.

Mavis Chionh Sze Chyi J:

Introduction

1 HC/SUM 1960/2026 ("SUM 1960") is an *ex parte* application by the first defendant, Wo Wei Dong ("Applicant"), for leave to commence committal proceedings against the claimant, Sun Hongmin ("Mdm Sun"). In SUM 1960, the Applicant originally relied on ss 3(1)(*da*), 3(1)(*e*) and 4(1)(*a*) of the Administration of Justice (Protection) Act 2016 (2020 Rev Ed) ("AJPA"). As contempt proceedings under s 3(1) AJPA may only be instituted with the Attorney-General's ("AG") consent (s 30(1) AJPA), the Applicant duly applied for such consent, but his request was rejected by the AG. The Applicant subsequently filed HC/SUM 2475/2026 ("SUM 2475") to amend SUM 1960 so as to remove the prayer relying on ss 3(1)(*da*) and 3(1)(*e*) AJPA, and to insert instead a prayer stating reliance on s 4(1)(*b*) (in addition to s 4(1)(*a*)) AJPA.

2 At the hearing on 26 August 2026, I allowed SUM 2475 and heard counsel for the Applicant on SUM 1960. Having considered the submissions and materials presented, I now dismiss SUM 1960. These are my reasons.

Facts

3 I start by summarising the factual and procedural background to SUM 1960. The two main protagonists in HC/OA 953/2025 ("OA 953") are the Applicant and Mdm Sun, who are married with two children.[1] They are both citizens of the People's Republic of China ("PRC"). At the time that OA 953 was filed, they were undergoing divorce proceedings in the PRC ("PRC Divorce Proceedings").[2]

4 OA 953 was Mdm Sun's application for a freezing injunction in respect of a sum of US$1,095,000 ("Monies") held in the bank account(s) of a company known as The Sub Rosa Capitol Pte Ltd ("Company"). The Company is the third defendant in OA 953.

5 In gist, it was Mdm Sun's case that the Monies were matrimonial assets which had been transferred without her consent through a Hong Kong bank account (HSBC Account No. XXX-XXXXXX-833 ("HSBC Account")) to a bank account in the name of the Company. The HSBC Account was held in the name of the second defendant, Zeng Lixin. *Per* Mdm Sun's case, Zeng was the Applicant's nominee and held the HSBC Account (and all the assets therein) on behalf of the Applicant.[3]

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1 1st Affidavit of Sun Hongmin filed 26 August 2025 ("SHM-1") at para 9.

2 SHM-1 at para 5.

3 SHM-1 at para 6.

Version No 1: 29 Oct 2026 (14:56 hrs)

6 Concurrently with OA 953, Mdm Sun filed HC/SUM 2415/2025 ("SUM 2415") which was an *ex parte* application for interim relief in aid of the PRC Divorce Proceedings. In SUM 2415, Mdm Sun sought an interim freezing injunction (pending the determination of OA 953) against the Applicant and Zeng, in respect of their assets in Singapore, up to a value of US$1,095,000. This included the monies in the Company's bank account.

7 According to Mdm Sun, she and the Applicant "co-developed" a highly successful group of companies ("Huiyin Group") which they jointly owned through the holding company, Shanghai Huiyin (Group) Co. Ltd ("SH Huiyin").[4] The Applicant disputes this version of events, claiming instead that the Huiyin Group was founded by and beneficially owned by him.[5] For the purposes of SUM 1960, there is no need for me to determine this factual dispute. Suffice to say, the Huiyin Group is a group of companies intricately linked to Mdm Sun and the Applicant.

8 In support of OA 953 and SUM 2415, Mdm Sun deposed in an affidavit filed on 26 August 2025 ("SHM-1") that she had been "informed by an employee of SH Huiyin … that Zeng opened the HSBC Account on 22 November 2024 for the purpose of holding assets on behalf of [the Applicant]" (the "Alleged Falsehood").[6]

9 On 14 October 2025, an interim freezing injunction was granted in SUM 2415, against the Applicant and Zeng.[7]

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4 SHM-1 at para 11.

5 2nd Affidavit of Wo Wei Dong filed in support of SUM 1960 on 14 August 2026 ("WWD-2") at para 5.

6 SHM-1 at para 27.

7 HC/ORC 6315/2025.

Version No 1: 29 Oct 2026 (14:56 hrs)

10 On 31 October 2025, the PRC Divorce Proceedings were dismissed at first instance.[8] On 2 March 2026, Mdm Sun's appeal against the dismissal of the PRC Divorce Proceedings was also dismissed.[9] On 3 March 2026, by way of a letter to this court, counsel for Mdm Sun confirmed that "[s]ince OA 953 is premised on the PRC Divorce Proceedings, … [Mdm Sun] no longer intends to proceed with OA 953".[10]

11 On 23 March 2026, Mdm Sun filed HC/SUM 890/2026 asking for the court's permission to discontinue OA 953 and for the interim freezing injunction in SUM 2415 to be discharged. On 14 April 2026, I granted Mdm Sun leave to discontinue OA 953 and discharged the interim freezing injunction, with costs to be paid by her to the Applicant and Zeng.[11]

12 The crux of the Applicant's case in SUM 1960 is that Mdm Sun lied in her affidavit by deposing to the Alleged Falsehood. According to the Applicant, Mdm Sun had accessed his messages on the messaging platform "Telegram" without his consent and knowledge, thereby coming to know of the fund transfers from the HSBC Account into the Company's bank account.[12]

Applicable law

13 It is trite that permission to commence committal proceedings will only be granted if it is shown that (a) the respondent to the committal proceedings has *prima facie* committed a contempt of court; and (b) the committal

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8 1st Affidavit of Wo Wei Dong filed in support of HC/SUM 251/2026 on 29 January 2026 ("WWD-1") at para 20.

9 Letter from 1st Defendant's counsel (Setia Law LLC) dated 2 March 2026 at para 3.

10 Letter from Claimant's counsel (Prolegis LLC) dated 3 March 2026 at para 3.

11 Minute Sheet (14 April 2026).

12 WWD-2 at paras 15–31.

Version No 1: 29 Oct 2026 (14:56 hrs)

applicant's supporting affidavit is sufficiently particularised: *Neo Chin Heng v Good Year Contractor Pte Ltd* [2024] 4 SLR 1102 ("*Neo Chin Heng*") at [9].

14 Having read the Applicant's affidavit, I find that it is sufficiently particularised such that a reasonable person reading the affidavit would understand the substance of the alleged contempt: *Neo Chin Heng* at [11].

15 As for whether the Applicant is able to establish a *prima facie* case of contempt of court, while this is a low threshold in that the court is not required to determine the merits of the substantive committal application (*Neo Chin Heng* at [10]), the live issue in the present case is whether Mdm Sun's act of (allegedly) lying in SHM-1 can come within the AJPA provisions that the Applicant relies on, *ie*, ss 4(1)(*a*) and 4(1)(*b*) AJPA. If, as a matter of law, Mdm Sun's actions cannot constitute a disobedience or breach of a judgment, decree, direction, order, writ or process of the court (s 4(1)(*a*) AJPA), or a breach of an undertaking given to the court (s 4(1)(*b*) AJPA), then it must follow that the Applicant is unable to make out a *prima facie* case of contempt.

Applicant's case

16 The Applicant advances three separate arguments; and so long as one of these three arguments succeeds, then a *prima facie* case of contempt will be made out. The three arguments are as follows:

(a) The words "process of court" in s 4(1)(*a*) AJPA should be construed so as to include the formal process by which the courts receive sworn or affirmed evidence. According to the Applicant, included or "embedded" in this process is the requirement that the matters sworn or affirmed by the deponent to be within her knowledge are in fact known by her to be true and that any matters stated on belief are genuinely

Version No 1: 29 Oct 2026 (14:56 hrs)

believed on the grounds given. In this connection, the Applicant relies on the Rules of Court 2021 ("ROC") and the Supreme Court Practice Directions 2021 ("SCPD"). On this reading, according to him, Mdm Sun's deliberate lie in SHM-1 is a breach of the truthfulness requirement embedded in the court's process of receiving sworn evidence.[13]

(b) SHM-1 contains an *express* undertaking that "where the matters deposed [thereto] are within [her] knowledge, they are true". Accordingly, by deposing to the Alleged Falsehood, Mdm Sun breached an express undertaking given to the court, which constitutes conduct falling under s 4(1)(*b*) AJPA.[14]

(c) *Per* s 4(9) AJPA, the words "undertaking given to a court" in s 4(1)(*b*) AJPA include an *implied* undertaking. In applying for an *ex parte* injunction, Mdm Sun "[gave] the Court an implied undertaking to make full and frank disclosure of all material facts". By deposing to the Alleged Falsehood, which concerned a material fact adverse to her own case, Mdm Sun intentionally breached this "implied undertaking" to the court.[15]

17 I consider each of these three arguments in turn.

My decision

"Process of court" under section 4(1)(a) AJPA

18 Section 4(1)(*a*) AJPA provides:

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13 Applicant's written submissions dated 5 August 2026 ("AWS") at paras 31–33.

14 AWS at para 44(a).

15 AWS at para 44(b).

Version No 1: 29 Oct 2026 (14:56 hrs)

> Any person who intentionally disobeys or breaches any judgment, decree, direction, order, writ or other process of a court commits a contempt of court.

19 The Applicant's first argument is that the words "other process of a court" in s 4(1)(*a*) encompass the filing of affidavits. On this reading, an untruth in an affidavit would amount to a "breach of the process of court".

20 With respect, I am unable to accept this proposed interpretation of s 4(1)(*a*). The Applicant has not been able to point to any case law which supports his proposed interpretation of the words "process of court". In any event, I am of the view that properly construed, s 4(1)(*a*) AJPA does not include the general procedural machinery of litigation and/or the procedural rules as stated in the ROC or SCPD.

21 First, in examining the text of s 4(1)(*a*), I find assistance in the principle of *ejusdem generis* as an interpretive tool. In *Public Prosecutor v Lam Leng Hung* [2018] 1 SLR 659, the Court of Appeal summarised the *ejusdem generis* principle as follows:

> 105 *Bennion* provides the following introductory description of the *ejusdem generis* principle (at p 1105):
>
> > The Latin words *ejusdem generis* (of the same kind or nature), have been attached to a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character. The principle may apply whatever the form of the association, but **the most usual form is a list or string of genus-describing terms followed by wider residuary or sweeping-up words**.
>
> …
>
> 114 It is clear that the crucial part of the analysis in determining whether, and if so how, the *ejusdem generis* principle may be applied is ***the identification of the "genus" or common thread that runs through all the items***

Version No 1: 29 Oct 2026 (14:56 hrs)

> ***in the list (or "generic string") that includes the disputed term***. …
>
> 115 How then does the court determine the genus that will thereafter enable it to ascertain the proper meaning of the disputed term? In the English High Court decision of *SS Magnhild v McIntyre Brothers and Company* [1920] 3 KB 321, McCardie J held (at 330) that "the specified things [*ie*, the items in the generic string] must possess some ***common and dominant feature***". *Bennion* further observes (at p 1110) from a review of the authorities that the courts' tendency has been to restrict the imputed genus to an area that goes *no wider than is necessary to encompass the entire generic string*.
>
> [original emphasis in italics; emphasis added in bold italics].

22 In s 4(1)(*a*) AJPA, a genus is easily identifiable – "judgment, decree, direction, order, writ or other process of a court" have the common and dominant feature of a binding legal obligation imposed by the court. These are coercive legal instruments by which the court's orders are delivered. This also coheres with the title of s 4 AJPA: "[c]ontempt by disobedience of court order". Accordingly, I find that "process of court" – as a residuary category in s 4(1)(*a*) AJPA – cannot be read so widely as to incorporate the process of filing affidavits (or as the Applicant puts it, "formal process by which the court receives sworn or affirmed evidence"). In my view, the correct interpretation is that only those processes of the court which impose a *court-ordered* obligation will fall within s 4(1)(*a*) AJPA.

23 Second, the above conclusion also coheres with a purposive interpretation (*per* s 9A(1) Interpretation Act 1965 (2020 Rev Ed)). An examination of the relevant legislative materials indicates that in enacting this provision, Parliament could not have intended that the term "breach of process of court" should include the making of false statements in an affidavit, as this would have resulted in an overlap between s 3(1)(*da*) AJPA and s 4(1)(*a*) AJPA.

Version No 1: 29 Oct 2026 (14:56 hrs)

24 At the second reading of the Administration of Justice (Protection) (Amendment) Bill on 13 November 2024, then-Minister of State for Law Murali Pillai ("MoS Pillai") explained, *inter alia*, that s 3(1)(*e*) AJPA was broad enough to include *abuse of process*, including deceiving the court:

> However, the language of the current provision, which I have just read, is broad. We have decided that the legal position can be made clearer on how the general standard set out in section 3(1)(e) applies to the context of abuse of process. The *amendments* which we are proposing are, therefore, *clarificatory in nature*. They do not lower the current threshold for contempt of Court.
>
> …
>
> Under clause 2 of the Bill, the proposed new sections 3(1)(da) and (db) of the Act clarify what kinds of conduct would amount to contempt by interference with the administration of justice.
>
> The new provisions apply to all court proceedings in Singapore, whether conducted by a self-represented person or a lawyer. Three categories of egregious abuse of process are set out: first, the conduct or commencement of a court proceeding, which the person knows, or ought to have known, *involves a deception on the court*, is fictitious or constitutes a mere sham.
>
> …
>
> *Deceiving the court*, abusing the court process by filing baseless claims for an improper purpose, or launching multiple baseless court proceedings – these *are acts of abuse that are clearly egregious and which cannot be condoned. These are also acts which would* ***already fall within the current section 3(1)(e) of the AOJPA****, as acts which interfere with the administration of justice****.***
>
> Our amendments, therefore, do not change the current legal standard. Rather, they provide clearer signposting in setting out the types of conduct that would amount to contempt of court.
>
> [emphasis added in italics and bold italics].

25 Deceiving the court, which necessarily includes giving false evidence, now falls under s 3(1)(*da*) AJPA. MoS Pillai's explanation makes it clear that prior to the amendments in 2024, s 3(1)(*e*) AJPA would have covered such

Version No 1: 29 Oct 2026 (14:56 hrs)

cases. To institute contempt proceedings under s 3 AJPA based on the giving of false evidence in an affidavit, an applicant is required to obtain the consent of the AG: s 30(1) AJPA. Indeed, the Applicant acknowledges that cases involving the filing of knowingly false affidavit evidence are typically "analysed" under s 3 AJPA, but nonetheless submits that this does not preclude such conduct from *also* falling within s 4(1) AJPA.[16]

26 If the Applicant is correct in suggesting that the giving of false evidence may equally fall under s 4(1)(*a*) AJPA, then ss 3 and 30 AJPA would be obsolete in cases involving such conduct, since a party seeking to institute contempt proceedings premised on such conduct would surely just proceed under s 4(1)(*a*) AJPA, thereby avoiding the added requirement of applying for the AG's consent. With respect, this cannot be right. Parliament could not have intended to impose a stricter requirement for cases involving deception of the court, while at the same time allowing such cases to bypass this requirement by simply resorting to a different provision within the same legislation. In my view, therefore, there is good reason why cases involving knowingly false affidavits have typically been dealt with under s 3 AJPA.

Express undertaking

27 In respect of the second argument, the Applicant's case is that the following standard assertion in an affidavit amounts to an express undertaking given to the court as to the truth of the affidavit's contents:

> Where the matters deposed to herein are within my personal knowledge, they are true. Where they are not within my personal knowledge, they are true to the best of my knowledge, information, and belief based on the documents and records made available to me.

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16 AWS at paras 69–70.

Version No 1: 29 Oct 2026 (14:56 hrs)

[hereinafter referred to as the "Standard Assertion"]

The Applicant contends that even though the Standard Assertion is not expressly labelled as an undertaking, "it is no less of an assurance … on which the Court is entitled to rely".[17]

28 I am unable to accept the Applicant's arguments. To begin with, the Applicant has not found any authorities defining the term "undertaking" in the context of s 4(1)(*b*) AJPA. There is also no authority for the proposition that the Standard Assertion amounts to an express undertaking to depose only to the truth.

29 The ordinary meaning of an "undertaking" is a "formal promise" (*Cambridge Dictionary*, "Undertaking" <https://dictionary.cambridge.org/dictionary/english/undertaking?q=Undertaking> (accessed 26 October 2026)). The ordinary meaning of a "promise" is "the act of saying that you will certainly do something" (*Cambridge Dictionary*, "Promise" <https://dictionary.cambridge.org/dictionary/english/promise> (accessed 26 October 2026)). An assertion in an affidavit that the matters deposed to therein are true, on the other hand, is merely an assertion rather than a formal promise to do something. With respect, therefore, the Applicant's argument – that the Standard Assertion amounts to an express undertaking to depose only to the truth – flies in the face of the ordinary meaning of the term "undertaking".

30 Indeed, as the Applicant points out, the Standard Assertion is routinely included in affidavits because Form 31 of the SCPD requires the deponent to:

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17 AWS at para 44(a)(ii).

Version No 1: 29 Oct 2026 (14:56 hrs)

> ***State*** *whether the maker knows the facts affirmed are true* and if he or she only believes that they are true, state the grounds for his or her belief.

31 Form 31 explicitly explains that this is a *statement*, *ie*, not an undertaking. It says nothing about an *undertaking* to depose only to the truth, although of course, if the maker has knowingly made false statements within the affidavit, then the separate question of whether the maker has deceived the court may arise. To my mind, the Standard Assertion is merely a statement as to the maker's state of mind – whether he *knows* the facts affirmed are true or whether he *believes* that they are true.

32 Notwithstanding that a solicitor's undertaking has been recognised as having a "unique status", the definition of "undertaking" may also be gleaned from the definition of a solicitor's undertaking: "a solemn promise that is not merely an agreement or a contract" (*Law Society of Singapore v Naidu Priyalatha* [2023] 3 SLR 1401 at [31]–[32]). A promise is a statement of intention or *future* conduct; it is prospective. An affidavit, in contrast, is retrospective and assertive. This reinforces my view that the Standard Assertion merely constitutes a representation of fact.

33 Another source of guidance is the definition in the ROC. Order 15 r 18 ROC states: "An affidavit is a *statement of evidence* in the English language, signed and affirmed before a commissioner for oaths." The affidavit being a *statement* of evidence, it appears to me incongruous to characterise an assertion in the affidavit as an undertaking to the court to tell only the truth.

34 I add that Schedule 1 to the order for interim freezing injunction issued in SUM 2415 is a good example of express undertakings given by a party to the court. Schedule 1 is titled "Undertakings given to the Court by the Claimant"; and it is evident from the matters listed in Schedule 1 that the "undertakings

Version No 1: 29 Oct 2026 (14:56 hrs)

given to the Court" by Mdm Sun are really promises to do certain things, *eg*, to "pay the reasonable costs of anyone other than the Defendants which have been incurred as a result of this order".

35 It should also be pointed out that if the Applicant's argument were accepted, it would follow that every intentional untruth in an affidavit amounts to contempt of court under both ss 3(1)(*da*) and 4(1)(*b*) AJPA. In this regard, I repeat my earlier observations at [23]–[26] that Parliament could not have intended to impose a requirement for the AG's consent in cases of deceiving the court through the giving of false evidence, while at the same time permitting that requirement to be sidestepped by recourse to a different provision.

36 For the reasons explained, I do not accept that for the purposes of s 4(1)(*b*) AJPA, Mdm Sun had, by way of the Standard Assertion, given an express undertaking to the court to state only the truth.

Implied undertaking

37 In respect of the third argument, counsel for the Applicant acknowledged that they were unable to find any reported Singapore cases dealing with the question of whether an intentional breach of the "undertaking" to give full and frank disclosure in *ex parte* applications amounts to conduct covered by s 4(1)(*b*) AJPA.[18] Nevertheless, counsel advanced the argument that a party who brings an *ex parte* application "undertakes" the burden or duty of full and frank disclosure – which (according to them) is, in effect, the same as an implied undertaking to the court to tell the truth, the intentional breach of which would subject the party to contempt proceedings.[19]

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18 Transcript, p 4 (lines 22–26).

19 Transcript, p 10 (line 11) to p 11 (line 16).

Version No 1: 29 Oct 2026 (14:56 hrs)

38 Counsel started by citing *Kok Seng Chong v Bukit Turf Club* [1992] 3 SLR(R) 772 ("*Kok Seng Chong*") at [95] for the characterisation of the duty of full and frank disclosure as an undertaking:

> If … the plaintiff chooses to apply for an *ex parte* injunction, then he ***undertakes*** the onerous burden of full and frank disclosure of all material facts to the court, including any facts which may not be advantageous to his case.
>
> [original emphasis in italics; emphasis added in bold italics]

39 However, as counsel correctly noted, the court in *Kok Seng Chong* appears to have used the word "undertake" as a verb – meaning, to assume or to take on a duty – as opposed to using the word in the technical sense of *giving an* undertaking to the court. Subsequent cases have repeatedly referred to the *ex parte* applicant's *duty* to make full and frank disclosure rather than his giving an *undertaking* to make full and frank disclosure: see, for example, *Castel, Romy Ingrid v Investment Beverage Business Management Pte Ltd* [2026] SGHC 158 at [33] and *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 ("*Vasiliy Golovnin*") at [83]. In the circumstances, I do not think it is correct to rely on *Kok Seng Chong* to make the point that the duty of full and frank disclosure has been recognised as an implied undertaking given to the court.

40 Leaving aside *Kok Seng Chong*, counsel submitted that nonetheless, the duty of full and frank disclosure should be treated as an implied undertaking because, like the *Riddick* undertaking (*ie*, the rule commonly attributed to *Riddick v Thames Board Mills Ltd* [1977] QB 881 ("*Riddick*")), the duty of full and frank disclosure is "an obligation imposed by operation of law".[20] Counsel relied on *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC* [2007] 2 SLR(R) 518 at [38], which in turn cited the decision of the English High Court

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[20] Transcript, p 7 (line 26) to p 9 (line 9).

Version No 1: 29 Oct 2026 (14:56 hrs)

in *Prudential Assurance Co Ltd v Fountain Page Ltd* [1991] 1 WLR 756 ("*Prudential Assurance*") at 764–765:

> *This undertaking is implied whether the court expressly requires it or not.* ***The expression of the obligation as an implied undertaking given to the court derives from the historical origin of the principle.*** *It is now in reality a legal obligation which arises by operation of law by virtue of the circumstances under which the relevant person obtained the documents or information. However treating it as having the character of an implied undertaking continues to serve a useful purpose in that it confirms that the obligation is one which is owed to the court for the benefit of the parties, not one which is owed simply to the parties; likewise,* ***it is an obligation which the court has the right to control and can modify or release a party from.*** *It is an obligation which arises from legal process and therefore is within the control of the court, gives rise to direct sanctions which the court may impose (viz. contempt of court) and can be relieved or modified by an order of the court.* It is thus a formulation of the obligation which has merit and convenience and enables it to be treated flexibly having regard to the circumstances of any particular case. Treating the duty as one which is owed to the court and breach of which is contempt of court also involves the principle that such contempts of court can be restrained by injunction and that any person who knowingly aids a contempt or does acts which are inconsistent with the undertaking is himself in contempt and liable to sanctions: see *Distillers Co. (Biochemicals) Ltd. v. Times Newspapers Ltd.* [1975] Q.B. 613.
>
> *The rational basis for the rule is that where one party compels another, either by the enforcement of a rule of court or a specific order of the court, to disclose documents or information whether that other wishes to or not, the party obtaining the disclosure is given this power because* ***the invasion of the other party's rights*** *has to give way to the need to do justice between those parties in the pending litigation between them; it follows from this that the results of such compulsion should likewise be limited to the purpose for which the order was made, namely, the purposes of that litigation then before the court between those parties and not for any other litigation or matter or any collateral purpose …*
>
> [original emphasis in italics; emphasis added in bold italics]

41 It is, of course, trite that the *Riddick* undertaking is an implied undertaking and that its breach may amount to contempt of court. However, there are at least two points of distinction between the *Riddick* undertaking and

Version No 1: 29 Oct 2026 (14:56 hrs)

the duty of full and frank disclosure in *ex parte* applications. In my view, these distinctions make it inappropriate for me to treat the duty of full and frank disclosure as being analogous to the *Riddick* undertaking.

42 First, as emphasised (in bold italics) in the above passage from *Prudential Assurance* at [40] above, the characterisation of the *Riddick* obligation as an implied undertaking to the court derives from the historical origins of the principle. In *Riddick* itself, Lord Denning MR explained at 896 that the *Riddick* undertaking was intended to encourage openness and fairness in the discovery process, by protecting the right to privacy and confidence of the party compelled to provide discovery:

> *Compulsion is an invasion of a private right to keep one's documents to oneself. The public interest in privacy and confidence demands that this compulsion should not be pressed further than the course of justice requires. The courts should, therefore, not allow the other party — or anyone else — to use the documents for any ulterior or alien purpose. Otherwise the courts themselves would be doing injustice.* Very often a party may disclose documents, such as inter-departmental memoranda, containing criticisms of other people or suggestions of negligence or misconduct. If these were permitted to found actions of libel, you would find that an order for discovery would be counterproductive. The inter-departmental memoranda would be lost or destroyed or said never to have existed. *In order to encourage openness and fairness, the public interest requires that documents disclosed on discovery are not to be made use of except for the purposes of the action in which they are disclosed.* They are not to be made a ground for comments in the newspapers, nor for bringing a libel action, or for any other alien purpose. The principle was stated in a work of the highest authority 93 years ago by Bray J., *Bray on Discovery*, 1st ed. (1885), p. 238:
>
> > A party who has obtained access to his adversary's documents under an order for production has no right to make their contents public or communicate them to any stranger to the suit : ... nor to use them or copies of them for any collateral object ... *If necessary an undertaking to that effect will be made* ***a condition of granting an order*** ...

Version No 1: 29 Oct 2026 (14:56 hrs)

> Since that time such an undertaking has always been implied, as Jenkins J. said in *Alterskye v. Scott* [1948] 1 All E.R. 469, 471. *A party who seeks discovery of documents gets it* ***on condition*** *that he will make use of them only for the purposes of that action, and no other purpose.*
>
> [emphasis added in italics and bold italics]

43 It can thus be seen that the *Riddick* undertaking was implied as a condition for the grant of a discovery order. Put simply, the *Riddick* undertaking is characterised as an implied undertaking given to the court because it is implied within the court's discovery order that the documents shall not be used for a collateral purpose. This historical origin is materially different from that of the duty of full and frank disclosure.

44 The duty of full and frank disclosure can be traced back to English authorities from the 19th century. In *Tunas (Pte) Ltd v Mayer Investments Pte Ltd* [1989] 1 SLR(R) 161, P Coomaraswamy J summarised it as follows:

> 2 In *Castelli v Cook* (1849) 7 Hare 89 at 94, Sir James Wigram, Vice Chancellor, said:
>
> > The rule, as I understand it, is this: that a Plaintiff applying *ex parte* comes (as it has been expressed) under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that *any material fact has been suppressed or not properly brought forward*, the Plaintiff is told that the Court will not decide on the merits, and that, **as he has broken faith with the Court**, the injunction must go. [emphasis added]
>
> 3 The applicant's failure to ascertain all material facts, and the real (or pretended) ignorance of the importance of any such fact is no excuse for failure to bring them to the judge's notice on the *ex parte* application.
>
> 4 Lord Langdale made this clear in *Dalglish v Jarvie* (1850) 42 ER 89 at 241. He said that it was:
>
> > [T]he duty of a party who comes for an injunction … the effect of which is to deprive another of his legal right, to ascertain for himself what are the facts which are

Version No 1: 29 Oct 2026 (14:56 hrs)

> material to be brought forward, and it being no excuse for him to say that he was not aware of their importance.
>
> 5 These words were approved by the English Court of Appeal in the case of *R v Kensington Income Tax Commissioners* [1917] 1 KB 486 by Cozens-Hardy MR at 504 and Scrutton LJ at 514. Cozens–Hardy MR also cited with approval the passage, abovementioned, from *Castelli v Cook*.
>
> 6 Even before *R v Kensington Income Tax Commissioners* in analysing the English authorities prior to 1912, Isaacs J (as he then was) of the Australian High Court said in *Thomas A Edison Limited v Bullock* (1912) 15 CLR 679 at 682:
>
> > … ***Uberrima fides* is required**, and the party inducing the Court to act in the absence of the other party, fails in his obligation unless he supplies the place of the absent party to the extent of bringing forward all the material facts which that party would presumably have brought forward in his defence to that application. Unless that is done, the implied condition upon which the Court acts in forming its judgment is unfulfilled and the order so obtained must almost invariably fall. …
>
> …
>
> 12 The principles I have referred to have also long been applied in Singapore and Malaysia in ex parte applications for attachment before judgment under the respective Debtors Acts. Chelvasingam Maclntyre J in the Ipoh case of *Hari Singh v Sundarammal* [1965] 2 MLJ 174 in setting aside such an attachment said:
>
> > It is settled law that **on an *ex parte* application, the person making the application should show the utmost good faith** by not holding back any vital information touching upon matters pertinent to the application.
>
> [original emphasis in italics; emphasis added in bold]

45 In *Vasiliy Golovnin* at [85], the Court of Appeal explained that the underlying rationale for the duty of full and frank disclosure in *ex parte* applications for civil remedies was the need to ensure that the judge hearing such an application would have a "balanced view of the matter" in coming to a decision:

Version No 1: 29 Oct 2026 (14:56 hrs)

> … these are all remedies that may potentially cause enormous and sometimes irreparable damage to a defendant or other connected parties. Further, the judge hearing the matter, not having the benefit of countervailing arguments, may not be appropriately sensitised to the real merits of the application and the potentially hazardous ramifications of the remedy, particularly (as is usually the case) if the relief is sought on an urgent basis. Fairly and logically, the onus of ensuring that the judge is given a balanced view of the matter rests squarely and uncompromisingly on every applicant in an *ex parte* application.

46 The duty of full and frank disclosure thus arises in the course of an *ex parte* application because the counter-party is not present, and is grounded in the need to ensure that all facts relevant to the court's exercise of its discretion are duly placed before the court. This is quite different from the *Riddick* undertaking which is imposed in a different context, for the protection of a different set of interests, *ie*, as a condition for the grant of a discovery order, to safeguard the public interest in privacy and confidence.

47 I note that counsel for the Applicant has submitted that serious consequences may be visited upon the absent party in an *ex parte* application, as a result of this party being unable to tell his "side of the story", and that as such, there is public interest in ensuring that the *ex parte* applicant is held to have *undertaken* to be completely frank with the court.[21] However, as I pointed out to counsel during the hearing,[22] there *are* consequences for an *ex parte* applicant's breach of the duty of full and frank disclosure; namely, the discharge of the order obtained, costs (including indemnity costs if such an order is found to be appropriate), and in the case of an interim injunction, damages (see, for example, *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [21]). In this connection, our courts have often stated that the usual consequence of a breach

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21 Transcript, p 15 (lines 9–22).

22 Transcript, p 15 (line 23) to p 16 (line 2).

Version No 1: 29 Oct 2026 (14:56 hrs)

of the duty of full and frank disclosure is a discharge of the order or injunction so obtained (see, for example, *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2018] 2 SLR 159 at [90(c)]). This is a natural consequence because a breach of the duty of full and frank disclosure impugns the decision to grant the order or injunction in the sense that the judge was not apprised of all the material facts in the matter.

48 The second point of distinction between the *Riddick* undertaking and the duty of full and frank disclosure is that the former is characterised as an implied undertaking *given to the court* because "it is an obligation which the court has the right to control and can modify or release a party from" (*Prudential Assurance* at 764; see also [40] above). In contrast (as counsel for the Applicant also accepted),[23] the duty of full and frank disclosure is not one which the court can modify or release a party from. Indeed, bearing in mind the rationale underlying the duty of full and frank disclosure, the court should not be able to modify this duty or to release the *ex parte* applicant from this duty.

49 Ultimately, counsel very fairly accepted that the *Riddick* undertaking was not on all fours with the duty of full and frank disclosure.[24] This is, of course, not a bar *per se* to my finding that the *ex parte* applicant's duty of full and frank disclosure can be characterised as an implied undertaking given to the court. I should make it clear that I find no basis for characterising the duty as such. As I alluded to earlier, apart from *Kok Seng Chong* (which I have not found relevant), counsel has not found any authorities in the long line of cases discussing the duty of full and frank disclosure to support the proposition that this duty is "in effect" the same as an implied undertaking given to the court.

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23 Transcript, p 17 (line 28) to p 18 (line 9).

24 Transcript, p 18 (lines 12–22).

Version No 1: 29 Oct 2026 (14:56 hrs)

50 More fundamentally, if the Applicant is correct in characterising the *ex parte* applicant's duty of full and frank disclosure as an implied undertaking which is caught by s 4(1)(*b*) AJPA, this will mean that lies in such an applicant's affidavit are capable of forming the basis for contempt proceedings under s 4(1)(*b*). As I explained earlier (at [23]–[26]), this is plainly contrary to Parliament's clear intention that conduct involving a deception on the court should fall under s 3(1)(*da*) AJPA and should require the AG's consent for the commencement of any contempt proceedings.

Conclusion

51 For the reasons explained, I dismiss SUM 1960.

Mavis Chionh Sze Chyi
Judge of the High Court

Ting Yue Xin Victoria, Mah Hao Ran Ian and Sarfaroj Ahmed Malik
(Setia Law LLC) for the first defendant.

Version No 1: 29 Oct 2026 (14:56 hrs)