IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 73

Civil Appeal No 172 of 2018

Between

Aero-Gate Pte Ltd

… *Appellant*

And

Engen Marine Engineering Pte Ltd

… *Respondent*

In the matter of Suit No 373 of 2012

Between

Aero-Gate Pte Ltd

… *Plaintiff*

And

Engen Marine Engineering Pte Ltd

… *Defendant*

Civil Appeal No 173 of 2018

Between

Aero-Gate Pte Ltd

… *Appellant*

And

Engen Marine Engineering Pte Ltd

… *Respondent*

In the matter of Suit No 373 of 2012

Between

Aero-Gate Pte Ltd

… *Plaintiff*

And

Engen Marine Engineering Pte Ltd

… *Defendant*

JUDGMENT

[Contempt of Court] — [Civil contempt]
[Contempt of Court] — [Sentencing]

Aero-Gate Pte Ltd
v
Engen Marine Engineering Pte Ltd and another appeal

[2020] SGCA 73

Court of Appeal — Civil Appeals Nos 172 and 173 of 2018
Judith Prakash JA, Woo Bih Li J and Quentin Loh J
17 September 2019

22 July 2020 Judgment reserved.

Judith Prakash JA (delivering the judgment of the court):

Introduction

1 The appellant in this case, Aero-Gate Pte Ltd, provides engineering services to the oil and gas industry. In this connection it did business with Engen Marine Engineering Pte Ltd ("the Company"). In 2012, the appellant started legal proceedings against the Company and obtained a Mareva injunction restraining the disposal of its assets. Somewhat later the appellant alleged that Mdm Selvarajoo Mageswari ("Mdm Mageswari") and Mr Ramasamy Tanabalan ("Mr Tanabalan") (collectively "the contemnors"), who were running the Company at all material times had acted in contempt of court by disobeying the injunction. Mdm Mageswari was the sole director of the Company and managed its administrative and financial matters, whereas Mr Tanabalan while not holding office managed the operations behind the business. Mdm Mageswari and Mr Tanabalan are husband and wife.

2 In the committal proceedings stemming from allegations of breach of the Mareva injunction binding the Company, the High Court Judge ("the Judge") found Mdm Mageswari to be in contempt of court on three of the seven charges brought against her, and Mr Tanabalan to be in contempt on one of the seven charges brought against him. The Judge sentenced Mdm Mageswari to pay a fine of $25,000 (one month's imprisonment in default) and Mr Tanabalan to pay a fine of $50,000 (two months' imprisonment in default). In the current appeals against the decisions in relation to Mdm Mageswari (CA/CA 172/2018) and Mr Tanabalan (CA/CA 173/2018), the appellant argues that (a) Mdm Mageswari and Mr Tanabalan ought each to have been convicted on six out of the seven charges; and (b) Mdm Mageswari and Mr Tanabalan ought to have been sentenced to a term of imprisonment of at least six months for their contempt.

Background facts

The legal proceedings against the Company

3 The appellant commenced legal proceedings against the Company in HC/S 373/2012 ("Suit 373") on 8 May 2012, in relation to disputes arising out of two purchase orders under which the Company agreed to manufacture diesel generators for the appellant. On 6 August 2012, the appellant filed an *ex parte* summons for a Mareva injunction against the Company. The injunction was granted on 8 August 2012 and it was ordered that:

> (a) The Company must not remove from Singapore in any way dispose of or deal with or diminish the value of any of its assets which were then in Singapore whether in its own name or not and whether solely or jointly owned up to the value of $1.5m.

(b) The prohibition included the following assets in particular:

(i) Properties and assets of its business known as Engen Marine Engineering Pte Ltd (or carried on at 13 Tuas Avenue 11) or the sale money if any of the same had been sold.

(ii) Any money in the Company's Singapore dollar account with Standard Chartered Bank ("the SCB SGD account").

(c) The eight engines in the possession of the Company at its premises at 13 Tuas Avenue 11 or wherever the same were situated be detained and/or placed in custody and/or preserved, and disposal of these engines was prohibited until after the trial of Suit 373 or any appeal therefrom.

(d) If the total unencumbered value of the Company's assets in Singapore exceeded $1.5m, the Company may remove any of those assets from Singapore or may dispose of or deal with them so long as the total unencumbered value of its assets still in Singapore was not less than $1.5m.

(e) The Company must inform the appellant in writing at once of all its assets whether in Singapore whether in its own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. The information must be confirmed in an affidavit which must be served on the appellant's solicitors within 21 days after service of the order.

(f) The Company may spend $1,500 a week towards ordinary living expenses and $2,000 a week on legal advice and representation, but must

tell the appellant's solicitors where the money was to come from before spending any money.

(g) The Company may deal with or dispose of any of its assets in the ordinary and proper course of business and shall account to the appellant monthly for the amount of money spent in this regard.

4 Pursuant to the Mareva order, Mdm Mageswari affirmed an affidavit on 28 August 2012 setting out a list of 70 assets wholly owned by the Company allegedly amounting to $3,256,637.75 in value and, additionally, listing trade receivables of $1,114,288.95 and cash and bank balances of $44,183.24. Thus, the total value of the assets disclosed in the affidavit of 28 August 2012 amounted to approximately $4.4m. It is undisputed that the Company did not engage the services of an independent valuer to value the physical assets, but rather valued these itself according to what it believed to be the market price of these assets, as the Company was "one of the few companies … in this line of business dealing with the sales of new and used engines, generators and reconditioned parts" and was thus "familiar with current market prices". It was the evidence of Mdm Mageswari that the values were given by Mr Tanabalan, and that her involvement in the preparation of the affidavit was simply to read and sign the affidavit given that she was the Company's sole director. Mr Tanabalan's evidence corroborates this, and he was not contradicted on this point. Mr Tanabalan explained during cross-examination that the values were arrived at based on his own personal knowledge or the knowledge of friends in the same line of business.

5 Mdm Mageswari further affirmed in the same affidavit that of the 70 assets listed, two were located at the premises of Transvictory Winch System

Pte Ltd at 20 Third Chin Bee Road ("the Transvictory premises"), one at Tuas South whereas the remaining assets were at the Company's own premises at 13 Tuas Avenue 11.

6 On 28 March 2013, having heard evidence and submissions in Suit 373, the Judge found in favour of the appellant, allowing the appellant's claim and dismissing the Company's counterclaim. The company was ordered to deliver up the eight engines (or the sale proceeds thereof) mentioned in the Mareva order at [3(c)] above, pay the appellant a sum of US$252,000 and pay the appellant damages for breach of contract to be assessed. The eight engines which were delivered to the appellant appear to be among the 70 items listed in the affidavit of 28 August 2012.

7 The Company's appeal against the findings in Suit 373 was heard on 26 November 2013. The Court of Appeal upheld the Judge's findings in relation to the appellant's claims but allowed the appeal in respect of the Company's counterclaim in the sum of US$96,000. The damages payable to the appellant were subsequently assessed on 5 January 2016 at $606,418.27, with interest thereon at the usual rate of 5.33% per annum from 15 August 2014 to 30 November 2015. Apart from the damages, the Company was also ordered to pay the appellant a total of $53,000 in costs arising from Suit 373 and the appeal. Given the appellant's unsuccessful attempts to levy execution (see below at [15]), the appellant remains a substantial creditor of the Company.

The circumstances leading to the contempt charges

The movement of assets

8 As stated above, the majority of the 70 assets listed in the affidavit of 28 August 2012 were located at the Company's premises at 13 Tuas Avenue 11. In March 2014, the Company vacated these premises. On 25 March 2014, in a letter signed by Mdm Mageswari, the Company informed the appellant ("the March 2014 Letter") as follows:

> Dear Sirs,
>
> We have discontinued our operations at 13 Tuas Avenue 11 Singapore 639079 but our registered address still remains the same as accounts have not been settled with the landlord against our deposit. We are in the midst of finding another premises for operation upon which we will inform ACRA to effect the changes.
>
> The assets set aside in the Mareva Injunction are in Singapore and at No. 20 Third Chin Bee Road and Tuas Private Shipyard (Singatec). The list of each individual item's location is attached to this e/mail.
>
> Please let us know a day in advance before the Sheriff is engaged as both the premises do not belong to us and they do not operate on Sundays. All other items stored at these yards do not belong to [the Company] or its director in any way whatsoever.

9 The March 2014 Letter appended a list of 36 assets allegedly valued at a total of $1,505,574.92. The values given for these 36 assets were identical to the values for the corresponding assets listed in the affidavit of 28 August 2012. The Company was apparently advised that it was not obliged to disclose the location of the remaining 34 assets since the 36 assets in the March 2014 Letter were valued in excess of the limit of $1.5m in the Mareva order. During cross-examination, Mr Tanabalan testified that the remaining 34 items were either

sold, given away or left in the premises of Singatec Engineering Pte Ltd at 21 Tuas Basin Lane ("the Singatac premises").

10 The premises in which the 36 assets were allegedly stored belonged to companies which were owned or controlled by Mr Tanabalan's business associates or friends. Of these 36 assets, one was further split into units stored in two separate locations. Treating these split units separately and as distinctive assets (as the Judge did in his Grounds of Decision reported as *Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2018] SGHC 267 ("the GD")), a total of 37 assets were disclosed in the March 2014 Letter. These 37 assets were said to be at the following locations:

Location	**Number of assets**	**Value**
The Transvictory premises	5	$630,000.00
The Singatec premises	20 (including part of asset split into two)	$635,500.00
Premises of Engen Spares Pte Ltd ("Engen Spares") and Engen Offshore Pte Ltd ("Engen Offshore") at 1 Soon Lee Street ("**Soon Lee Street**")	12 (including part of asset split into two)	$240,074.92
Total:	37	$1,505,574.92

11 Engen Spares and Engen Offshore share the name "Engen" with the Company and use the same logo as it did. The sole shareholders and directors of both companies are the two adult children of the contemnors. Mdm Mageswari was a director of Engen Spares up to June 2013, but neither Mdm Mageswari nor Mr Tanabalan hold any direct interest in Engen Spares or Engen Offshore.

12 The assets at the Singatac premises were subsequently disposed of by Singatac as it wished to recover rental arrears of $24,000 owed to it by the Company. This is undisputed. According to Singatac's representative, one Mr Tan Soon Keong ("Mr Tan"), he was unaware that the assets were subject to a Mareva injunction. Singatac agreed with Mr Tanabalan that the assets could be stored at its premises for two months, but Mr Tanabalan failed to move the assets out of the premises on schedule. Thereafter, he could not be contacted for eight months. Mr Tan told the court that the assets had to be removed as they were obstructing ongoing works at the premises. Subsequently, the assets were scrapped by Singatac for $8,626.80.

13 According to Mr Tanabalan's affidavit of evidence-in-chief, the assets at the Transvictory premises were disposed of in a similar fashion by Transvictory, in satisfaction of a debt of $300,000 owing by the Company. This was denied by Transvictory. Its lawyers stated that the arrangement between Transvictory, represented by one Richard Chiang ("Mr Chiang"), and Mr Tanabalan was that Mr Tanabalan and the Company had been given uninhibited access to the premises to store the items or retrieve the items stored. Transvictory asserted that it had no knowledge whether any of the Company's assets were actually stored at its premises, and that it did not dispose of any of the assets. During cross-examination, Mr Tanabalan corrected his evidence and said that Transvictory disposed of the assets not because of the $300,000 loan, which had been repaid in full, but because of a separate personal loan of $65,000 owed by Mr Tanabalan to Mr Chiang himself. Mr Tanabalan also testified that he did not inform Transvictory that the assets stored at its premises were subject to a Mareva order.

14 As stated above at [3(b)(ii)], the Mareva injunction also contained a specific prohibition in relation to the SCB SGD account. In March 2014, Mdm Mageswari instructed Standard Chartered Bank to close the SCB SGD account. Standard Chartered Bank thereafter lifted the "freeze" on the account that had been in place since the Mareva injunction, released the balance of some $6,804.73 to the Company and closed the account. This sum was subsequently spent.

The appellant's attempts to levy execution

15 On 10 September 2013, the sheriff seized 19 of the Company's assets from its premises at 13 Tuas Avenue 11 under a writ of seizure and sale ("WSS"). These 19 assets had been valued by Mdm Mageswari at $1.045m in her affidavit of 28 August 2012 but were valued by the appellant's valuer at only $117,400. Mr Tanabalan disputes this valuation and says that the appointed valuer might not have been familiar with the industry, and further that it was unfair that the Company was not requested to appoint its own valuer at the same time. It appears that the 19 assets were returned to the Company on 31 October 2013 but it is unclear what happened to them after that.

16 In June 2014, two assets in the Singatac premises were seized by the sheriff pursuant to another WSS. The seizure was effected by stickers being affixed by the sheriff onto these assets. No further action was carried out in respect of these two assets from the time of seizure up to the time they were disposed of by Singatac.

17 According to the March 2014 Letter, 12 assets had been moved to the premises at Soon Lee Street. In December 2016, the appellant executed a WSS

on the assets at Soon Lee Street and found only seven assets there. Five assets were missing. The missing five assets form the subject matter of the sixth charge against Mdm Mageswari and the seventh charge against Mr Tanabalan. The seven assets found in Soon Lee Street had been valued at $188,000 in the March 2014 Letter but the appellant's valuer valued them at only $15,600. When auctioned later, they realised $2,100. In July 2017, Mdm Mageswari disclosed that the missing five assets were to be moved shortly thereafter to a warehouse known as the "Hock Ann Warehouse". The appellant's representative visited the Hock Ann Warehouse and saw items corresponding with the relevant description there but thought the items looked too new to be the original ones subject to the Mareva order.

The committal hearing

The contempt charges

18 Mdm Mageswari and Mr Tanabalan faced seven charges each in the committal proceedings. On the Judge's directions, the charges were reframed in the appellant's closing submissions.

19 Set out below is a table showing the charges faced by Mdm Mageswari, the outcome of those charges in the court below and the appellant's position on appeal in respect of those charges.

Charge number	**Facts**	**Outcome after committal hearing**	**Appellant's position on appeal**
First	Intentionally affirming an affidavit on 28 August 2012 and attesting to the facts therein without having any personal knowledge of the same.	Not liable	Not contesting
Second	Misleading the court and the appellant by intentionally providing inaccurate and inflated values to assets listed in the affidavit of 28 August 2012, despite being fully aware that the values were incorrect.	Not liable	Mdm Mageswari should be liable
Third	Intentionally dissipating the Company's bank accounts by instructing Standard Chartered on 21 and 24 March 2014 to withdraw all moneys in the SCB SGD account and another account with the bank ("the SCB USD account") and subsequently instructing the bank to close the two accounts.	Liable	–
Fourth	Intentionally failing to disclose all the Company's assets, in particular intentionally concealing the details of the Company's trade receivables and the existence of the SCB USD account and an account with UOB Bank referred to in the GD as the "UOB SGD account".	Liable	–
Fifth	Intentionally disposing of and/or dealing with 25 of the Company's assets allegedly	Not liable	Mdm Mageswari

	amounting to $1,275,500, by knowingly storing the assets with the Company's creditors and subsequently failing and/or refusing to make payment of the rental charges for the premises/loan instalments due to the landlords.		should be liable
Sixth	Intentionally removing five assets purportedly located at the Soon Lee Street premises and relocating the same to a different location without accounting to the appellant and/or the court.	Not liable	Mdm Mageswari should be liable
Seventh	Intentionally failing and/or refusing to account to the appellants and/or their solicitors for moneys spent towards the Company's ordinary living expenses, legal advice and ordinary course of business as required under the Mareva order. In particular, failing to disclose the Company's financial commitments, including legal fees to Straits Law and Attorneys Inc, payments to suppliers, monthly rentals and loans.	Liable	–-

20 A similar table is set out below in respect of the charges faced by Mr Tanabalan:

Charge number	**Facts**	**Outcome after committal hearing**	**Appellant's position on appeal**

First	Deliberately assisting Mdm Mageswari in the preparation of the affidavit on 28 August 2012 and providing inaccurate and misleading valuations of the assets listed therein.	Not liable	Mr Tanabalan should be liable
Second	Intentionally dissipating the moneys in the Company's bank accounts.	Not liable	Mr Tanabalan should be liable
Third	Failing to take due care of the Company's assets allegedly placed at the Transvictory and Singatac premises.	Liable	–
Fourth	Deliberately failing to make payment of the rental sums due and owing to the landlord of the Singatac premises.	Not liable	Mr Tanabalan should be liable
Fifth	Deliberately failing to repay the loan outstanding to Mr Chiang of Transvictory.	Not liable	Mr Tanabalan should be liable
Sixth	Deliberately placing the Company's assets with a creditor.	Not liable	Mr Tanabalan should be liable
Seventh	Deliberately dealing with five items located at the Soon Lee Street premises by shifting them to a new location.	Not liable	Not contesting

The Judge's findings

Preliminary observations

21 The Judge noted that not all of the charges against the contemnors were within the scope of the statements made pursuant to O 52 r 2(2) ("the O 52

statements") of the Rules of Court (Cap 332, R 5, 2014 Rev Ed) ("ROC") which were served on them but held that it was appropriate to hear and determine all 14 charges against Mdm Mageswari and Mr Tanabalan. This was because none of the charges would take either of them by surprise, there was ample factual material relevant to their defence on all 14 charges, and the appellant could in any case apply afresh for leave to commence contempt proceedings and serve fresh statements under O 52 r 2(2) of the ROC (GD at [51]–[61]).

Mdm Mageswari's liability

22 The Judge first noted that the appellant had chosen to frame its case against Mdm Mageswari as that her conduct was "intended or calculated to impede, obstruct or prejudice the administration of justice" or that she was "personally involved in the acts of [the Company] which resulted in the … breaches of the Mareva injunction", even though the ordinary rule is that any director of a company who has notice of an injunction is liable to be committed for contempt if the company breaches the injunction and the director has wilfully failed to take reasonable steps to ensure that the injunction is obeyed (GD at [70]–[71]). The Judge decided that since Mdm Mageswari responded to the appellant's case as framed, it would only be fair for the appellant to prove all the elements alleged against Mdm Mageswari.

23 In the circumstances, Mdm Mageswari's role in the Company became relevant. The Judge accepted Mdm Mageswari's evidence that Mr Tanabalan was entirely responsible for the Company's business and operations and opined that the only reason he did not hold a formal appointment as a director was that he was an undischarged bankrupt (GD at [75]).

24 The Judge's findings in respect of Mdm Mageswari's liability on the seven charges have been noted in the table in [19] above. She was found liable on three charges only. In respect of the four charges on which she was found not liable, the appellant is contesting the findings in respect of three of the same. We will discuss the Judge's reasons for his findings in conjunction with our consideration of the appellant's arguments on appeal.

Mr Tanabalan's liability

25 The Judge began by noting that even though Mr Tanabalan could have been held liable for the Company's contempts under O 45 r 5(1)(ii) of the ROC on the basis that he was a shadow director or general manager of the Company, the appellant chose to make its case more difficult for itself than it had to be, by alleging that Mr Tanabalan had knowingly assisted in and/or permitted a breach of the Mareva injunction, *ie*, by classifying Mr Tanabalan as a third party (GD at [146]–[149]). In so doing, the appellant had to establish beyond reasonable doubt that Mr Tanabalan had the specific intent to impede or prejudice the due administration of justice, rather than just establish that there was intention to do an act which was in fact a breach of the injunction (GD at [150]–[151]).

26 The Judge found Mr Tanabalan liable on one charge only as shown in the table at [20] above. The appellant challenges these findings in respect of five of the remaining charges. We shall discuss the Judge's reasons in conjunction with our consideration of the appellant's findings on the appeal.

The appropriate sentence

27 In arriving at the appropriate sentence for civil contempt, the Judge referred to the guidance set out by the Court of Appeal in *Mok Kah Hong v*

Zheng Zhuan Yao [2016] 3 SLR 1 ("*Mok Kah Hong"*) as to the relevant considerations, and also noted that committal to prison is normally a measure of last resort to be utilised where the court is faced with a recalcitrant and obstructive litigant in continuous breach (GD at [204]–[207]). The Judge also examined the cases of *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR(R) 60 ("*OCM Opportunities"), Maruti Shipping Pte Ltd v Tay Sien Djim and others* [2014] SGHC 227 ("*Maruti Shipping*") and *Toyota Tsusho (Malaysia) Sdn Bhd v Foo Tseh Wan and others* [2017] 4 SLR 1215 ("*Toyota Tsusho"*). He noted that a term of imprisonment was ordered in each of those cases because the contemnor had deliberately disobeyed an injunction in clear defiance of the authority of the court and/or was a repeat offender (GD at [209]–[212]).

28 The Judge noted that the appellant had initially argued for a term of imprisonment of six years before moderating this to three years in its final submissions. The Judge observed that this was unsupported by any binding authority and was clearly excessive, and was meant to intimidate and oppress the contemnors (GD at [213]–[214]).

29 In relation to the appropriate sentence for Mdm Mageswari, the Judge accepted her evidence that she relied on Mr Tanabalan and genuinely believed that she was acting on the advice of the Company's solicitor. The content of the solicitor's advice was not before the Judge but he accepted Mdm Mageswari's evidence as to how she understood that advice. Mdm Mageswari had indicated that she was willing to waive privilege and adduce evidence from the said solicitor, but she apparently lacked the means to subpoena the solicitor. In the

circumstances, the Judge found that Mdm Mageswari was not acting in flagrant or contumelious disregard of the Mareva injunction (at [217]–[221]).

30 Further, the Judge observed that the amount withdrawn from the SCB SGD account (re the third charge) was *de minimis,* and that moneys spent on the Company's legal advice and ordinary course of business which were not disclosed to the appellant (re the seventh charge) were sums that would have been incurred in any event, and the appellant did not press for such disclosure to be made (GD at [222]–[224]).

31 In relation to the third charge against Mr Tanabalan (failing to take due care of the Company's assets at the Transvictory and Singatac premises), the Judge noted that even though the assets were of not insignificant value, this did not cause much prejudice to the appellant, as the physical assets listed in the 28 August 2012 affidavit were not worth as much as their listed values. As such, the appellant had little prospect of recovering substantial sums from the Company in any event. Further, the Judge found that Mr Tanabalan's overvaluation of the assets was due to optimism and incompetence rather than dishonesty or a desire to mislead the court. Thus, Mr Tanabalan's contempt did not warrant a custodial sentence (GD at [226]–[227]).

32 Noting that Mr Tanabalan's single breach was more serious than Mdm Mageswari's three breaches as it went to the root purpose of the Mareva injunction, the Judge ordered Mdm Mageswari to pay a $25,000 fine and Mr Tanabalan to pay a $50,000 fine. Both fines have since been paid. The Judge also ordered the contemnors to be jointly and severally liable to pay the appellant 50% of its reasonable costs and disbursements on a standard basis, as the appellant only succeeded in four out of the 14 charges.

The appeal

General points

33 Even though the appellant says that its appeal is against the whole of the Judge's decision, it does not appear to contest the Judge's finding of non-liability in relation to the first charge against Mdm Mageswari (for intentionally affirming an affidavit on 28 August 2012 and attesting to the facts therein without having any personal knowledge of the same) and the seventh charge against Mr Tanabalan (for deliberately dealing with five items located at the Soon Lee Street premises by shifting them to a new location).

34 The appellant has made both general and specific points in support of its appeal. The general points relate to the Judge's characterisation of the cases against the respective contemnors while the specific points relate more directly to the individual charges. We will deal with the general points first.

35 The appellant argues first that the Judge was wrong in concluding that the appellant had chosen to highlight acts of personal involvement of Mdm Mageswari and Mr Tanabalan and that the appellant should thus be held to the more stringent threshold of *mens rea*. The appellant argues that its O 52 statements were framed generally and with the intention to proceed against Mdm Mageswari in her capacity as a director and hold her liable for the Company's breaches of the Mareva order. However, it later chose to specify Mdm Mageswari's specific acts of involvement because the Judge had indicated at the first hearing that the appellant would have to highlight the same and that it would not be sufficient to prove that she was the sole director of the Company.

36 The appellant also states that it had chosen to proceed against Mr Tanabalan on the basis that he was a third party because it was unsure whether the court would be prepared to lift the veil and find that Mr Tanabalan was a "shadow director". Nevertheless, the appellant maintains that the evidence before the court was that Mr Tanabalan was a "shadow director", and this was referred to in the relevant O 52 statement and supporting affidavit, and the Judge erred in failing to take this fact into consideration when determining the issue of Mr Tanabalan's *mens rea*. The appellant thus argues that Mr Tanabalan was no mere third party, but was the controlling mind of the Company and had full knowledge of the proceedings and the Mareva order.

37 In view of the above, the appellant took the position on appeal that it only needed to prove that Mdm Mageswari and Mr Tanabalan, as directors of the Company, had notice of the injunction and wilfully failed to take reasonable steps to secure the Company's compliance. Further, the Judge ought to have considered the justice of the case and the conduct of the two contemnors holistically instead of discussing each contempt charge in isolation.

38 We do not accept the appellant's arguments relating to the Judge's characterisation of its case. The appellant chose the way it wished to frame its contempt case against the contemnors and on appeal it is too late for the appellant to resile from that choice. Contempt proceedings are quasi-criminal in nature and therefore procedural fairness to the persons accused of contempt is of utmost importance. That is the reason for the O 52 statements – so that the alleged contemnors will know from the outset the particulars of the allegations and the basis on which they are made so as to enable them to mount their defences thereto. In this case the Judge fairly characterised the appellant's cases

against Mdm Mageswari and Mr Tanabalan respectively in the manner that the same were mounted. The fact that the cases could have been mounted differently, as the Judge pointed out, is beside the point. It is not permissible for the appellant to say now that if it had known the Judge was open to treating Mr Tanabalan as a shadow director it would have argued the case differently. The appellant cannot seek to argue the appeal on a basis that was not before the Judge.

39 Further, the appellant has conflated two distinct issues. Its argument is that it had originally framed its case widely against Mdm Mageswari and Mr Tanabalan in the O 52 statements, but that the Judge ordered the appellant to frame the charges narrowly *and* on the basis of actual *intention to impede the administration of justice*. This, however, is not borne out by the transcripts. During the hearing on 1 August 2016, the Judge made clear that he wanted to know what *specific acts* were alleged on the part of Mdm Mageswari and Mr Tanabalan, but did not require that the appellant allege any specific *intention* to breach the Mareva order:

> Ct: I just want a list of things you have to prove at this stage …
>
> PC: What we have to prove is that there was a prohibition preventing the [Company] from dealing with and disposing of the goods.
>
> …
>
> PC: Second, that the goods have been disposed of.
>
> Ct: That is also not disputed. Anything else?
>
> PC: That is all. Because in the Court of Appeal decision in *Pertamina,* the Court of Appeal cited *Knight v Clifton* [1971] Ch 700. The prohibition is absolute and is not to be related to intent unless otherwise stated on the face of the order.

Ct: That proposition I accept. But you are now seeking to commit a specific officer of the [Company] to prison for her contempt of court. Don't you have to prove an element of personal involvement by that officer in the disposition of the assets?

…

Ct: My question was: when you seek to commit a director for a contempt committed by the company, don't you have to prove some personal involvement on the part of the director in the acts of the company which are said to constitute the contempt? That is a conceptual question which is not answered by referring to the facts of this case.

PC: Yes, we have to prove that. I will take Your Honour through the affidavits to show Your Honour the extent of her involvement in relation to the disposal of the goods. However, it is still quite clear, I submit, subject to Your Honour's views, from the authorities that such an order is an absolute one and is not based on intention.

Ct: The authorities are clear that the committal proceedings are quasi-criminal. So that means that some intention is required on the part of the person you are seeking to commit if you are to secure your order. So if Mdm Mageswari, to take an extreme example, through an involuntary act, *eg* in a hypoglycaemic state, destroyed some assets covered by the order, she would not be in contempt of court.

PC: I accept that.

Ct: So you are correct in the sense that an intention to breach the order is not required. But some intentional act by the person you seek to commit must be required …

…

Ct: So the only question in dispute, which the [appellant] has to establish beyond reasonable doubt, is whether Mdm Mageswari was personally involved in the acts which have resulted in the assets covered by the *mareva* injunction being disposed of. I accept that if she was personally involved, then her intention is irrelevant subject to that extreme example I gave of an involuntary act.

> [emphasis added in underline]

40 In other words, it is clear that the Judge did *not* direct the appellant to frame its case as that Mdm Mageswari or Mr Tanabalan acted *intentionally to pervert the course of justice*, but rather that their acts in breach of the order were *deliberate* (rather than passive). What the Judge said reflected the legal position that a person bound by a Mareva order breaches that order if she deliberately (that is, not inadvertently), with knowledge of the terms of the order, does something which is forbidden by the order and that for a breach to occur it is irrelevant that there was no intention to commit such a breach. This is consistent with the position in case law: *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 at [51] states:

> > In so far as the party to the court order is concerned, it would appear that it is only necessary to prove that the relevant conduct of the party alleged to be in breach of the court order was intentional and that it knew of all the facts which made such conduct a breach of the order (including, of course, knowledge of the existence of the order and of all of its material terms […]). However, it is unnecessary to prove that that party appreciated that it was breaching the order. As Sachs LJ put it in the English Court of Appeal decision of *Knight v Clifton* [1971] Ch 700 at 721, "[the] prohibition is absolute and is not to be related to intent unless otherwise stated on the face of the order".

41 This is also the case in relation to the liability of directors of a body corporate – even though O 45 r 5 of the ROC provides that an order for committal may be issued against a director of a corporation where that corporation disobeys a court order, a director's mere *passive* or *inadvertant* behaviour will not render him liable to contempt if no allegation of misconduct or wilful behaviour is made against that director (*Singapore Civil Procedure 2019* vol 1 (Chua Lee Ming J gen ed) (Sweet & Maxwell, 2019) at para 52/1/7, citing *Director General of Fair Trading v Buckland* [1990] 1 WLR 920 and

Re Galvanised Tank Manufacturers' Association's Agreement [1965] 2 All ER 1003). It is for this reason that the Judge emphasised the need for the appellant to particularise its case as to what *intentional acts* were alleged against the contemnors. The Judge did not ask the appellant to frame its case as that either contemnor acted with the intention to pervert the course of justice – the appellant did that purely of its own accord.

42 The Judge's concern about the width of the O 52 statements, which was a separate concern, was also well justified. Given the quasi-criminal nature of committal proceedings, it was necessary for the appellant to be clear about the case that it was pursuing against the contemnors so that the latter could fairly respond to the accusations. This is consistent with the fundamental rule of justice that a person being called upon to answer a charge has to first know the precise case that he has to meet and should be accorded ample opportunity to refute the allegations (*Mok Kah Hong* at [61]). That this weighed on the Judge's mind is evident from the following exchange:

> Court: So, but what I would like, Mr Navin---
>
> Singh: Yes, Your Honour.
>
> Court: ---is for a sequential exchange because you have to state your case.
>
> …
>
> Court: You---your three statements are very broad and very wide […] You should now focus and almost like ---I think I mentioned this before, almost like a---
>
> Singh: Charge sheet.
>
> Court: ---criminal trial.
>
> …

> Court: You have to frame your charges […] and then show me the ingredients and how the evidence substantiates them and how the law supports your submission.
>
> Singh: Understand that.
>
> Court: And then they will know---they will have […] your submissions to go on to respond---to know what the case they have to respond to. So I'll take it, Mr Navin, that no matter what is set out in your statements, it is---what is in your submissions that will define the scope of the inquiry in this committal proceedings.
>
> Singh: That's right, Sir.
>
> Court: As I've said, the statements are very wide---
>
> Singh: Yes, Sir.
>
> Court: ---and now you narrow them down.
>
> Singh: Yes, Sir.

43 It is evident from a perusal of the O 52 statements that the Judge's concerns were well warranted. The first O 52 statement served on Mdm Mageswari, which pertains to the alleged dissipation of physical assets, simply states in the material paragraph that despite the Mareva order, the appellant had "learnt through a series of correspondence with [Mdm Mageswari] of the [Company] that the items the Mareva Injunction Order prohibited the [Company] from dealing with had in fact been dealt with. Although there has been no change in the storage address of the said items, the said items are no longer at that address. The reason [Mdm Mageswari] gives is that these items had allegedly been disposed of without her knowledge", before going on to state that the appellant sought the committal of Mdm Mageswari on the basis that "she has breached the Mareva Injunction Order and showed no concern for the same".

44 Thus, before us, the appellant must be held to its case as framed in its closing submissions. The Judge had given advance notice during the hearing that the case as framed in the closing submissions would be the case that Mdm Mageswari and Mr Tanabalan were expected to meet, and it does not behove the appellant to now argue that it should not be held to this case on appeal because it only particularised its case on the direction of the Judge. The Judge directed the appellant to particularise the specific acts alleged against the contemnors and to narrow the case against each but did not ask the appellant to prove specific intention to breach the Mareva order, or to classify Mr Tanabalan as a third party. Further, rather confusingly, even though the appellant claims that it should not be held to the more stringent requirements that it set out for itself below, it nonetheless makes the same allegations on appeal that Mdm Mageswari and Mr Tanabalan acted to intentionally frustrate the Mareva order and to impede the proper administration of justice. This points to the conclusion that its case all along, including on appeal, has been pitched at the level set out by the Judge in his GD, and that this is the same case that the appellant should be held to.

45 As regards the appellant's point that the Judge should have considered the contemnor's conduct holistically and not focussed on the individual charges, we think this is unwarranted. The court must consider each charge separately to determine whether it is made out. However, this exercise is done with the whole context in mind and not in isolation. The Judge heard the case and all of the evidence and would have been well aware of the background when he came to consider the charges.

46 We now turn to consider the appellant's arguments as to why the contemnors should have been found liable on more charges.

Mdm Mageswari's liability

47 The appellant argues that the Judge erred in finding that Mdm Mageswari had minimum involvement in the running of the Company, as her evidence showed that she was kept informed and had knowledge of various projects handled by the Company, its accounts and even details of its business dealings with the appellant. It puts forward various reasons why she ought to have been found liable on the second, fifth and sixth charges. We will deal with these charges in turn.

48 To reiterate, the second charge is that Mdm Mageswari intentionally provided inaccurate and inflated values for assets in the affidavit despite being fully aware that the values were inaccurate. The appellant argues that the crux of the charge is not whether Mdm Mageswari knew at the time of swearing the affidavit that the values were inaccurate, but that she misled the court by filing an inaccurate affidavit. The appellant contends that it is sufficient for liability to show that Mdm Mageswari did the act of affirming the affidavit which was inaccurate when filed.

49 The argument set out above is a clear deviation from the appellant's case during the committal hearing that Mdm Mageswari intentionally provided inaccurate values to mislead the court – this is clearly stated in the charge as framed in the closing submissions. As we have already said, any attempt to backtrack from its case during the committal hearing is impermissible at this stage, and the Judge's finding that there was no evidence as to

Mdm Mageswari's intention to present inaccurate values cannot be challenged on that basis. Mdm Mageswari's oral evidence during the hearing was consistently that the valuation of the assets came from Mr Tanabalan, and the appellant's counsel did not challenge her on this. Even though Mdm Mageswari accepted during the hearing, when confronted with the valuation figures of the appellant's valuer in 2013, that the figures in the 28 August 2012 affidavit might not have been accurate, this does not assist the appellant in showing Mdm Mageswari's state of mind at the time when she affirmed the affidavit. Similarly, that Mdm Mageswari did not take positive steps to value the assets herself does nothing to show that she intentionally provided inaccurate figures, particularly when she was relying on Mr Tanabalan's familiarity with the assets and their market values.

50 Alternatively, on the second charge, the appellant says that the circumstantial evidence shows that Mdm Mageswari intended to mislead the court – amongst other things, she did not take steps to value the assets and deliberately withheld disclosure of the existence of the Company's SCB USD and UOB SGD accounts. In our view the circumstantial evidence relied on is weak. There was no obligation on Mdm Mageswari to personally procure a valuation of the assets and she was entitled to rely on her husband who ran the operations to get the values. The non-disclosure of the bank accounts was wrong and the Judge found her liable on that count but, in itself, that action cannot support a conclusion that Mdm Mageswari intended to mislead the court in relation to the value of the assets.

51 Next, the fifth charge, which is that Mdm Mageswari intentionally disposed of 25 of the Company's assets by storing them with its creditors and

subsequently failing and/or refusing to make payment of the rental/loans due to creditors. The crux of this charge is that Mdm Mageswari as director allowed the items to be placed with Transvictory and Singatac and failed to make payment of the amounts owing to those companies so that the items would be dissipated.

52 The appellant argues that even though Mdm Mageswari knew that Singatac had written in May 2014 to ask the Company to move the assets away from the premises and that the Company had sufficient funds to pay rent, nothing was done. The items were left where they were and no rent was paid. This abandonment amounted to an intentional dissipation of the assets in breach of the Mareva order.As for the Transvictory assets, there was no evidence adduced to show that the items were ever at the Transvictory premises. Even if they were, Mdm Mageswari ought to be liable for placing the assets with a creditor to whom the Company owed money and failing to make payment of the loan, knowing that there was a risk of endangering the assets.

53 We have difficulty in accepting the appellant's argument in relation to the fifth charge. It is clear from the evidence that Mdm Mageswari was not personally involved in the storing of the assets at the Transvictory and Singatac's premises, as the appellant itself alleged during the committal hearing and also on appeal. Even though Mdm Mageswari states in her affidavit that she "ensured that the items were properly stored in the storage areas and constantly communicat[ed] with the landlords as regards [their] financially difficult situation", this does not amount to "intentional disposal" as alleged. Mdm Mageswari maintained during cross-examination that Mr Tanabalan was responsible for the shift of the assets to the Transvictory premises and that she

did not take part in this exercise. She was not contradicted on this point. This assertion was also corroborated by Mr Tanabalan's evidence that he was the one who oversaw the relocation of the items from 13 Tuas Avenue 11 to the Transvictory and Singatac premises. Mdm Mageswari's limited involvement in the movement of the assets to the Transvictory and Singatac premises is revealed in the following exchange which she had with the appellant's counsel:

> Q You had stated: [Reads] "I wish to make clear that I took all the above steps with information I … received from my husband. I did not have first-hand knowledge with regard to the storing of the Items. However, upon receiving information from my husband, I did take all reasonable steps in my capacity as Director of the Defendant to ensure that the Items were preserved."
>
> …
>
> Q What reasonable steps did you take to ensure that the items were preserved?
>
> A Originally, first the---all the Mareva items were kept in our workshop at Tuas. Then, we were forced to move out because of---we were asked to vacate the premises because the landlord wanted to use the premises for themselves. So, we had no choice but to move the items out. And I knew that the items were all under a Mareva injunction, so I asked my husband to find a proper place to house them because I did not want to be answerable for any mistakes happening there. So at that point of time, though we were in much financial difficulty, my husband couldn't find a proper place to house these items because of the rent involved. The rent that people were charging were very high and we could not afford the rent. So, he approached his two friends, bis—who were also his business associates to house the Mareva items in their places.

54 Further, the appellant has not adequately addressed the Judge's alternative finding that even if Mdm Mageswari was involved in the movement of the assets to the Transvictory and Singatac premises, it is not clear how their subsequent disposal by third parties amounts to a disposal in breach of the

Mareva order. It is also putting it too highly to say that Mdm Mageswari "abandoned" the assets by acquiescing to their storage at the Transvictory and Singatac premises without being conscientious about making payment for rent – it is clear in the circumstances that the assets were placed there because the Company was in the difficult situation of having to vacate its existing premises with no viable alternatives for the storage of its various assets, and thus had to avail itself of assistance from Mr Tanabalan's business associates and friends. It is puzzling to us that rent was not paid even though the Company had funds but although this omission was definitely not in the Company's interests, the inference that the purpose of the non-payment was only to defeat the Mareva injunction is not a reasonable one. If the Company had wanted to dispose of the assets there were better ways of doing so, ways that would have brought benefit to the Company, instead of leaving them to a creditor to sell them and swallow up the proceeds of sale.

55 The sixth charge is that Mdm Mageswari intentionally removed five assets purportedly located at Soon Lee Street and relocated them without accounting to the appellant/the court, and thereafter continued to conceal the location of the items. The crux of the charge is that Mdm Mageswari deliberately moved these assets to another location and refused to inform the appellant of the new location, albeit having been directed by the court to do so on numerous occasions.

56 In its arguments on appeal the appellant has not, however, addressed the Judge's primary basis for his conclusion that this charge had not been proved – that the mere movement of assets subject to a Mareva order does not amount to a disposal of the assets under that order. In fact, the appellant points out that the

five assets in question appear to be currently housed at Hock Ann Warehouse, although it makes a bare assertion that these might not be the same five items, an allegation that was not raised during the committal hearing or in its closing submissions below. In the circumstances, it is unclear how the movement of the five assets from one venue to another can by itself amount to a breach of the Mareva order. Again, while we accept that Mdm Mageswari was dilatory in advising the appellant of the new location of the assets, we agree with the Judge that the Mareva injunction itself did not impose a continuing obligation on the Company to inform the appellant of changes in location of the assets once the first disclosure had been made.

57 Thus, there is no basis to disturb the Judge's findings of non-liability in relation to the second, fifth and sixth charges against Mdm Mageswari.

Mr Tanabalan's liability

58 The appellant argues that Mr Tanabalan ought to have been found liable on the first, second, fourth, fifth and sixth charges for various reasons. We will deal with these in turn.

59 The first charge is that Mr Tanabalan deliberately assisted Mdm Mageswari in providing inaccurate and misleading values for the assets in the affidavit. In this connection, the appellant says that it need only prove that Mr Tanabalan assisted Mdm Mageswari in providing inaccurate figures, that he knew the values were misleading and inaccurate, and that he intended to prejudice the administration of justice by doing so.

60 In the appellant's view, the Judge erred in finding that the mental element was not met – Mr Tanabalan was the controlling mind of the Company and had personal knowledge of its assets and their value and adduced no evidence to support his valuation. He had also sold an item under injunction worth $350,000 for only $2,000 in March 2014, and thus must have known that the values in the 28 August 2012 affidavit were false – yet he continued to use the same values in the March 2014 Letter.

61 In relation to the first charge, the appellant's position on appeal seems confused – on the one hand it argues that Mr Tanabalan should be treated as a shadow director of the Company and thus it is sufficient that he intentionally provided inaccurate figures, and yet on the other hand the appellant repeats its assertion at the committal hearing that Mr Tanabalan "intended to prejudice the administration of justice by doing so". In any case, the appellant has not provided any convincing arguments to show why the Judge erred in finding that Mr Tanabalan did not intend to provide misleading figures – it is clear from his cross-examination that Mr Tanabalan stood by his valuation of the assets, and insisted that (a) the appellant's valuers were inexperienced in the niche industry; that (b) the appellant's valuers were wrong in stating that some of the assets were missing core components; and that (c) the Company ought to have been asked to nominate a valuer of its own. In the circumstances, the Judge was justified in saying that Mr Tanabalan's inaccurate valuation was due to incompetence or optimism rather than dishonesty.

62 The second charge is that Mr Tanabalan intentionally dissipated the moneys in the Company's bank accounts. The appellant contends that the Judge erred in finding that the lack of particularisation of this charge deprived

Mr Tanabalan of a reasonable opportunity to respond to the charge – Mr Tanabalan said in his closing submissions that he did not dissipate the moneys and had no capacity to do any banking transactions, even though he admitted in cross-examination that he would decide together with Mdm Mageswari as to how much money was to be withdrawn from the accounts and that he was aware of certain transactions.

63 In relation to the second charge, our view is that the Judge was certainly right to say that there was no elaboration of the charge in the appellant's closing submissions and that on that basis it has not been sufficiently particularised. That Mr Tanabalan asserted in his reply submissions that he did not dissipate the moneys does not cure the appellant's error. There was also no cross-examination on this charge during the hearing, save for asking Mr Tanabalan about his involvement in financial matters of the Company generally. It is to this date unclear what exactly the appellant is alleging under this charge.

64 The fourth charge is of deliberately failing to make payment of the rent due to Singatac. In this regard the appellant accepts that it needs to prove that Mr Tanabalan failed to make payment of the rental due to Singatac, as a consequence of which the assets were disposed of, and that he intended to do so to impede the administration of justice. It submits that the Company had substantial funds in 2014 and was being reminded by Singatac to remove the assets from the Singatac premises – nonetheless Mdm Mageswari and Mr Tanabalan simply abandoned these assets, which action was tantamount to intentional dissipation. It submits that the Judge erred in considering Mr Tanabalan to be a mere third party as he was the controlling mind of the Company. The Judge further erred in finding that the Company lacked resources

to pay the rent for the Singatac premises, and that the withdrawals from the UOB SGD account were effected in the ordinary course of business, as no evidence was provided as to the nature of these transactions.

65 It is convenient to set out the arguments in respect of the fifth and sixth charges before dealing with the fourth charge. The fifth and sixth charges are that Mr Tanabalan deliberately failed to repay amounts due to Mr Chiang of Transvictory, and deliberately placed the assets with a creditor of the Company. In this connection the appellant submits:

(a) The evidence as to the nature and sum of the loan owed to Mr Chiang was inconsistent.

(b) There was no evidence that the assets were even placed at the Transvictory premises, and Mr Tanabalan could well have disposed of the items at the Transvictory premises or could have disposed of them without ever placing them at the Transvictory premises.

(c) Alternatively, the contemnors essentially abandoned the assets at the Transvictory premises. Mr Tanabalan intended to impede the administration of justice by doing so, as he was aware that the remainder of the 36 assets were only worth $1.5m. He ought not to have placed the assets with a creditor and risk their disposal for non-payment of the amounts due.

66 In relation to the fourth, fifth and sixth charges, we are of the view that the appellant has simply not adduced sufficient evidence in support of its case, which is essentially that Mr Tanabalan had deliberately placed the Company's assets at the Transvictory and Singatac premises knowing that doing so would

expose them to risk of disposal or seizure by the landlords, and that Mr Tanabalan did so "to orchestrate the scheme to disobey and frustrate the Mareva Order". This is a serious allegation that is not borne out by the evidence – rather the undisputed evidence is that the Company was forced to vacate its existing premises at 13 Tuas Avenue 11, had trouble finding alternative storage arrangements for its assets and ended up storing these assets at the premises of Mr Tanabalan's business associates or friends on the basis of "goodwill and trust". This decision might have, on hindsight, been imprudent or excessively optimistic, but it does not support the appellant's assertion that the assets were transferred to the care of others intentionally with the aim of frustrating the Mareva order. This was not a case where Mr Tanabalan arranged for the Company's assets to be stored at the premises of a creditor who was otherwise unknown to Mr Tanabalan, with full awareness that the creditor was likely to thereafter resort to the assets in satisfaction of an unpaid debt. Thus, even without relying on the Judge's observation that the appellant's case treats Mr Tanabalan as a third party rather than a shadow director of the Company, there was simply insufficient evidence to show that Mr Tanabalan dealt with the Transvictory and Singatac assets in such a manner as to evince an intention to impede the administration of justice.

67 Thus, the Judge's findings on liability in relation to Mr Tanabalan are unimpeachable.

The appeal against sentence

The appellant's submissions

68 The appellant argues that the sentencing precedents for committal applications relating to breaches of Mareva injunctions show that there is a preference for custodial sentences, referring to the cases of *OCM Opportunities, Maruti Shipping* and *Toyota Tsusho*. It submits that the Judge erred in giving weight to Mdm Mageswari's bare assertion that she acted on legal advice, as she has not adduced any evidence of the same. The Judge also failed to consider Mdm Mageswari's contumelious acts such as in concealing the fact that the Company had ceased to use the SCB SGD account and was using the SCB USD and UOB SGD accounts. Further, the Judge failed to consider that the appellant had suffered irreparable prejudice in that the Mareva injunction which had apparently frozen over $4m worth of assets was disregarded by the contemnors who cleared out those assets.

69 As for Mr Tanabalan, the appellant argues that the Judge erred in finding that no prejudice was caused to the appellant from the dissipation of the 34 assets – by deliberately overvaluing the assets, Mr Tanabalan and Mdm Mageswari placed themselves in a prime position to dissipate the Company's other assets which had value, namely, the bank accounts and the Company's property at Soon Lee Street. The Judge's finding that the overvaluation of the assets was out of incompetence rather than an intention to mislead is also inconsistent with the fact that the contemnors sold a container allegedly worth $35,000 for $2,000 in 2014.

70 Thus, the appellant seeks a custodial sentence of at least six months in respect of Mdm Mageswari and Mr Tanabalan.

Analysis

71 We now examine the conduct of Mdm Mageswari and Mr Tanabalan in the events giving rise to the contempt proceedings, with a view to determining if the sentences ought to be disturbed, with particular focus on the following allegations:

(a) the failure to disclose the UOB SGD account which was used by the Company for its trading activities, with large sums of money flowing in and out of the account over a period of two years;

(b) the property at Soon Lee Street whose sale was only discovered during the examination of judgment debtor proceedings; and

(c) the company known as Engen Offshore which was apparently owned only by the contemnors' children.

72 A difficulty that arises in this case is that whilst the objective evidence suggests a level of subterfuge on the part of Mr Tanabalan and Mdm Mageswari that it is hard to chalk up to mere ignorance or the blind following of supposed legal advice, much of the objective evidence merely formed part of the background matrix and did not form part of the appellant's case framed or pursued against either contemnor. Given the quasi-criminal nature of contempt proceedings, this failure on the appellant's part to adequately put its case in a way that would enable the contemnors to fairly respond to the allegations limits the extent to which these objective facts can now be taken into account in

sentencing. The possibility cannot be discounted that had these allegations been properly pursued at the contempt hearing below, Mr Tanabalan and Mdm Mageswari would have put forth further evidence in their defence.

73 We first consider the bank accounts. According to the appellant, the Company started to use the UOB SGD account for its business operations after it disclosed only the SCB SGD account and, further, it deliberately acted to prevent the appellant from finding out about the UOB SGD account. It is not disputed that the UOB SGD account was only disclosed during the examination of judgment debtor proceedings in September 2016, four years after the Company was first asked to disclose assets by the order for the Mareva injunction.

74 Not only were the contemnors not forthcoming about the UOB SGD account when they filed the affidavit in August 2012, it would appear that they continued to be obstructive even during the examination of judgment debtor proceedings, although it is unclear whether they were intentionally so. The appellant served a second questionnaire on Mdm Mageswari on 26 July 2016 asking for information on the Company's financial statements. This information was only provided in Mdm Mageswari's affidavit of 26 September 2016. Between end July and 26 September 2016, Mdm Mageswari was ordered by three different Assistant Registrars to file her affidavit and responses by three different dates. First, by 16 August 2016, then by 5 September 2016, and then finally by 30 September 2016. In each of those hearings, Mdm Mageswari asked for more time to get the necessary documents from the banks but did not otherwise provide reasons for her delay in responding to the questions (it is not clear whether reasons were provided but not recorded in the minute sheets).

During the contempt hearing, Mdm Mageswari explained that her failure to give the bank statements was partly because she had been given to understand that there were no relevant bank statements, at least in relation to the SCB USD account, for the material period.

75 Mdm Mageswari admitted that the UOB SGD account was used for the Company's trading activities, and that this was necessitated by the freezing of the SCB SGD account. The bank statements show that the UOB SGD account was used infrequently from January 2012 to June 2012, with around five small transactions per month and the account balance not rising above $5,000. However, starting with a cash deposit of $36,000 on 29 June 2012, which is one month after the appellant commenced the main suit against the Company and two months before the Mareva injunction was obtained, the account became much more frequently used with major transactions in the thousands, and with the account balance rising to above $275,000 around November 2012 shortly before a large cheque withdrawal of $200,000 on 9 November 2012. Thereafter, the account continued to see frequent transactions, and the account balance hovered in the thousands to tens of thousands. The next big deposit came on 14 March 2013, bringing the account balance to its peak of over $792,000 but the bulk of this was withdrawn from the account a few days later on 18 March 2013. The account then continued to see frequent transactions and the balance continued to hover between the low thousands to over $100,000. By December 2013, the account balance consistently stayed in the low hundreds to low thousands, and frequently went into overdraft, sometimes by as much as $60,000. Transactions into and out of the UOB SGD account dwindled by June 2014, and from then until July 2016 there were only a few minor transactions

each month, with the exception of a flurry of transactions between December 2014 and January 2015.

76 According to Mdm Mageswari, she did not disclose the UOB SGD account because the contemnors' lawyers did not tell them that they had to disclose the bank accounts, and only mentioned the assets. She was under the impression that "assets" did not include bank accounts. This was also the evidence of Mr Tanabalan. Even though the UOB SGD account saw frequent trading, Mdm Mageswari maintained that the Company faced financial difficulties at the relevant periods of time because of debts to suppliers and so on.

77 We move next to consider the facts in relation to the Company's property at Soon Lee Street. According to the appellant, it became aware of the disposal of this property during the course of the examination of judgment debtor proceedings and managed to discern that part of the purchase price, in the sum of $210,000, was credited into the UOB SGD account in December 2013. The UOB SGD bank statements reveal that $210,000 was indeed credited on 15 December 2013 and that the same amount was withdrawn on the same day by cheque.

78 According to Mdm Mageswari and Mr Tanabalan, they did not disclose the property at Soon Lee Street because they were under legal advice that this was not necessary. The property was sold for $420,000 on paper but $210,000 was used to repay the UOB mortgage. The remaining $210,000 was paid by the buyer (from Transvictory) by cheque but apparently a cheque for the same amount was immediately handed over to the buyer (from Transvictory) for payment of two machines which the court had ordered to be returned to the

appellant. The fact that $210,000 was credited into the UOB SGD account and then immediately withdrawn by another cheque on the same day seems to support this account that the Company and the buyer merely exchanged cheques for the same amount. However, this cannot be conclusively verified because the cheque withdrawal on the UOB SGD bank statement does not reveal the recipient of the cheque. It is also not clear why the parties had not simply offset the sum instead of going through this rather pointless exercise of transferring the same amount back and forth.

79 Engen Offshore was incorporated under the names of the children of Mdm Mageswari and Mr Tanabalan on 19 August 2013. The appellant says its incorporation coincided with a drop in the moneys in the UOB SGD account. The appellant thus submits that the Company had stopped its business and transferred the same to Engen Offshore.

80 The objective evidence does seem to support the appellant's case that Engen Offshore is essentially carrying out the same business as the Company did. Engen Offshore's website states that it has been "involved in the field of repair and service of diesel engines" since "the early eighties", which is around the time that the children of Mdm Mageswari and Mr Tanabalan were born. It also utilises the same logo and name as the Company did. Whilst the appellant has also alluded to the fact that Mdm Mageswari and Mr Tanabalan have on occasion used the e-mail address of Engen Offshore to send e-mails but in their own names, this does not go as far as to support the claim that they were involved in the operations of Engen Offshore, since the e-mails referred to were communications between Mdm Mageswari and Mr Tanabalan and their ex-solicitors in relation to the present matter.

81 During the contempt hearings, Mdm Mageswari testified that Engen Offshore was set up by her children who are running the company and that the paid-up capital of $1m was not actually put up. On appeal, the contemnors maintain that Engen Offshore "was wholly set up by two different individuals" and that the "fact they are the [contemnors'] children is a natural relationship and not a business relationship". In view of the objective evidence, this is hard to believe.

82 It is evident from the charges framed and the closing submissions that the focus and subject matter of the appellant's case against Mdm Mageswari and Mr Tanabalan before the Judge pertained to (a) the inflated valuation of the 70 physical assets in the affidavit of 28 August 2012; (b) the location and subsequent disposal of these physical assets from the Singatac and Transvictory premises; (c) the dissipation of the moneys from the Company's SCB accounts; and (d) the failure to account for the Company's living, legal and business expenses. Of the three issues discussed above, the UOB SGD account was a point in issue in the closing submissions and at the hearing, whereas the Soon Lee Street property and the status of Engen Offshore hardly featured at all.

83 The UOB SGD account formed part of the subject matter of the fourth charge against Mdm Mageswari (intentionally failing to disclose all of the Company's assets, in particular intentionally concealing the details of the Company's trade receivables and the existence of the SCB USD and UOB SGD accounts), for which she was found liable. The use of the UOB SGD account could also potentially fall within the second charge against Mr Tanabalan (intentionally dissipating the moneys in the Company's bank accounts), for

which he was *not* found liable, although the appellant's case pertained not to the dissipation of moneys but to the non-disclosure of the account.

84 During the contempt hearing, Mdm Mageswari was cross-examined on her failure to disclose the UOB SGD account, but the appellant was not permitted by the Judge to go into the issue of what the various transactions in the bank statements related to, since the Judge was of the opinion that it was not relevant to the committal proceedings based on the charges framed. Similarly, the appellant attempted to ask Mr Tanabalan during cross-examination whether the large sums of withdrawal from the UOB SGD account were for his personal expenses, which Mr Tanabalan denied, and the Judge told the appellant's counsel not to ask questions for which there was no basis.

85 The appellant's case in respect of the UOB SGD account is essentially that Mdm Mageswari and Mr Tanabalan deliberately transferred the Company's trading activities from the SCB SGD account, which was disclosed and frozen pursuant to the Mareva order, to the UOB SGD account. However, this was not pursued with any detail at the committal hearing, at which the focus was simply on the non-disclosure of the account.

86 The issue of the Soon Lee property was not brought up at all during the cross-examination of either Mdm Mageswari or Mr Tanabalan, nor in closing submissions.

87 The issue of Engen Offshore was brought up briefly towards the end of the cross-examination of Mdm Mageswari, but she was not challenged when she said that it was set up and run by her children, and that the $1m paid up capital did not represent sums injected into the company. It was not brought up

during the cross-examination of Mr Tanabalan. In the concluding portion of its closing submissions, the appellant submitted that Mdm Mageswari and Mr Tanabalan had proceeded to set up companies under their children's names, showing that their intention all along was to "escape the consequences of breaching the contract with [the appellant]".

Sentence

88 Several conclusions can be made from the foregoing. Based on the objective evidence, it is hard to believe that Mdm Mageswari and Mr Tanabalan acted innocently or in complete ignorance of their obligations under the Mareva injunction simply because they were under legal advice. In finding Mdm Mageswari liable for the fourth charge (the non-disclosure of the SCB USD and UOB SGD accounts), the Judge made the finding that the Mareva injunction was in plain terms and Mdm Mageswari proved herself well able to read, speak and understand English during cross-examination, and thus that she ought to have understood her obligations under the Mareva injunction notwithstanding any legal advice on the issue. The irresistible inference is thus that the non-disclosure of the UOB SGD account was deliberate, and the voluminous transactions from 2012 to 2014 suggest that this was at best to allow the Company to continue its trading activities, at worst to put funds out of the appellant's reach. It is also clear that Mr Tanabalan would have been equally complicit in this endeavour, notwithstanding the appellant's failure to frame a specific case against him in relation to the UOB SGD account.

89 It is plain that the Company's ownership of the Soon Lee property was not disclosed, and this was wrong. It is not clear whether the non-disclosure caused any prejudice to the appellant, since it is the evidence of

Mdm Mageswari and Mr Tanabalan that there were no actual balance proceeds arising from the sale of the property, and there is no evidence to contradict them on this point. Prejudice, however, is not the point. The Company was obliged by the Mareva order to disclose all its assets and disobeyed the order when it omitted the Soon Lee property from the list. As the director who provided the list Mdm Mageswari was at fault. Mr Tanabalan would have been equally at fault for the reasons given above.

90 The objective evidence in relation to the setting up of Engen Offshore is also suspicious, although inconclusive. In light of the evidence, the appellant's case at its highest would be that Engen Offshore was set up by the children of Mdm Mageswari and Mr Tanabalan, and the children are the ones who are operating the company, albeit by borrowing the Company's history and reputation for branding purposes. There is nothing that would contradict this directly or show that Mdm Mageswari and Mr Tanabalan are actually actively involved in the business of Engen Offshore, albeit this would appear likely given the degree of overlap between the Company and Engen Offshore.

91 The difficulty, as alluded to above, is that the issues of the Soon Lee property and Engen Offshore did not form part of the cases framed against Mdm Mageswari and Mr Tanabalan, and they were not explored in any detail at trial. No concessions were obtained from either of them during cross-examination, and in fact they were not even challenged on their case that Engen Offshore was completely unrelated to the Company. Even though the contemnors were cross-examined on the UOB SGD account, the focus of the complaint pertained simply to the non-disclosure of the account. As the Court of Appeal cautioned in *Tay Kar Oon v Tahir* [2017] 2 SLR 342, "procedural

fairness in committal proceedings entails ensuring that the alleged contemnor understands the nature of the allegations against him and is given an opportunity to respond to them" (at [42]). Further, whilst the court has the power to order committal on its own motion and in relation to matters not contained in a statement under O 52 r 2(2) of the ROC, this must be exercised judiciously and the alleged contemnor must be given notice of the charge and an opportunity to meet that charge in relation to both liability and punishment (at [44]). In that case, the Court of Appeal found that the judge below ought not to have taken into account a fifth breach (concerning the disposal of $3,000 from a bank account subject to an injunction) when the appellant was not given proper notice that she could be convicted and punished for the charge.

92 While the objective facts raised above in relation to Engen Offshore and the Soon Lee property cannot form the basis for additional charges against the contemnors, that does not prevent us from considering them as part of background facts for the charges that were made out against Mdm Mageswari and Mr Tanabalan when it comes to considering the appropriate sentence for those charges. However, the same principles of natural justice must be taken into account as it would be unfair to punish the contemnors for conduct that they were not given an opportunity to defend. An added difficulty is the fact that the only charge which is made out against Mr Tanabalan related to his failure to take due care of the physical assets at the Transvictory and Singatac premises (the third charge), which appears to have little relation to the issues raised here.

93 That being said, it is also clear from a brief perusal of civil contempt cases that the sentences in the present case were on the low side, albeit not entirely inconsistent with the precedents:

Case	Facts	Outcome
Technigroup Far East Pte Ltd and another v Jaswinderpal Singh s/o Bachint Singh and others [2018] 3 SLR 1391	The first and second defendants acted in contumelious disregard of their discovery obligations on multiple occasions and maintained false assertions despite numerous opportunities to come clean. Their non-disclosure handicapped the assessment of the plaintiff's damages.	Four months' imprisonment.
Ho Seow Wan v Ho Poey Wee and others [2015] SGHC 304	The defendants acted in breach of a court order following a minority oppression suit found in the plaintiff's favour, such as by failing to pass a resolution to allow the plaintiff to issue notices in relation to his reinstatement and various internal correspondence which were aimed at curtailing the plaintiff's rights and powers in the company. The court took into account that the defendants acted primarily to ensure that the business operations of the company would continue expediently, and that the plaintiff had used the court order to disrupt the company's business.	$25,000 fine for the first defendant and $20,000 fine for the second defendant.
PT Sandipala Arthaputra and others v	The defendants disobeyed three examination of judgment debtor orders, failed	Seven days' imprisonment.

STMicroelectronics Asia Pacific Pte Ltd and others [2018] 4 SLR 818	to turn up for hearings and failed to produce the relevant books and documents in their possession. When they finally provided answers to the questionnaires, the answers were nothing but bare denials of assets and income, which showed a lack of genuine remorse.	
Brightex Paints (S) Pte Ltd v Tan Ongg Seng (in his personal capacity and trading as Starlit(S) Trading) and others [2019] SGHC 116	The first defendant extracted confidential information from the plaintiff to be passed on to others, and failed to comply with court orders to deliver up this confidential information and to disclose the unauthorised disclosures and the identities of the third party recipients of the information. The court considered that the non-compliance was over an extended period of time, although the first defendant did take (inadequate) steps to comply with the orders. The court also noted the prejudice caused to the plaintiff from the leak of confidential information.	14 days' imprisonment (enhanced to three months' imprisonment on appeal).
STX Corp v Jason Surjana Tanuwidjaja and others [2014] 2 SLR 1261	The defendants filed their affidavits late and failed to disclose ownership of certain land, bank accounts and shares. The court found that the defendants demonstrated a nonchalant manner towards the court.	Fines of $18,000, $10,000 and $12,000.

94 One key consideration that arises at this point is whether or not Mdm Mageswari and Mr Tanabalan genuinely believed themselves to be acting in accordance with legal advice. One of the main reasons why the Judge did not think that a custodial sentence was warranted was the fact that he accepted that the contemnors genuinely believed that they were, at least, not acting inconsistently with the Mareva order. This is a finding that the Judge arrived at in part from his evaluation of Mdm Mageswari's evidence on the stand. However, at least in relation to the UOB SGD account, this is largely inconsistent with his finding that Mdm Mageswari plainly understood that the non-disclosure was in contravention of the Mareva order.

95 Having considered all the relevant circumstances, we are of the view that the sentences passed on the contemnors were too lenient. However, in view of the difficulties alluded to in [91] and [92] above, a custodial sentence would be too harsh. We therefore increase the fine payable by each contemnor by $25,000 and, in default of payment within 14 days, the defaulting contemnor shall be imprisoned for one month. We have doubled the fine for Mdm Mageswari because her non-disclosures and general nonchalant attitude to the Mareva order when she was a director of the Company and should have been concerned to ensure the Company complied fully with the order were given insufficient weight by the court below. As for Mr Tanabalan, the increase is only by 50% because his behaviour had already attracted a heavier penalty below and he was found liable for only one charge. The increase in the fine that we have imposed is, in our view, enough to reflect his culpability on the basis that he was sentenced as a third party rather than as a director.

Conclusion

96 In conclusion, we allow both appeals in part. The appellant has succeeded on only one issue in each appeal and even then not to the extent submitted for. In the premises, and having regard to the costs schedules filed by the appellant, we award it costs of $15,000 for each appeal (inclusive of its disbursements in each case) to be paid by the relevant contemnor. There shall be the usual consequential orders.

Judith Prakash	Woo Bih Li	Quentin Loh
Judge of Appeal	Judge	Judge

Navinder Singh and Farah Nazura bte Zainudin (KSCGP Juris LLP) for the appellant;
Selvarajoo Mageswari (in person) as the respondent in Civil Appeal No 172 of 2018;
Tanabalan Ramasamy (in person) as the respondent in Civil Appeal No 173 of 2018.