Sembcorp Marine Ltd *v* Aurol Anthony Sabastian
[2012] SGHC 52

Case Number : Originating Summons No 465 of 2011 (Summons No 2861 of 2011)

Decision Date : 19 March 2012

Tribunal/Court : High Court

Coram : Quentin Loh J

Counsel Name(s) : Davinder Singh SC, Pardeep Singh Khosa, and Vishal Harnal (Drew & Napier LLC) for the applicant; George Lim SC and Foo Say Tun (Wee, Tay & Lim LLP) for the respondent.

Parties : Sembcorp Marine Ltd — Aurol Anthony Sabastian

Contempt of Court – criminal contempt

Contempt of Court – criminal and non-criminal contempt distinguished

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 71 of 2012 was allowed by the Court of Appeal on 17 January 2013. See [2013] SGCA 5.]

19 March 2012 Judgment reserved.

Quentin Loh J:

Introduction

1 The applicant, Sembcorp Marine Ltd ("SCM"), seeks an order for committal of the respondent, Anthony Sabastian Aurol ("Mr Aurol"), for contempt of court pursuant to Order 52 of the Rules of Court (Cap 322, Rg 5, 2006 Rev Ed), alleging a deliberate breach of an interim sealing order of two documents: (a) a Summons in Chambers applying for a sealing order; and (b) the 5th affidavit of Mr Wong Weng San ("Wong's 5th Affidavit") filed in support of the said summons.

2 On 3 December 2010, SCM filed Summons in Chambers No 5659 of 2010 ("Summons 5659") in Suit No 351 of 2010 ("Suit 351"), applying for a sealing order in relation to Mr Wong Weng San's 4th affidavit ("Wong's 4th Affidavit"), Summons 5659 itself, and Wong's 5th Affidavit. Three days later, on 6 December 2010, SCM orally applied for an interim order to seal the Summons itself and Wong's 5th Affidavit pending the hearing of Summons 5659. The Assistant Registrar ("AR") granted the interim sealing order.

3 In Suit 351, SCM and PPL Shipyard Pte Ltd ("PPLS") sued PPL Holdings Pte Ltd ("PPLH") and E-Interface Holdings Limited ("E-Interface").

4 Mr Aurol was a director and executive of PPLS until SCM terminated him as an executive on 8 June 2010. He is also a director and Chief Operating Officer of Baker Technology Ltd ("Baker"), the parent company of PPLH, whose sale was the subject of Suit 351. At all material times, Mr Aurol was a director of PPLH, the 1st Defendant in Suit 351. E-Interface, the 2nd Defendant in Suit 351, is a wholly-owned subsidiary of PPLH.

Issues

5 The issues are:

(a) Whether Mr Aurol breached the terms of the interim sealing order in relation to Summons 5659;

(b) Whether Mr Aurol breached the terms of the interim sealing order in relation to Wong's 5th Affidavit;

(c) Whether Mr Aurol intended to breach one or both of these orders; and

(d) Whether these breaches carried a real risk of interference with the administration of justice.

Background to the dispute

6 There are two related cases that form the background to these proceedings: (a) the main action, *ie*, Suit 351; and (b) Originating Summons No 590 of 2010 ("OS 590"), which was appealed in Civil Appeal No 148 of 2010 ("CA 148").

7 PPLS was originally set up by Mr Aurol and 2 others. They also set up PPLH as a holding company for PPLS. In 2001, SCM entered into a joint venture with PPLH to participate in PPLS with each party holding 50% of the share capital of PPLS. Pursuant to negotiations in 2003, SCM's shareholding in PPLS was increased to 85% and PPLH's shareholding dropped to 15%. A Supplemental Agreement was entered into which SCM alleged contained a right of pre-emption to buy PPLH's 15% at the same rate. PPLH was wholly owned by Baker, a listed company.

8 Sometime in April 2010, Baker sold PPLH to Yangzijiang Shipbuilding (Holdings) Ltd ("YZJ"). This sale to YZJ was significant because, apart from cash, PPLH's only other asset was its shares in PPLS. SCM cried foul, claiming that in effect, the sale was a buying up of PPLS's shares and a wrongful repudiation of the joint venture agreement which protected SCM from becoming a partner with any entity controlled by a non-party to the agreement. SCM further claimed that it had a right of pre-emption for the remaining 15% of PPLH's shares in PPLS.

9 These events led to Suit 351 being filed on 15 May 2010 by SCM and PPLS against the defendants, PPLH and E-Interface.

10 SCM further alleged that Mr Aurol was guilty of a breach of confidentiality when he disclosed the net book value of PPLS to YZJ. Five days prior to the filing of Suit 351, SCM had lodged a complaint with PPLS's board, laying out the following accusations:

(a) Mr Aurol became aware of PPLS's net book value on or around 31st March 2010;

(b) Mr Aurol was aware that the net book value was only meant to be filed with the Accounting and Corporate Regulatory Authority on 19th April 2010;

(c) Mr Aurol, who stood to gain approximately US$15 million from the sale, deliberately made the disclosure to YZJ in order to secure the deal;

(d) YZJ later disclosed in a market statement on 17th April 2010, that the net book value was part of its purchase considerations; and

(e) Mr Aurol was accordingly in breach of his director's duties by making such a disclosure.

11 This complaint continued to feature in Suit 351, in which Mr Aurol was a key witness. This complaint also formed the basis for the removal of Mr Aurol from the board of directors of PPLS on 8 June 2010. Relations between SCM and Mr Aurol have thus been acrimonious for some time leading up to this application for committal.

12 OS 590 concerned the powers of the SCM-nominated directors of PPLS to pass resolutions which included, *inter alia*, the appointment of solicitors to investigate SCM's complaints against Mr Aurol, without quorum from the PPLH-nominated directors. Woo Bih Li J refused to validate this resolution, finding no elaboration on the likely damage to PPLS, and no evidence to suggest that the disclosure was damaging to PPLS: see *Tang Kin Fei and others v Chang Benety and others* [2011] 1 SLR 586. He further found, at [45] of his judgment, that the resolutions could have been made "for the collateral purpose of trying to find fault with certain persons at the instigation of a shareholder who was unhappy with Yangzijiang's intended purchase". Because it could not be said that the resolutions were passed in the interests of PPLS, the resolutions were invalid.

13 The defendants in Suit 351 (*ie*, PPLH and E-Interface) then took out Summons No 4837 of 2010 on 14 October 2010 for an injunction to restrain the board of PPLS from conducting business at these inquorate board meetings.

14 Woo J's refusal in OS 590 to validate the resolution was upheld on appeal in CA 148: see *Chang Benety and others v Tang Kin Fei and others* [2012] 1 SLR 274. The Court of Appeal referred to this particular resolution as evidence of SCM's intention to make use of the inquorate meetings to obtain a tactical advantage over PPLH. This tactical advantage was *prima facie* a substantial injustice, and resolutions passed with this in mind could not be validated.

15 The confidential documents which were sought to be protected arose out of these two suits and their accompanying interlocutory proceedings. On 26th November 2010, the Applicant filed Wong's 4th Affidavit, which included some of SCM's confidential financial policies.

16 On 3rd December 2010, the Applicant filed Summons 5659, supported by Wong's 5th Affidavit, requesting the following orders: [note: 1]

(a) That the file relating to the Summons and all its contents, including Wong's 5th Affidavit in support of the Summons, be sealed;

(b) That Wong's 4th Affidavit be sealed from non-parties to Suit 351; and

(c) That any further affidavits filed in Suit 351 which referred to exhibit WWS-47 of Wong's 4th Affidavit also be sealed from non-parties.

17 On 6th December 2010, the AR fixed a hearing for this Summons before a Judge, and issued an interim sealing order on the backing page of the summons recorded as follows:

Mr Wong Weng Sun's 5th supporting affidavit dated 26 November 2010, together with the

summons, are to be sealed as against non-parties to the Suit. To serve on all parties. [note: 2]

In doing so, the AR made a mistake. Wong's 5th Affidavit was not dated 26th November 2010; it was dated 3rd December 2010. It was Wong's 4th Affidavit, (the sealing of which was the subject matter of the application in Summons 5659), that was dated 26 November 2010.

18 However, on the same day (*ie*, 6 December 2010), counsel for SCM served a letter ("the 6th December Letter") on the defendants' lawyers in Suit 351, Straits Law Practice, informing them of the date for the hearing of Summons 5659, and stating that:

> The Court has granted an interim order that until the hearing of the Summons, the Summons itself and the 5th Affidavit of Mr Wong Weng Sun filed in support of the Summons be sealed as against non-parties to the suit. [note: 3]

Straits Law Practice acknowledged receipt of this letter, noting that they had yet to be served with the summons and the supporting affidavit. It is not disputed that Mr Aurol read this letter sometime between 6th December and 9th December 2010, when the alleged contemptuous incidents occurred.

19 These incidents arise out of what Mr Aurol allegedly did with Summons 5659 and the AR's order endorsed thereon, and Wong's 5th Affidavit. Here, SCM's and Mr Aurol's cases diverge significantly, but the following facts are not disputed:

(a) Mr Aurol sent Wong's 5th Affidavit and Summons 5659, including the sealing order endorsed thereon, by email to Mr Conrad Jayaraj ("Mr Raj"), a journalist with the TODAY newspaper, on 9th December 2010;

(b) On 13th December 2010, Mr Raj published an article based on these documents, entitled "Sembmarine boss rushes to stop affidavit leak";

(c) On 14th December 2010, SCM asked Mediacorp Press Ltd ("Mediacorp") to disclose its source of the leak of information;

(d) SCM commenced Originating Summons No 74 of 2011 ("OS 74") against Mediacorp on 27th January 2011 when the latter refused to disclose this information;

(e) AR Tan Wen Hsien ("AR Tan") ordered Mediacorp to reveal its source on 7 March 2011;

(f) Mediacorp appealed, but AR Tan's order was upheld on appeal by Judith Prakash J on 31 March 2011;

(g) Mediacorp prepared to reveal its source, publishing an article to this effect, on 2 April 2011;

(h) On 5 April 2011, Mr Aurol identified himself as the source of the leak and apologised to the Court and SCM for the breach;

(i) On 6 April 2011, Mediacorp destroyed all documents related to this case, including the email sent from Mr Aurol to Mr Raj;

(j) SCM filed Originating Summons No 465 of 2011 on 10 June 2011, challenging the sincerity of Mr Aurol's apology and, pursuant to O 52 r 2, seeking leave to apply for an order for committal. Leave was granted by me on 30 June 2011; and

(k) SCM filed Summons 2861 on 1 July 2011, seeking an order that Mr Aurol be committed to prison for contempt of court.

SCM's case

20 SCM contended that Mr Aurol deliberately breached the order, despite the fact that he knew what the effect of the order was.

21 On 9th December, upon receipt of the Summons and Wong's 5th Affidavit, SCM contends that Mr Aurol had called his friend, Mr Raj, a journalist who had written unfavourable articles about SCM in the past. [note: 4] Mr Aurol then drew Mr Raj's attention to paragraph 21 of Wong's 5th Affidavit, which specifically referenced the need to protect these documents from the scrutiny of journalists. SCM submitted that this was a calculated attempt by Mr Aurol to pique Mr Raj's interest, and thus to nudge him towards publishing an article based on these sealed documents. [note: 5]

22 SCM alleged that Mr Aurol then sent Wong's 5th Affidavit and Summons 5659 with the interim sealing order endorsed thereon, by email to Mr Raj, asking him to keep his identity confidential. [note: 6] SCM further claimed that this was further evidence that Mr Aurol was deliberately and cynically breaching the sealing order, as a part of a personal vendetta against SCM. [note: 7]

23 SCM also contended that Mr Aurol was cognisant of the fact that the interim sealing order referred to the 5th, and not the 4th, affidavit, as this had been made clear from the 6th December Letter, which "very clearly set out the position" [note: 8] and which Mr Aurol admitted reading sometime between 6th and 9th December 2010.

Mr Aurol's case

24 Mr Aurol claimed, to the contrary, that he had no intention of breaching the interim sealing order, but had instead been confused as to which document was the subject of the sealing order. He claimed that because the sealing order made reference to an affidavit filed on 26th November 2010 (the date when Wong's 4th Affidavit was filed), he assumed that the document sealed was the 4th, and not the 5th, affidavit. [note: 9] While Mr Aurol concedes that he had received and read the 6th December Letter, he claimed that this letter was "not within my contemplation" [note: 10] when speaking to Mr Raj. When forwarding the document to Mr Raj, he was unaware that he was breaching the interim sealing order.

25 He further claimed that coincidentally, Mr Raj had called him on 9th December 2010 when he happened to be reading the summons. He mentioned paragraph 21 of Wong's 5th Affidavit to Mr Raj because he thought that it would "interest him" [note: 11] as this was the subject of an ongoing joke between the both of them. [note: 12] He maintained that they had spoken as friends, [note: 13] and that there was no indication that Mr Raj intended to publish an article on the application. [note: 14] He also claimed that he had never told Mr Raj that he was forwarding the documents to him on the basis

that his identity would be kept confidential. [note: 15]

26 Mr George Lim SC, counsel for Mr Aurol, makes the following submissions:

(i) The power to order committal for contempt is a power that is exercised with great care;

(ii) Mr Aurol should not be held liable in contempt because the terms of the interim order are unclear and confusing;

(iii) It is clear from the facts of the case that Mr Aurol had no intention of interfering with the administration of justice;

(iv) On the facts of this case, there has been no real risk of interference with the administration of justice; and

(v) This application is an abuse of the process of court.

Nature of contempt proceedings

27 As has been said time and again, the court's power to punish contempt does not exist to vindicate the dignity of the court or the self-esteem of judges. It is to prevent interference with and to safeguard public confidence in the administration of justice. The integrity of the legal process must be safeguarded for those using the courts and to ensure that civil or criminal proceedings are fairly tried and justly determined according to law. The intentional subversion of an order of court, or of the purpose for which it was made, is a serious act that directly threatens the integrity of the legal process and the administration of justice.

28 Contempt has traditionally been classified as either civil or criminal contempt. Civil contempt has been used to describe cases involving a breach of a court order, while criminal contempt has been used to describe other conduct which involves an interference with the administration of justice: see C J Miller, *Contempt of Court* (Oxford University Press, 3rd Ed, 2000) ("*Miller*") at paras 1.05 and at 1.07, where the contemnor is not himself affected by the prohibition contained in the order; and *Attorney-General v Times Newspapers Ltd and another* [1992] 1 AC 191 at 218 ("*The Spycatcher*"). It has also been said that civil contempt involves disobedience of a court order or undertaking by a person involved in litigation whereas criminal contempt is an act that threatens the administration of justice so that it requires punishment from the public point of view: see David Eady and ATH Smith, *Arlidge, Eady & Smith on Contempt* (Sweet & Maxwell, 3rd Ed, 2005) ("*Arlidge, Eady & Smith*") at para 3-1.

29 This distinction has been useful in the past, as different burdens of proof, procedural safeguards, and sanctions followed a finding of either civil or criminal contempt. The utility of this distinction has, however, been called into question in recent years, following the use of a singular standard of proof for both types of contempt, and a mixed approach to sanctions (punitive and remedial) in both categories of contempt. This distinction has been described as "unhelpful" or "largely meaningless", a criticism which was acknowledged in *The Spycatcher* at 217.

30 Sir John Donaldson MR in *Attorney-General v Newspaper Publishing Plc and others* [1988] 1 Ch 333 ("*A-G v Newspaper Publishing*") at 362B–D suggested a re-classification:

> Whatever the value of this classification in earlier times, I venture to think that it now tends to mislead rather than assist, because the standard of proof is the same, namely, the criminal

standard, and there are now common rights of appeal. Of greater assistance is a re-classification as (a) conduct which involves a breach, or assisting in the breach, or a court order and (b) any other conduct which involves an interference with the due administration of justice, either in a particular case or, more generally, as a continuing process, the first category being a special form of the latter, such interference being a characteristic common to all contempts: *per* Lord Diplock in *Attorney-General v. Leveller Magazine Ltd.* [1979] A.C. 440, 449.

31 This seems to have been implicitly accepted by V K Rajah JA, sitting as a High Court Judge, in *You Xin v Public Prosecutor and another appeal* [2007] 4 SLR(R) 17 ("*You Xin*"), where he noted (at [16]) what the learned authors N Lowe and B Sufrin state at page 2 of their text, *The Law of Contempt* (Butterworths, 3rd Ed, 1996), and opined that:

> [C]ontempt can be divided into two broad categories, *viz*, contempt by interference and contempt by disobedience. The former category comprises a wide range of matters such as disrupting the court process itself (contempt in the face of the court), publications or other acts which risk prejudicing or interfering with particular legal proceedings, and publications or other acts which interfere with the course of justice as a continuing process (for example, publications which "scandalise" the court and retaliation against witnesses for having given evidence in proceedings which are concluded). The second category comprises disobeying court orders and breaching undertakings given to the court.

32 Such a re-classification is not misplaced, particularly as this re-classification is not a substantive, but an ontological, one. By putting the terms 'criminal' and 'civil' to one side, one is better able to address the real issue. As Rajah JA stated, contempt by interference encompasses a wide range of matters. Its single most important function is to prevent interference with the due and proper administration of justice, especially in proceedings which are *sub judice*. This category of contempt threatens the due and proper administration of justice: see *Miller* at pp 207–209. The public must have faith in the administration of justice and that once a dispute has been submitted to a court of law, there will be no usurpation by any other person or body of the function of the court to decide that dispute according to the law: see *Attorney-General v Times Newspapers Ltd* [1974] AC 273 at 309 ("*A-G v Times Newspapers*").

33 The subversion of an order of court constitutes a direct threat to the administration of justice because it has the effect of nullifying the purpose of the order or rendering any subsequent proceedings for which the order was made otiose or academic or, more importantly, taking away the decision-making process of the court because the harm has been done. This is a serious accusation as it alleges a grave attack on the integrity of the legal process and must be dealt with firmly, otherwise incalculable harm can be done to the legal fabric of society and, in most cases, to one or more of the litigants before the courts.

34 The burden of proof is therefore high. The alleged offending facts and circumstances that amount to contempt by interference must be proved beyond a reasonable doubt. SCM therefore has to prove beyond a reasonable doubt that:

> (a) First, the contemnor had the requisite intention to disregard the order of court and interfere with the proper administration of justice; and
>
> (b) Secondly, the act or acts in question carried a real risk that the proper administration of justice would be interfered with.

See *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518

("*Pertamina*") at [43], [63] and [64]. The second question involves two further sub issues:

(a) What did the order purport to achieve, prevent or preserve?

(b) How has a subversion of this order interfered or posed a real risk of interference with the administration of justice?

35 Mr Lim SC submits that SCM could not proceed against Mr Aurol in civil contempt because he was not a party to Suit 351; SCM therefore conjured up this allegation of criminal contempt, which is something that came under the supervision and purview of the Attorney-General. However, this proposition is unsupported by any authority. Mr Lim SC argues that even if there is no authority limiting the bringing of criminal contempt to the exclusive preserve of the Attorney-General, it is time for courts to rule accordingly.

36 Mr Lim SC's initial proposition may be said to have some basis in *A-G v Newspaper Publishing*. In the context of proposing an abolition of the civil/criminal dichotomy in that case, Sir John Donaldson MR goes on to opine (at 362D–E):

> What distinguishes the two categories is that in general conduct which involves a breach, or assisting in the breach, of a court order is treated as a matter for the parties to raise by complaint to the court, whereas other forms of contempt are in general considered to be a matter for the Attorney-General to raise. In doing so he acts not as a government minister or legal adviser, but as the guardian of the public interest in the due administration of justice.

The learned Master of the Rolls prefaced each proposition with the phrase "in general". This therefore does not mean that only the Attorney-General may bring such actions. Moreover, Singapore does not currently have legislation that is similar to the English Contempt of Court Act 1981 ("the 1981 Act"), which specifically limits the bringing of proceedings for some forms of contempt to the Attorney-General (see s 7), such legislation may be introduced in Singapore at a future point in time. Prior to the 1981 Act, any interested party could bring such an action in the UK: see Ian Cram gen ed, *The Law of Contempt* (LexisNexis, 4th Ed, 2010) at 13.13 ("*Borrie and Lowe*"). Given that Order 52 in Singapore's Rules of Court was derived from Order 52 of the English Rules of the Supreme Court, in the absence of any statutory provisions to the contrary, any interested party can bring an action for criminal contempt (especially because, as noted above, we should move away from a strict categorisation of 'civil' and 'criminal' contempt). This is of course provided the court gives leave under O 52 r 2.

37 Mr Aurol is technically not a party in Suit 351. Practically speaking, being a director and/or executive in some of the companies involved as parties in Suit 351, neither is he is really an 'unconnected' third party as understood in common parlance. Be that as it may, if SCM makes out its allegations, then Mr Aurol falls within the category of contempt by interference.

38 Even if I take the position that Mr Aurol is a third party, as that term is commonly understood in law, it is clear that such a party can be liable in contempt if he knowingly assists a breach on the part of a named party or even if he acts alone, see *Arlidge, Eady & Smith* at para 11-34. In *The Spycatcher* , Lord Jauncey of Tullichettle held (at 231B) that:

> ...a person who knowingly acts in a way which will frustrate the operation of an injunction may be guilty of contempt even although he is neither named in the order nor has he assisted the person who is named to breach it.

Similarly in *Attorney General v Punch Ltd and another* [2003] 1 AC 1046 ("*AG v Punch*"), Lord Nicholls of Birkenhead said (at [4]):

> Aiding and abetting a breach of the order by the person specifically restrained by the order is not always an essential ingredient of "third party" contempt. **The purpose of a court in making an order may be deliberately frustrated by a third party even though he is acting independently of the party against whom the order was made. An interlocutory order for the non-disclosure of information is the paradigm example of the type of order where this principle is in point.** The Spycatcher litigation is the best known recent instance of this.
>
> [emphasis added]

39 The above principles have been endorsed and applied by the Singapore Court of Appeal in *Pertamina*, where it held that a party who is not directly bound by an order of court can be held liable for criminal contempt if he deliberately frustrates the purpose of that order. Phang JA said (at [42]-[44]):

> 42 The first relates to *aiding and abetting* a party to the order concerned in the latter's commission of an act in contempt of court.
>
> ...
>
> 43 The second relates to conduct where there is a real risk that the due administration of justice will be either impeded or prejudiced inasmuch as the purpose of the court in making the order concerned would be defeated. As was succinctly put in a legal text, "a third party must not deliberately frustrate the purpose of the order" (see *Gee* ([19] *supra*) at para 3.006). It need not, of course, be shown that a certainty of prejudice would result; as just mentioned, a real risk would suffice (see, for example, *Sports Newspapers* ([1] *supra*) at 1208. In so far as the issue of *mens rea* on the part of the third parties is concerned, this is discussed below (at [63]-[65]).
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> 44 Carnwath LJ, in the English Court of Appeal decision of *World Wide Fund for Nature v THQ/Jakks Pacific LLC* [2004] FSR 10, after citing a passage from the judgment of Lord Nicholls of Birkenhead in the recent House of Lords decision of *Attorney-General v Punch Ltd* [2003] 1 AC 1046 ("*Punch*") at [4] (reproduced, in fact, below at [50]), succinctly referred (at 175) to this particular category of contempt as being based on "deliberate frustration"."
>
> [emphasis added]

40 SCM has submitted that the issue is with the administration of justice. [note: 16] The allegation is not that Mr Aurol has merely assisted with a breach of the order, but that he is directly responsible to the court for having interfered with judicial processes. The focus is not on the harm which may have been caused to SCM by the breach of the order, but on the potential interference with the court's ability to decide a matter it is seized of. I now turn to the facts and circumstances of this case to evaluate whether SCM has made out its case beyond a reasonable doubt.

Breach of the interim sealing order in relation to Summons 5659

41 Whatever else Mr Aurol says about the mistaken reference to the number of the affidavit and the date ascribed to it, he cannot deny that the interim sealing order in relation to Summons 5659 was clear and unambiguous. That order states: "*In the interim* (till the hearing of the application), ... together with *the summons, are to be sealed* as against non-parties to the suit." [emphasis added]

42 Mr Aurol does not say that he did not read the interim sealing order. In fact, he cannot, because he says that when he read the interim sealing order, he was mistaken, misled or confused into thinking it was Wong's 4th Affidavit that was being sealed. Mr Aurol states (at para 37 of his affidavit),

> As the Interim Order referred specifically to the date 26 November 2010, I believed that the 4th Affidavit was the document that was subject to the Interim Order, and not the summons and the 5th Affidavit.

Mr Aurol does not explain his leap in logic, *ie*, from thinking that Wong's 4th Affidavit was sealed to therefore thinking that the summons was not sealed.

43 Mr Aurol does not offer any other explanation as to how he misread or misunderstood the unambiguous order that the summons was also sealed in the interim. I therefore cannot accept his explanation, if indeed one can call it as such, (at para 37 of his affidavit) that:

> I never had the intention of breaching the Interim Order or thwarting or frustrating its purposes. With respect to the Summons I did not realise that it had been sealed.

That is his only proffered explanation. For an experienced businessman, a company director of more than ten companies, including a listed company, and someone who has obtained a law degree from England, and therefore must have had a sufficient facility in English to do so, to put forward such a bald statement is quite unbelievable and is something I am constrained to reject. Suit 351 was filed on 15 May 2010; there must have been interlocutory matters prior to December 2010. I cannot accept that Mr Aurol did not know the difference between a summons and an affidavit. Leaving that aside, the words "together with the summons, are to be sealed" as a matter of plain English cannot be confused with Wong's 4th Affidavit; the sealing order with regard to the summons could not have been expressed more clearly.

Breach of the interim sealing order in relation to Wong's affidavit

Clarity of the sealing order

44 The interim sealing order is ambiguous as to which affidavit it refers to. There is no 5th Affidavit of Mr Wong dated 26 November 2010. As noted above, there is a 4th affidavit of Mr Wong dated 26 November 2010 and a 5th affidavit of Mr Wong dated 3 December 2010. Mr Davinder Singh SC, counsel for SCM, accepts the ambiguity but points out that within the interim sealing order there is the all important description of the affidavit as a "supporting affidavit" which removes that ambiguity, *a fortiori* for a person with Mr Aurol's background and commercial experience:

> ...Mr Wong Weng Sun's 5th *supporting* affidavit … together with the summons, are to be sealed…"
>
> [emphasis added]

45 More importantly, Mr Singh SC argues, any residual doubts would have been removed by the 6 December Letter which clarified which affidavit was being sealed together with the summons and what the application was for. As noted at [18] *supra*, Mr Aurol does not deny receiving this letter sometime between 6th and 9th December 2010, and that he read it before or just before he sent the email of 9 December 2010 attaching the Summons with the interim sealing order endorsed thereon and

Wong's 5th Affidavit to Mr Raj.

The 6 December Letter

46 The 6 December Letter was sent by fax by Drew & Napier to Straits Law Practice, solicitors for PPLH (and who took instructions from Mr Aurol and one Dr Benety Chang), [note: 17] on the same day that Drew & Napier obtained the interim sealing order. This letter stated:

> SUIT NO.351 OF 2010/H (THE "SUIT")
>
> SUMMONS NO.5659 OF 2010/M (THE "SUMMONS")
>
> 1 We write to inform you that our clients filed the captioned Summons on 3 Dec 2010 seeking, *inter alia*, an order that the 4th Affidavit of Mr Wong Weng Sun, filed on 26 November 2010, be sealed from inspection by non-parties to the Suit; and that any affidavit filed in the Suit which contains references to, quotations or extracts from exhibit WWS-47 to the 4th Affidavit of Mr Wong Weng Sun be similarly sealed from non-parties.
>
> 2 The Summons has been fixed for hearing this Friday, 10 December 2010, at 9 a.m. Please be informed that the *Court* has *granted an interim order* that *until the hearing* of the Summons, *the Summons itself and the 5th Affidavit of Mr Wong Weng Sun filed in support* of the Summons *be sealed as against non-parties* to the Suit.
>
> 3 We have just received the sealed copy of the Summons from the Court and will be serving the same on you shortly via EFS
>
> [emphasis added]

47 The 6 December Letter clearly refers to the grant of an interim sealing order for "the Summons itself and the 5th affidavit of Mr Wong Weng Sun filed in support of the Summons". [note: 18] Paragraph 1 of the letter explains that the hearing date was for deciding whether these documents, along with the 4th affidavit, should be sealed. A distinction was thus drawn between the 4th and 5th affidavit. I find that the letter, which was served on Mr Aurol, would have been sufficient to dispel any ambiguity in the order itself.

The level of precision required – whether the 6 December Letter was necessary and should be referenced

48 Mr Lim SC contends that the power of committal for contempt should be a power to be exercised with great care. I agree and I do not see much dispute over that proposition. Mr Lim SC then submits that as a pre-requisite, the terms of the order alleged to have been breached must be clear and unambiguous. The interim sealing order was unclear and confusing and the 6 December 2010 Letter cannot be referred to because it is extraneous material, and parties should not need to go beyond the terms of the order itself in order to ascertain its meaning. [note: 19]

49 There is some authority in the UK for this proposition. Lord Nicholls opined in *A-G v Punch* (at [40]):

> If third parties are bound to respect the purpose of an order made in an action between other

persons, it is essential they should be able to perceive this purpose readily from reading the order.

However, the example given in *A-G v Punch* (at [35]–[36]) was of an order expressed to restrain publication of "confidential information" or "information whose disclosure risks damaging national security" or "arguably risks damaging national security". These orders were, by nature, prohibitions with an uncertain ambit and capable of differing subjective interpretation as to whether something risks damaging national security or not.

50 I entirely accept Lord Nicholls' formulation of the principle cited above. In most cases this will hold good. But each case must turn on its own facts and I can envisage some situations where a strict exclusion of any extraneous documents or material other than the order itself would not be right. One clear exception is where the litigant is a company and companies act through their directors or officers. A director or officer is not, in such situations, an uninformed third party. As this issue does not directly arise here, I say no more. However this is not at all a case like that of *A-G v Punch*. Other than the date being wrong, which I shall deal with below, the deponent of the affidavit was named in the order and it was described as the 5th *supporting* affidavit. There was no subjective interpretive exercise required. I accept that upon considering the interim sealing order, a query will arise: "But there is no 5th Affidavit of Mr Wong dated 26 November 2010?" But is there any evidence that Mr Aurol sought any clarification on this point? It appears not, but I hasten to add that I do not find that fact, in itself, to be fatal to his defence.

51 This must be contrasted also to cases of injunctions where the precision of the terms of the order is all important to determine what is the ambit of the injunction, what is prohibited and what is not. In the case of *Mareva* injunctions, precision is required to know what assets are caught by the injunction, what are not and the position of third parties. In *Z Ltd v A-Z and AA-LL* [1982] 1 QB 558 ("*Z Ltd*") at 572, quoted with approval in *Pertamina* (at [42]), the court explained that any injunction has an "immediate effect on every asset of the defendant covered by the injunction". A bank that liquidates these assets is thus not guilty of aiding a disobedience of an order, but directly guilty of contempt of court, since the order attaches to the property and thus can bind third parties dealing with that property. Precision is important because it determines which property is affected, and thus determines the situations in which a third party may become bound. Whether Mr Aurol is directly bound is not in issue here; rather, the important question is whether the order was clear enough for a third party to understand its purpose.

52 The more important question to be asked is: what does the order prohibit and does it do so clearly? An order cannot be disobeyed if it is unclear what is required to constitute obedience. That must be clear on the face of the order when the contempt proceedings relate to disobedience of an order. I mention at this juncture that as this concerns contempt by interference, a related pertinent question must be asked – what is the purpose of the order and how does disobedience therefore result in a real risk of interference in the administration of justice?

53 SCM is right to point out [note: 20] Lord Nicholls' dicta in *A-G v Punch* at [39]:

> ... Fundamental to the concept of contempt in this context is the intentional impedance or prejudice of the purpose of the court.

Lord Nicholls also quoted, with approval, Lord Oliver of Aylmerton in *The Spycatcher* at 223:

> 'Purpose' in this context, refers, of course, not to the litigant's purpose in obtaining the order or

in fighting the action but to the purpose which, in seeking to administer justice between the parties in the particular litigation of which it had become seised, the court was intending to fulfil.

54 I find that the purpose of the interim sealing order is clear. What is sought to be protected by the interim order is the eventual ability of the court to decide whether parties should be prevented from disclosing the information contained in Wong's 4th and 5th Affidavits, and the summons.

55 If the interim order stood on its own, with its mistake as to the date of Wong's 5th Affidavit, and Mr Aurol had been an unsuspecting third party with no connection to the case I may have been prepared to take a different view. But for the reasons that I will now go into, Mr Aurol was not such an unsuspecting third party, unconnected to the proceedings comprised in Suit 351. Neither were the surrounding facts and circumstances, including matters like the 6 December Letter from Drew & Napier to Straits Law Practice, extraneous material which I should exclude. Just as circumstantial evidence can prove guilt beyond reasonable doubt, so can surrounding facts and circumstances establish guilt beyond a reasonable doubt in contempt proceedings.

Wong's 5th Affidavit and whether there was an intentional breach of the interim sealing order

56 As noted above, SCM has to prove, beyond a reasonable doubt, that Mr Aurol breached the interim sealing order and had the specific intent to interfere with the administration of justice. For the reasons that I will now go into, I find that SCM has satisfied both these requirements.

57 Mr Aurol is not an unconnected and uninformed third party as far as Suit 351 is concerned. He is a director and executive of PPLS, an executive director of PPLH, and a director and Chief Operating Officer of its parent, Baker. He gives instructions on behalf of PPLH to its lawyers, Straits Law Practice. He knows what is going on and is involved in the litigation in Suit 351.

58 I also find, on the evidence before me, that he is an experienced company director, holding directorships in more than ten companies, including a listed company, and is a businessman who has a tertiary degree in law. Although Mr Aurol's law degree is described as "an Honours degree in Law from the University of London" on Baker's website, I accept that it is an external law degree and that he has never practised as a lawyer and therefore would not be expected to be familiar with legal matters and proceedings as a practising lawyer would. Nonetheless, he clearly is not a disadvantaged or misinformed person or even a layman who may not be expected to be *au fait* with matters in relation to companies, matters of commerce and basic legal matters including some basic knowledge of commercial litigation.

59 I agree with Mr Singh SC's characterisation of Mr Aurol's affidavit as a very carefully crafted affidavit to obfuscate rather than explain why it is that he came to misread the interim sealing order. He further makes bald assertions without any supporting facts or evidence. This omission is all the more glaring because the supporting facts and evidence can be put forward without much difficulty.

60 Whilst Mr Aurol makes much of the mistake in the wrong date being ascribed to Wong's 5th Affidavit, his glossing over of the 6 December Letter cannot be but noticed. I have already dealt with the point that Mr Aurol could not have made a mistake as to the interim sealing of the summons, nor could he have missed the word "supporting" affidavit when reading the interim sealing order. If Mr Aurol had read the 6 December Letter, then that would have removed all ambiguity; he could not have been in any doubt that Wong's 5th Affidavit in support of the summons and the summons itself was, in the interim, sealed and that the application was to seal Wong's 4th Affidavit and all future references to exhibit WWS-47 and its contents.

61 Mr Aurol's only explanation is a bland concession that he had read the letter, but had not "read it in detail" and nor did he have it within his contemplation at the time of his conversation with Mr Raj. [note: 21]

62 Whilst it is not disputed that Mr Aurol received the 6 December Letter sometime between 6th and 9th December 2010, he has chosen not to say when he received it, when he read it, and in what circumstances he read it so as to show why he had not "read it in detail". Nowhere does he explain what he understood that letter to mean, or otherwise explains why, having read it, he thought it was irrelevant or forgot all about it. That letter was a short one-page, three-paragraph, straightforward letter; there was nothing complex about its contents and it involved an application which the Defendants had to decide whether to contest or agree to. Why the contents of that important letter were not in his contemplation when he spoke to Mr Raj is also not explained or elaborated upon. I do not even categorise that as an explanation, because I read this as a bald and evasive statement.

63 Next, Mr Aurol, says (at para 25 of his affidavit): "On 9 December 2010, I was reading the backing sheet of Summons No.5659/2010M, which contained the Interim Order, when I received a telephone call from Mr. Conrad Jayaraj ("Conrad")." I find that rather coincidental, but these things happen in life, and I cannot weigh that against Mr Aurol. However I do accept Mr Singh SC's point that if Mr Aurol wanted to support his case that Mr Raj coincidentally telephoned him, and not the other way around, he could simply have produced his telephone records to put that part of his story on a solid footing. For reasons best known to him, Mr Aurol chooses not to. Mr Aurol then claims (at para 36 of his affidavit) that in providing these documents to Mr Raj: "I did not tell him that I was providing him with the summons and the 5th affidavit on the basis that he would keep my identity strictly confidential." However this is contradicted by Mr Raj at para 27 of his affidavit filed on 23 February 2011 in OS 74 (SCM's application to compel Mediacorp to reveal its source for the article), where Mr Raj deposes: "They were provided to me by my source on the basis that I would keep his/her identity strictly confidential." I have no hesitation in accepting Mr Raj's evidence over Mr Aurol's evidence on this score. His employers, Mediacorp, resisted the disclosure before the registrar and appeal to a judge in chambers.

64 Mr Aurol sent the summons and Wong's 5th Affidavit to Mr Raj by email. If Mr Aurol was only given paper copies of these documents, he would have had to scan them before attaching them to his email to Mr Raj. If he was given soft-copies, he would have to copy-and-paste them as attachments to his email before sending them to Mr Raj. Either way, these would have been deliberate actions as compared to a quick unthinking click on his mouse and forwarding an email accidentally, which is not his case, or before he had much time to think about it, in which case he has to explain his conduct after he had time to reflect upon what he had done.

65 When he was asked to produce the email, Mr Aurol laconically said at para 46 of his affidavit: "I do not have it as I had deleted it from my computer." [note: 22] He chooses not to explain when or why he deleted it. The silence is deafening. He does not say it was part of his normal practice to delete old emails, or that he did so weekly or monthly or whether his email box was too full at that time or whether there was any other reason to do so. He only adds that he contacted his email service provider, Pacific Net, and was told by Mr Hassan that retrieval of his email was not possible. Mr Singh SC says this is hearsay and inadmissible. Even if I put that valid objection under O 41 r 5 to one side, Mr Aurol's explanation is less than feeble.

66 Mr Aurol claims that "the contents of the email were innocuous." [note: 23] I do not believe him.

The language used in that email and other indications therein could have exonerated him, showing that he did so unknowingly, or it may show that he did so surreptitiously, knowing he was disobeying the interim sealing order and asking Mr Raj to keep his identity confidential. Mr Aurol says that if he really meant to disobey the interim sealing order, he would hardly have sent the backing sheet of the summons with the interim order endorsed on it. That rhetorical question is nothing but an attempt to ignore answering the accusation that he could not have made the mistake he did about the sealing of the summons and Wong's 5th Affidavit. What I find to be the real truth is that because he knew that the summons and Wong's 5th Affidavit were sealed, he asked Mr Raj to keep his identity strictly confidential and sent the backing sheet as well. But what Mr Aurol had already done was to pique Mr Raj's interest in the affidavit by referring to the comment about journalists and Mr Raj read Wong's 5th Affidavit in detail to publish his article, but did not read the summons at that point in time.

67 Mr Aurol disingenuously says he passed the documents on to Mr Raj, a close and long standing friend, over something they had joked about – preventing journalists like Mr Raj from reporting on matters already disclosed in an open affidavit. Mr Aurol then says, he never asked Mr Raj to write an article. However the indications are all in the opposite direction. Mr Aurol himself says he brought paragraph 21 of Wong's 5th Affidavit to Mr Raj's attention; that paragraph set out Mr Wong's reasons for sealing – a high likelihood of journalists seeking to examine the affidavits to find material for news articles, which would then find their way into news articles. He did that deliberately to pique Mr Raj's interest. Mr Raj had previously written an article in not too flattering terms about SCM and Suit 351. I can see little else than that Mr Aurol intended that Mr Raj write an article. You do not wave a red cloth in front of a bull and expect it to ignore that instigation.

68 Just as Mr Aurol intended, an article did appear in the TODAY newspaper with the headline: "SembMarine boss rushes to stop affidavit leak". That article also quoted from Wong's 5th Affidavit.

69 There is another aspect which clearly shows that Mr Aurol's actions were not innocent and unintentional as far as the interim sealing order was concerned. I have accepted Mr Raj's statement in his affidavit that 'his source' asked him to keep his identity strictly confidential. When SCM took out OS 74 to compel Mediacorp to reveal its source, Mr Aurol never came forward to own up, explain his confusion and apologise. If he truly did not realise that these documents were sealed then, upon realisation of his mistake, he should have come forward at the first opportunity to explain what had happened. At the very least, if his story was true, he must have re-read the summons and the interim sealing order at that point in time. He says nothing about this period in his affidavit.

70 Instead he chose to lie low. When AR Tan ruled that Mediacorp had to reveal its source, he still chose to stay out of sight. It was only when Prakash J confirmed the AR's order, and it would only then be a matter of time before his identity would be made known, that he came forward to own up and apologise. I do not accept Mr Aurol's explanation that he only came forward because he did not want his close friend to lose his job to protect his name. [note: 24] I also find this to be implausible. I am sure Mr Raj would have been under a lot of pressure when SCM took out the application for TODAY newspaper to reveal its source. That pressure must have increased considerably when AR Tan made the order for disclosure. Yet, Mr Aurol only came forward when he knew that he could not longer conceal that he was the "source" of the newspaper article. There was a gap of almost 5 months between SCM's first request to Mediacorp to reveal its source (14 December 2010) and Mr Aurol coming forward (5 April 2011). I find that in the same vein, as a director of PPLH, he instructed its lawyers to consent to the sealing of Wong's 4th Affidavit to camouflage the fact that he was the 'source' for Mr Raj's article.

71 Straits Law Practice wrote to the court on 5 April 2011 tendering apologies for the breach on behalf of PPLH and Mr Aurol, the director who had been giving them instructions. The terms of that letter are equally carefully crafted and evasive (I make no criticism of Straits Law Practice as they were duty bound to put forth the best case for their clients within their professional constraints). Interestingly, that letter states that Mr Raj only asked for a copy of the summons and Mr Aurol sent the summons and Wong's 5th Affidavit. That is quite inexplicable. The letter claims that neither PPLH nor Mr Aurol had any intention of breaching any order of court. The letter repeats the mistake in the interim sealing order and how Mr Aurol made a mistake. That explanation made no reference as to when Straits Law Practice had sent Mr Aurol the 6 December Letter. Having given their explanation on how the mistake, implying inadvertence, arose, they then went on to explain away the 6 December 2010 Letter. That explanation was very carefully crafted, completely evasive and unconvincing as an explanation and prelude to his apology:

> We have ***now*** reviewed with our clients and Mr Aurol the relevant correspondence, including the letter dated 6 December 2010 from M/s Drew & Napier to us. While that letter refers to the sealing of the affidavit in support, the interim order refers to the affidavit dated 26 November 2010. In this regard, the 6 December 2010 letter was not within Mr Aurol's contemplation when he was considering the interim order, when Mr Jayaraj called.
>
> [emphasis added]

72 The following is clear:

(a) The entire letter does not say when Straits Law Practice had sent Mr Aurol the 6 December Letter, nor does it say when Mr Aurol read the latter document for the first time, or indeed whether he only read it once or whether it was more than once;

(b) In the paragraph quoted above, the letter misleadingly uses the word "now" in the first sentence, implying in context at first blush that the 6 December Letter was only 'now' brought to Mr Aurol's attention; yet if it came to scrutiny, it could easily be said that it did not make that claim;

(c) The second sentence is a complete *non sequitur*; the 6 December Letter is a straightforward letter, there was nothing complex nor ambiguous and it clearly states what is sealed; there is absolutely no explanation why it was mis-read, if indeed that was possible for someone like Mr Aurol, or misunderstood (see [73] below);

(d) The letter does not document any queries raised by Mr Aurol to his lawyers on the mistake in the sealing order, and it is therefore quite legitimate to infer there were no such queries raised with the lawyers;

(e) The letter does not explain why for 4 months Mr Aurol kept silent and did not come forward to acknowledge his mistake, and he only did so after Prakash J affirmed AR Tan's order for disclosure; and

(f) The third sentence is another *non sequitur* with words but no explanation as to why the 6 December Letter was not within Mr Aurol's "contemplation" when he spoke to Mr Raj.

73 I need to point out, in relation to sub-paragraph (c) above, another inconsistency. In Mr Aurol's 'apology', Straits Law Practice makes careful reference to the ambiguity in relation to the affidavit, and not the summons.

> Mr Aurol had thought that, as the Summons was for the sealing of the affidavit dated 26 November 2010 (the document containing the confidential information) and as *the interim order referred specifically to the affidavit dated 26 November 2010*, this affidavit was the document that was subject to the order, and not the application and the supporting affidavit.
>
> [emphasis added]

It will be noted that from the mistake in the date of the affidavit, that apology slipped in "the application" (as contrasted with the word "summons" used in Mr Aurol's affidavit), without explaining how the mistake in the dates also extended to the 'application'. More importantly, Straits Law Practice replied to Drew & Napier's 6 December Letter on the same day, and stated that:

> …as at the time of this letter, we have yet to be served with the Summons, your client's *affidavit in support of the said Summons* and the Interim Order which your clients had obtained.
>
> [emphasis added]

These lawyers, who were advising PPLH, were certainly in no doubt as to which affidavit was being sealed and what the interim sealing order meant.

74 I can only draw the conclusion that Mr Aurol had no real explanation and all Straits Law Practice's skill with words could not help him craft an explanation when there really was none.

75 Accordingly, I find that the interim sealing order, taken together with the 6 December Letter, which Mr Aurol accepts he read, clearly referred to Wong's 5th Affidavit, and that the order in relation to this affidavit was breached when Mr Aurol made reference to paragraph 21 of the same in his conversation with Mr Raj, and again when he forwarded the summons and affidavit to Mr Raj via email.

76 Taking all these facts and circumstances into consideration, I find and hold it proved beyond a reasonable doubt that Mr Aurol knew the purpose and effect of the sealing order; he proceeded to deliberately disobey, interfere and undermine the purpose and effect of that order by calling his journalist friend, Mr Raj, who had written articles previously on SCM and Suit 351, deliberately piqued Mr Raj's interest in the application, which resulted in an article that was at the very least, unflattering to SCM, all of which was to serve his own ends and purposes.

77 It is also clear to me that his relationship with SCM was acrimonious for some time, he stood to gain a large sum of money with the sale of PPLH to YZJ; the transaction was being challenged, the offer from YZJ was reduced from US$255 million to US$116 million, he had been unceremoniously removed as a director from PPLS, a company he had started, and he would have wanted to embarrass SCM by making it look foolish and held up to ridicule and question in the eyes of the investing public and the public generally.

Whether there was a "real risk" of interference with the administration of justice

78 I now turn to whether there was a real risk that the administration of justice would be interfered with by Mr Aurol's acts: see *Pertamina* at [43], [63] and [64].

79 Mr Aurol submits that I should consider this to be a mere technical breach of the order, and is thus undeserving of an order for committal. Mr Aurol submits that a case of technical contempt arises where there is no significant adverse effect on the administration of justice. [note: 25]

80 I find that neither of the cases Mr Aurol raises in support of a finding of a technical breach supports this position. In the case of *Attorney-General v Newspaper Publishing Plc and others* [1997] 1 WLR 926 [note: 26] ("*A-G v Newspaper Publishing No 2*"), the court had ordered, (the "July 1995 Order"), that a number of sensitive documents, the subject of public interest immunity certificates, be disclosed in edited and summary form. The Court of Appeal, involving appeals against convictions under the Export of Goods (Control) Orders 1987 and 1989, gave judgment in November 1995 in open court, allowing the appeals and quoted short passages from two of those documents. The newspaper published in facsimile form marginally more extensive extracts, (obtained from another source earlier on), from the two documents quoted in the Court of Appeal's judgment. The Attorney-General applied to commit the publishers of the newspaper, the editor and the journalist for contempt. The court concluded (at 936) that the reproduction of the form of documents which had, in all likelihood, been read in open court during the proceedings, did not amount to a significant interference with the administration of justice, but was a mere technical breach. The purpose of the order was to ensure that the compulsory disclosure of confidential documents would be no wider than what was necessary to promote the just determination of the proceedings, and the purportedly contemptuous act did not affect this purpose. The breach was minimal since the additional material was slight and harmless. Further, the evidence established ignorance of the July 1995 Order. All in, the acts did not amount to a significant interference with the administration of justice. The case is clearly distinguishable on its facts and does not support Mr Aurol's proposition of "mere technical breaches".

81 The case of *Her Majesty's Attorney General v Michael John Pelling* [2005] EWHC 414 [note: 27] ("*Pelling*") also does not support Mr Aurol's submission that this should be a technical breach. In that case, the defendant had published in a journal and on the internet a judgment given seven years prior in private in proceedings brought under the Children Act 1989. The Court held (at [40]) that the purpose of the "cloak of privacy" was "the protection of the interests of the minor in question, not the adjudication without interference of the issues arising for decision." Clearly there could be no suggestion that the defendant's publication in April 2003 of a judgment given in August 1996 interfered or might have interfered with the fair disposal proceedings before the judge in 1996. The Court went on to doubt whether the alleged contemptuous act qualified as an interference with the administration of justice at all. A mere technical breach was found in *Pelling* because there was no interference with the administration of justice. *Pelling* does not fit with the paradigm in this case, where actual interference is alleged. Neither of the cases cited by Mr Aurol were held to be interferences with the administration of justice, and do not support his contention.

82 Lord Diplock, in *A-G v Times Newspapers* at 309B–D, formulated three categories where there would be an interference with the administration of justice:

> The due administration of justice requires *first* that all citizens should have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; *secondly*, that they should be able to rely upon obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in courts of law; and *thirdly* that, once the dispute has been submitted to a court of law, they should be able to rely upon there being no usurpation by any other person of the function of that court to decide it according to law. Conduct which is calculated to prejudice any of these three requirements or to undermine the public confidence that they will be observed is contempt of court.
>
> [emphasis in italics in original]

This case falls within the third category of substantive interference (see also [33]–[40] *supra*). . The paradigm example of this is *The Spycatcher* case. The House of Lords held that criminal contempt had been made out as the purpose of Millet J's injunctions (which was to preserve the confidentiality of the material in "Spycatcher" pending trial of the actions) was completely destroyed by the publication of the material in "The Sunday Times".

83 In my view, as set out by Lord Diplock in *A-G v Times Newspapers*, an act carries a real risk of prejudice or interference with the administration of justice if it has the effect of destroying or nullifying either the purpose of the trial, pursuant to which the order of court was made, or the order itself.

84 Applying this to the facts of this case, I find that Mr Aurol's breach of the interim sealing order constituted a substantial interference with the due administration of justice, and was no mere technical breach. The purpose of the interim sealing order was clearly threefold:

(a) First, to avoid non-parties to Suit 315 from becoming aware of the fact that SCM had sought to seal Wong's 4th Affidavit.

(b) Secondly, to avoid non-parties to Suit 315 becoming aware of the sensitive matters contained in Wong's 5th Affidavit, including:

(i) The fact that the confidential policies of SCM were set out in Wong's 4th Affidavit which had already been filed in court; and

(ii) The manner in which the confidential policies could be deployed to the detriment of SCM and its subsidiaries.

(c) Thirdly, and more importantly, the court's interim order kept the summons and Wong's 5th Affidavit sealed so that it could, upon hearing both parties, decide whether or not it should seal Wong's 4th Affidavit.

Each one of these three purposes was thwarted once Mr Raj published his article in the TODAY newspaper and Mr Raj was only able to do so because Mr Aurol sent him the summons and Wong's 5th Affidavit. The public became immediately aware that SCM had sought to seal Wong's 4th Affidavit, and that it contained confidential policies. The public was also immediately alerted to the manner in which the confidential policies could be deployed to the detriment of SCM and its subsidiaries.

85 The seriousness of Mr Aurol's breach, which I have found to be cynical, deliberate and calculated, lies in the fact that the whole basis or purpose of Summons 5659 was to bring before the court an application to seal the affidavits and summons from non-parties. The interim order was intended to preserve the *status quo* so that there would be something for the court to decide. When the interim sealing order was breached, there was no longer an issue for the court to decide because the confidential documents were no longer confidential and there would be no point in bolting the stable door after the horse has run off.

86 The key in this case is the irreversibility of the situation after Mr Aurol used Mr Raj to make public what was meant to be kept sealed until the court could decide the matter. Unlike a *Mareva* injunction, where the court can order costs, or for monies to be seized or paid from other sources, a breach of a sealing order cannot be so compensated, nor can there be further remedial orders issued

by the court. There cannot be a case of disobedience of an interim sealing order like the present case that does not usurp the court's power of determination.

87 This is not just a mere risk of interference in the administration of justice, let alone a technical breach; this is a substantial interference with the decision-making power of the courts and therefore the administration of justice. I find that SCM has made out a real and substantial (and not merely a risk of) interference with the administration of justice by usurpation of one of the Court's functions.

Conclusion

88 I find that SCM has proved its case beyond a reasonable doubt and I accordingly find Mr Aurol guilty of contempt of court. I will hear parties on the appropriate sentence at a date to be fixed by the Registrar.

[note: 1] Wong Weng San's 1st affidavit, 10 June 2011, para 17.

[note: 2] Bundle B, "Sealed Documents for use in OS 465/2011/E", tab 4.

[note: 3] Wong Weng San's 1st affidavit, 10 June 2011, "WWS-5", para 2.

[note: 4] Applicant's sub missions, page 50, paras 160-161; Notes of Evidence, 13 Feb 2012, p 37.

[note: 5] Applicant's submissions, page 54, para 173, Notes of Evidence, 13 Feb 2012, p37.

[note: 6] Wong Weng San's 1st affidavit, 10 June 2011, "WWS-19"; Applicant's submissions, p 55, para 180.

[note: 7] Applicant's submissions, page 55, para 179.

[note: 8] *Ibid.*, page 41, para 134.

[note: 9] Anthony Sabastian Aurol's Affidavit, 18 July 2011, pp 8 and 10, paras 23 and 30.

[note: 10] *Ibid.*, p 10, para 34.

[note: 11] *Ibid.*, p 9, para 29.

[note: 12] *Ibid.*, p 10, para 31.

[note: 13] *Ibid.*, p 9, para 27.

[note: 14] *Ibid.*, p 11, para 36.

[note: 15] *Ibid.*

[note: 16] Applicant's submissions, p 18, paragraphs 71 and 72.

[note: 17] See Respondent's Submissions, para 77.

[note: 18] Wong Weng San's 1st affidavit (10 June 2011), WWS-5 at p 106, para 2.

[note: 19] Notes of Evidence, 13 Feb 2011, p 28; Respondent's submissions, paras 46 and 47.

[note: 20] Applicant's submissions, p 25, paras 90 to 91.

[note: 21] Anthony Sabastian Aurol's Affidavit, 18 July 2011, p 10, para 34.

[note: 22] *Ibid.*, p 13, para 43.

[note: 23] *Ibid.*

[note: 24] *Ibid.*, para 45.

[note: 25] Notes of Evidence, 13 Feb 2011, p 33. Also see Respondent's submissions, p 44, paras 94 and 95.

[note: 26] Respondent's submissions, pp 44-46.

[note: 27] Respondent's submissions, p 47, para 97.