IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 20

Suit No 542 of 2012
(Summons No 5464 of 2017)

Between

PT SANDIPALA ARTHAPUTRA

… Plaintiff

And

(1) STMICROELECTRONICS ASIA PACIFIC PTE LTD

(2) OXEL SYSTEMS PTE LTD

(3) VINCENT PIERRE LUC, COUSIN

… Defendants

And Between

OXEL SYSTEMS PTE LTD

… Plaintiff (by Counterclaim)

And

(1) PT SANDIPALA ARTHAPUTRA

(2) PAULUS TANNOS

(3) CATHERINE TANNOS

(4) LINA RAWUNG

… Defendants (by Counterclaim)

GROUNDS OF DECISION

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Introduction

1 Summons No 5464 of 2017 arises out of High Court Suit No 542 of 2012 ("the Substantive Proceedings"). The Substantive Proceedings concerned a dispute over a contract entered into around 9 December 2011 between the plaintiff, PT Sandipala Arthaputra ("Sandipala"), and the second defendant, Oxel Systems Pte Ltd ("Oxel"), for the supply of microchips ("chips") from the first defendant, STMicroelectronics Asia Pacific Pte Ltd ("ST-AP"). These chips were needed to fulfil Sandipala's obligations under an Indonesian Government contract or award to produce electronic identification cards for its citizens.

2 In the Substantive Proceedings, Oxel counterclaimed against Sandipala as well as Paulus Tannos ("Paulus"), Catherine Tannos ("Catherine") and Lina

Rawung ("Rawung") for damages and sums due and owing to Oxel by Sandipala. The claim against Paulus, Catherine and Rawung was for conspiracy to injure Oxel by unlawful means.

3 I dismissed Sandipala's claims in the Substantive Proceedings on 12 May 2017. Oxel obtained judgment on the counterclaim for some US$21.822m plus interest against Sandipala, Paulus and Catherine. Oxel's counterclaim against Rawung was dismissed. The complete facts are set out in my earlier judgment, *PT Sandipala Arthaputra v STMicroElectronics Asia Pacific and others* [2017] SGHC 102 ("the Substantive Judgment"), and my supplemental judgment on interest, *PT Sandipala Arthaputra v STMicroElectronics Asia Pacific and others* [2017] SGHC 191.

4 Sandipala, Paulus and Catherine filed an appeal on 12 June 2017 against my substantive decision. No application was filed to stay the execution of the judgment in the Substantive Proceedings until 9 October 2017 ("the Stay Application"). By this time, Oxel had already applied for and obtained orders of court for the examination of Paulus and Catherine as judgment debtors.

5 The Stay Application was dismissed on 27 November 2017. Leave was granted to Oxel to commence committal proceedings against Paulus and Catherine for breaches of examination of judgment debtor orders ("the EJD Orders"). I heard Summons No 5464 of 2017, which was for an order of committal, on 12 January 2018.

6 After hearing the parties and considering the submissions, I found Paulus and Catherine to have committed wilful breaches of the EJD Orders and guilty of contempt of court. In the circumstances, I imposed a custodial sentence of seven days' imprisonment each, commencing 15 January 2018, with costs.

On being informed that Paulus and Catherine intended to appeal the committal decision, I ordered a stay of the order of committal until the hearing of the appeal of the committal order ("the Committal Appeal"). Certain consequential or supplementary orders were also made. These will be summarised later.

7 I now provide the grounds for my committal decision.

Background facts

8 The key background facts behind the substantive dispute are set out at [10]–[48] of the Substantive Judgment. For present purposes, it is sufficient to summarise the relationship between Sandipala, Paulus and Catherine. Sandipala is an Indonesian company that was incorporated in 1987. On or about 19 January 2011, Paulus purchased majority shares in Sandipala. Most of the purchased shares were placed under the name of his wife, Rawung. Paulus injected considerable capital into Sandipala. As at 4 March 2011, Sandipala's management board consisted of Paulus (President Director), his daughter Catherine (Director), Pauline Tannos (Director) and Rawung (President Commissioner).

9 In or around June 2011, the Indonesian Government awarded a very substantial contract for the production and supply personalised electronic identification cards to a consortium of companies, of which Sandipala was a member. In brief, within the consortium, Sandipala was to produce and personalise large quantities of electronic identification cards in accordance with the tender award. To this end, Sandipala entered into an agreement with Oxel for some 100 million electronic chips encoded with a particular operating system ("the Oxel Contract"). These electronic chips were in turn sourced from and produced by the STMicroelectronics Group of companies, of which ST-AP

is a member. The third defendant in the Substantive Proceedings, Vincent Pierre Luc Cousin ("Cousin"), is an employee of ST-AP.

10 Oxel is a Singapore company in the business of supplying electronic chips and had licensing rights to sell a software suite known as "PAC". Disputes arose when Sandipala "discovered" that the electronic chips ordered and supplied could not be used for the personalised electronic identification card project that had been awarded. It is sufficient to note that there was a considerable dispute as to why the chips supplied could not be used and who was responsible. It was in this context that Sandipala brought the Substantive Proceedings against ST-AP and Oxel. The substantive claim was dismissed. Oxel succeeded in the counterclaim against Sandipala under the Oxel contract. Oxel also succeeded in the claim against Paulus and Catherine for conspiring through unlawful means to cause Sandipala to breach the Oxel contract.

Timeline of key events after delivery of the Substantive Judgment

11 It is convenient to set out a timeline of the key events post-delivery of the substantive judgment which culminated in Oxel's application for an order of committal against Paulus and Catherine. To be clear, the timeline set out below does not include certain proceedings taken out by ST-AP and Cousin against Sandipala concerning an anti-suit injunction. These will be briefly touched on later.

Date	Event
12 May 2017	Substantive Judgment was delivered.
24 May 2017	Oxel sent a letter of demand to the judgment debtors.

2 June 2017	Oxel filed Summons No 2543 of 2017 ("SUM 2543") for the examination of Paulus and Catherine as judgment debtors and officers of Sandipala ("EJD 1").
5 June 2017	EJD 1 was granted. Paulus and Catherine were ordered to attend the examination of judgment debtor hearing ("EJD hearing") on 19 June 2017.
10 June 2017	Oxel's counsel, Drew & Napier LLC ("D&N"), sent a letter to Paulus and Catherine's counsel, Gurbani & Co LLC ("G&C"), seeking confirmation as whether GC had instructions to accept service of the order on 5 June 2017. No response was received. D&N made unsuccessful attempts to serve the order on Paulus and Catherine by personal service.
12 June 2017	Sandipala, Paulus and Catherine filed their appeal against the Substantive Judgment.
19 June 2017	Oxel obtained adjournment of the 19 June 2017 examination hearing to 10 July 2017 as they had not been able to effect service. Paulus, Catherine and G&C did not attend the hearing on 19 June 2017.
21 June 2017	Oxel obtained an order re-fixing the date of EJD hearing to 17 July 2017 on the account of its counsel's schedule.
21 June 2017 to 3 August 2017	Oxel made further unsuccessful attempts to effect personal service on Paulus and Catherine. Oxel requested and obtained an adjournment of the 17 July 2017 EJD hearing to 21 August 2017 to make further attempts to effect service and apply for such orders on service as appropriate.
21 August	Oxel was still unable to effect personal service.

2017	The EJD hearing was adjourned again to enable Oxel to make further attempts to effect service and to apply for an order of substituted service. The court ordered Paulus and Catherine in their capacities as judgment debtors and as officers of Sandipala to attend for an EJD hearing on 25 September 2017. This order was endorsed with a penal notice.
24 and 25 August 2017	Oxel made two more unsuccessful attempts to effect personal service.
30 August 2017	Oxel applied for leave to serve the 21 August 2017 order and questionnaires ("the EJD Questionnaires") by way of substituted service on G&C.
5 September 2017	The court granted Oxel's application for substituted service and observed that G&C was still acting for the judgment debtors and that Paulus and Catherine were evading service by not instructing solicitors to accept service or by evading personal service.
8 September 2017	Oxel effected substituted service of the 21 August 2017 order on G&C and enclosed the EJD Questionnaires.
25 September 2017	Paulus, Catherine and G&C did not attend the EJD hearing. Shortly before the hearing, D&N (for Oxel) called G&C to enquire whether Paulus and Catherine would be attending court. The reply was "I think my clients are in China" and "I think they are not turning up". Answers to the EJD Questionnaires were not provided. The court ordered Paulus and Catherine to attend on 11 October 2017 for examination and to produce the books and documents on matters relating to the EJD hearing.
6 October	Oxel served the 25 September 2017 order by

2017	letter and attachments to G&C, endorsed with the penal notice.
9 October 2017	The judgment debtors filed the Stay Application against: (i) execution of the judgment and (ii) enforcement of the 25 September 2017 order, pending the substantive appeal.
11 October 2017	Again, Paulus and Catherine failed to appear at the EJD hearing and did not provide answers to the EJD Questionnaires. Shortly before the hearing, D&N called G&C and enquired whether Paulus and Catherine were attending. D&N was informed that Paulus and Catherine would not be attending and that the Stay Application had been filed. The court was informed. D&N put on record that this was the second breach by Paulus and Catherine of an Order of Court. The court ordered Paulus and Catherine to attend for an EJD hearing on 1 November 2017.
24 October 2017	Oxel served the 11 October 2017 order by letter and attachments to G&C, endorsed with the penal notice and enclosing the EJD Questionnaires.
31 October 2017	Oxel applied for leave to commence committal proceedings (Summons No 4987 of 2017).
1 November 2017	Paulus and Catherine were again absent at the EJD hearing. G&C was however present and informed the court that his instructions were to request adjournment until after the Stay Application was determined. G&C informed the court that whilst Paulus intended to appear at the next EJD hearing, Catherine did not intend to attend any EJD hearing and that she had concerns about costs of travelling to Singapore. The EJD hearing was adjourned to 1 December 2017 and Paulus and Catherine were to answer

	the EJD Questionnaires by 27 November 2017.
10 November 2017	Oxel filed its second application for leave to commence committal proceedings (Summons No 5174 of 2017).
27 November 2017	I dismissed the Stay Application, and granted leave for Oxel to commence the committal proceedings.
27 November 2017	Catherine files her fifth affidavit setting out reasons why she was unable to attend the EJD hearings. This affidavit was affirmed by Catherine in Hong Kong. Her address in this affidavit was given as a place in Indonesia. This affidavit was filed in respect of SUM 2543. Paulus and Catherine provided answers to the EJD Questionnaires.
1 December 2017	Paulus and Catherine were absent at the EJD hearing. Counsel from G&C informed the court that Paulus had informed him on 27 November 2017 that "he was travelling to the United States for an emergency family matter."[1] No explanation was provided for Catherine's absence.
6 December 2017	Paulus filed his 48th affidavit in which he set out reasons why he was unable to answer questions in the EJD Questionnaires and why he was unable to attend on 1 December 2017 (namely, to attend a family gathering overseas to commemorate the one-year anniversary of his mother's passing). This affidavit was affirmed/sworn in India and was made in respect of SUM 2543.
29 December 2017	Paulus and Catherine attended the EJD hearing. They did not produce any documents. After a

[1] Affidavit of Jaspreet Singh Sachdev dated 22 December 2017, para 5.

	period of questioning Paulus, the EJD hearing was adjourned. Paulus and Catherine were ordered to produce certain documents by way of an affidavit to be filed and served by 12 January 2018. Examination of Paulus was to continue on 20 February 2018, followed by an examination of Catherine. The latter date was requested by Paulus and Catherine. The court rejected their request to continue by video link.
9 January 2018	Paulus filed his 50th affidavit. This affidavit was filed in respect of SUM 2543 in connection with the EJD Order and production of documents, and a request that Paulus and Catherine be allowed to give evidence in writing or by video link on 20 January 2018. This affidavit was sworn by Paulus in Singapore but was not filed in respect of the committal proceedings. Paulus's address as set out in this affidavit was in Singapore.
12 January 2018	I heard the present application for committal. Paulus and Catherine attended the hearing.

Separate committal proceedings in respect of Paulus's and Catherine's non-compliance with an anti-suit injunction

12 It will be noted that a different set of committal proceedings had been brought by ST-AP and Cousin in respect of Paulus and Catherine's alleged breaches of an anti-suit injunction. I will briefly set out the related procedural history here.

13 On 4 August 2015, an *ex parte* anti-suit injunction was granted in respect of certain proceedings commenced in Indonesia by Sandipala against ST-NV (the parent company of ST-AP), Cousin and another Indonesian company (Perushaan Umum Percetakan Negara Republik Indonesia) that was a member of the consortium which won the Indonesian tender. A final anti-suit injunction

was granted on 4 September 2015. The decision was upheld on appeal on 3 February 2016. By then, leave had been granted on 4 December 2015 for ST-AP and Cousin to commence committal proceedings against Paulus and Catherine for alleged breaches of the anti-suit injunction.

14 Given that the Substantive Proceedings were due to commence on 14 March 2016, the committal proceedings were adjourned to after the Substantive Proceedings. On 22 May 2017 (after delivery of the Substantive Judgment), the EJD hearing for the costs of the anti-suit injunction was adjourned as Paulus and Catherine were outside Singapore. On 12 June 2017, Paulus attended the EJD hearing for costs arising from the anti-suit injunction application. The Assistant Registrar ("AR") directed Paulus to translate certain documents and adjourned the matter to 24 July 2017.

15 On 24 July 2017, Paulus was absent from the EJD hearing. Paulus's counsel informed the AR that Paulus was in the United States on account of his daughter's mental breakdown. The EJD hearing was adjourned to 25 August 2017.

16 Paulus failed to attend the EJD hearing of 25 August 2017. Paulus's counsel informed the AR that Paulus was away in China for an urgent meeting. Counsel for ST-AP informed the AR that Paulus had not furnished any answers to the EJD questionnaire. The AR granted a suspension of the EJD order in anticipation of the committal proceedings.

17 Subsequently on 6 September 2017, a settlement regarding the committal proceedings was reached between Sandipala and ST-AP and Cousin. The committal proceedings for the alleged breaches of the anti-suit injunction were vacated.

18 Whilst Oxel did not in the present proceedings refer to the matter of the anti-suit injunction and the EJD proceedings brought by ST-AP and Cousin, its statement dated 31 October 2017 pursuant to O 52 r 2(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) made reference to the position taken by Paulus and Catherine in those EJD proceedings. Oxel's statement noted (at para 50) that Paulus and Catherine had asserted by affidavit in those EJD proceedings that they had been declared bankrupt in Indonesia and were disqualified from acting as directors for Sandipala. That said, I note that in the present EJD proceedings brought by Oxel, neither Paulus nor Catherine filed any affidavit or response until late in the day. Catherine filed an affidavit on 27 November 2017, followed by Paulus on 6 December 2017 after leave had been granted to Oxel to commence the present committal proceedings. Similar points were made in these affidavits on the Indonesian bankruptcy. Nothing was said, however, of Catherine's purported medical or mental health issues that were raised by counsel at the 24 July 2017 EJD hearing in the proceedings by ST-AP and Cousin.

Paulus's and Catherine's bankruptcies

19 Paulus and Catherine took the position that the key reason why they were unable to respond to the EJD Questionnaires and attend the EJD hearings to answer questions on Sandipala's assets and their personal assets and income is that they were made bankrupt in Indonesia on 22 February 2017. This was after the trial in the Substantive Proceedings but before the Substantive Judgment was delivered on 12 May 2017.[2] The bankruptcy proceedings are said to arise out of, *inter alia*, personal guarantees they had provided for loans taken out in Indonesia by PT Megalestari Unggul from Bank Artha Graha. Paulus and

[2] 5th Affidavit of Catherine dated 27 November 2017; 48th Affidavit of Paulus dated 6 December 2017; 5th Affidavit of Paulus Sinatra Wijya dated 27 November 2017.

Catherine's position is that the bankruptcy order was wrongly made and that the bankruptcy proceedings were brought as part of a conspiracy between Oxel and others to harass Paulus and his family.[3] It appears that an application for judicial review has been made to the Supreme Court of Indonesia.

20 Paulus and Catherine asserted, in brief, that as a result of the bankruptcy order, they were (i) disqualified from acting or speaking for Sandipala; (ii) unable to gain access to or provide copies of relevant documents of Sandipala and (iii) unable to attend the EJD hearings in Singapore to answer questions on their assets and income or respond to the EJD questionnaires as this would (or may) have amounted to an interference with the Indonesian Curator's control and administration of their assets.

21 Paulus and Catherine went on to assert that Oxel, being aware of the bankruptcy proceedings and that Paulus and Catherine were unable under Indonesian law to comply with the EJD Orders, commenced the EJD proceedings for the purpose of harassing them.[4] Indeed, at the hearing before me on 12 January 2018, the submission was made that Oxel was well-advised to put in a claim in Indonesia as a judgment creditor to the relevant Indonesian authorities. The assertion was also made from the bar that the Curator in Indonesia had already started disposing of Paulus's and/or Catherine's assets.[5]

22 Oxel denied the assertion that the bankruptcy proceedings are part of some conspiracy to harass Paulus and his family. Oxel denied any involvement in the bankruptcy proceedings and made the point that prior to the affidavits of

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3 5th Affidavit of Paulus Sinatra Wijya dated 27 November 2017, para 11.

4 5th Affidavit of Paulus Sinatra Wijya dated 27 November 2017, para 19; Paulus and Catherine's submissions, para 5.

5 Notes of evidence, 12 January 2018 ("NE"), p 88, lines 13–19.

Catherine and Paulus Wijya on 27 November 2017 no such suggestion had been raised before in the EJD proceedings in Singapore.[6] Oxel asserted that the EJD proceedings were brought simply because its demand for payment of the judgment debt had been ignored by Paulus, Catherine and Sandipala. Oxel also made the point that the fact of bankruptcy in Indonesia (which they did not in any case accept) did not prevent Paulus and Catherine from attending the EJD hearings in Singapore and responding to the EJD Questionnaires. This is a point which I shall return to later in these Grounds of Decision.

The EJD hearing on 29 December 2017 and the EJD Questionnaires

23 It will be recalled that on 27 November 2017, Paulus and Catherine responded to the EJD Questionnaires which they hitherto had refused to make any response. The EJD Questionnaires required the production of documents including bank statements (local and overseas) for the past five years, payslips for the past five years, income tax returns for the past five years, statements from the Central Depository, securities brokers and fund managers in respect of shares, bonds and unit trusts (local and overseas) for the past five years, and so on. The EJD Questionnaires included a notice that a failure to attend the hearing without consent may result in committal proceedings and that the penalty may be a fine or imprisonment.

24 The specific questions asked in the EJD Questionnaires included those relating to monthly income, immovable property whether in Singapore or elsewhere, motor vehicles owned in Singapore or elsewhere, particulars of bank accounts or safe deposit boxes in Singapore or elsewhere, as well as particulars of other assets whether in Singapore or elsewhere, including insurance policies,

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6 See 35th Affidavit of Ika Kusuma dated 22 November 2017.

shares, antiques, jewellery, funds, *etc*. The answers provided by Paulus and Catherine were essentially "none" or "not applicable." [7] For example, in the case of immovable property the response was "assets in Indonesia confiscated by Curator [who] has taken all my assets including bank account" and "no asset in Singapore or overseas". As for shares, Paulus stated "share in [Sandipala] curator in process of confiscating assets…" In the case of Sandipala and whether the company was making trading profits or losses, the answer by Paulus was "don't know most likely losses". Other questions concerning immovable property of Sandipala, bank accounts, *etc*. were simply answered "don't know". Catherine's answers to the EJD Questionnaires were essentially the same. Questions as to whether Paulus, Catherine and/or Sandipala had transferred assets since 8 February 2013 were not answered at all. Following a query, Paulus and Catherine responded on 1 December 2016 saying that no assets had been transferred and that no debts were due to them.

25 In short, Paulus and Catherine's position is that they have no assets or bank accounts in Singapore. Whatever assets they had in Indonesia (including bank accounts) has been seized by the Curator. In so far as Sandipala was concerned, their position was that they did not know what the position was, although Paulus thought that Sandipala was making trading losses. No details were provided even though the questions concerned assets over the past five years. The home address provided by Paulus in his answers to the EJD Questionnaires was an address in Singapore. The home address provided by Catherine in her answers was an address in Jakarta.

26 At the EJD hearing on 29 December 2017 which Paulus and Catherine attended, no documents were produced. It is undisputed that questions to Paulus

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7 Oxel's written submissions dated 10 January 2018, Annex B.

about his assets and income were answered in a similar vein as those provided in respect of the EJD Questionnaires. The position taken by Paulus was that he had no assets to his name and no ability to pay for anything including simple day-to-day amenities and food.[8] In its submissions, Oxel asserted that during the EJD hearing, Paulus stated that the questions asked amounted to "harassment" and made complaints about the costs of attending the EJD hearing in Singapore.[9] The matter was adjourned to 20 February 2018. Paulus was ordered to provide the following documents by way of an affidavit to be filed by 12 January 2018:

(a) a full list of all companies in which Paulus had shares, which according to Paulus had been seized by the Curator in Indonesia;

(b) a letter from Paulus's Indonesian bank, Bank Mandiri, informing Paulus that the Curator had changed the signature of and withdrawn all monies from his bank account;

(c) the address of the office at which Paulus had a safe containing his personal belongings, which according to Paulus had been seized by the Curator;

(d) a list of all cars owned by Sandipala and PT Pakuan; and

(e) the letter(s) that Paulus claimed to have written to Bank Mandiri to request copies of his bank statements and Bank Mandiri's response(s) if any.[10]

27 On 9 January 2018, Paulus provided the following documents by affidavit:

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8 Oxel's written submissions, para 128.

9 Oxel's written submissions, para 129.

10 Oxel's written submissions, para 132.

(a) a letter from Bank Mandiri dated 21 February 2017 notifying him that his account had been blocked;

(b) a letter from Bank Mandiri dated 10 May 2017 addressed to Rawung notifying her that an application had been made by the Curator to transfer the funds from Paulus's, Catherine's, Pauline Tannos's and Rawung's accounts; and

(c) a letter to Bank Mandiri dated 12 September 2017 requesting copies of his bank statements for the last five years beginning September 2012.

28 As for the other documents ordered to be produced, Paulus stated that he was unable to produce these for the following reasons:

(a) *The full list of companies seized by the Curator in Indonesia*. He was unable to produce this as the "Curator has not informed [him] or written to [him] about the assets or companies that has been seized" and "[f]urther, the assets do not belong to me or [Catherine] as they belong to the companies."

(b) *The address of the office with the safe deposit box which the Curator seized*. As Paulus stated: "I understand that the assets of PT Pakuan belong to the company and do not form part of my personal assets. Therefore, I believe that they are not relevant to this EJD hearing. For the same reason, I believe that the cars owned by PT Pakuan are not relevant to the current proceedings." In addition, he stated that he did not currently own any cars.

(c) *The reply from Bank Mindiri for copies of bank statements*. This was not produced as no reply had been received yet.

29 I note that in his affidavit of 9 January 2018, Paulus stated that his brothers residing in the United States were paying for all of his and Catherine's expenses.[11] He went on to state that he and Catherine were assisting his brothers in their businesses and that they were staying in the United States with his brothers.[12] Paulus raised the costs and expenses of travelling to and from Singapore to attend the EJD hearings. He stated that his brothers were "not agreeable to fund [his and Catherine's] expenses for flying to Singapore repeatedly on an indefinite basis." In this regard, Paulus complained that the "adjournment of the EJD hearing could have been avoided if Oxel's solicitors properly utilised the time given in the EJD hearing to complete their questioning".[13] He went on to complain at that "Oxel's solicitors did not even ask a single question to [Catherine] in the whole EJD hearing" and that "[a]lthough [Catherine] was present and the Honourable Court was available for the EJD hearing for the whole morning session, Oxel's solicitors refused to ask any questions to [Catherine]."[14] Whilst it appears that the AR had already refused a request for the evidence at the next EJD hearing to be given by video link, Paulus nonetheless repeated the request in his affidavit of 9 January 2018. I note also that Paulus and Catherine complained that Oxel had never offered to meet their travel expenses for the EJD hearings.

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11 50th Affidavit of Paulus dated 9 January 2018, para 13.

12 50th Affidavit of Paulus dated 9 January 2018, para 14.

13 50th Affidavit of Paulus dated 9 January 2018, paras 15–17.

14 50th Affidavit of Paulus dated 9 January 2018, para 16.

30 Oxel's counsel clarified in their oral submissions that the EJD hearing had been adjourned because Paulus and Catherine had not brought any documents and that questioning of Paulus was to resume on 20 February 2018 (a date chosen by him). It was made clear that Catherine would be questioned after Paulus. Whilst the notes of evidence for the EJD hearing on 29 December 2017 were not yet available, I note that counsel for Paulus and Catherine accepted the sequence of events as recounted by counsel for Oxel.[15]

Committal hearing

31 On 12 January 2018, the committal hearing took place. Paulus and Catherine attended the hearing together with their counsel. After hearing Oxel's submissions, G&C informed the court that Paulus and Catherine wished to make a statement in response to certain points raised by Oxel's counsel. These points concerned Oxel's position that Paulus's companies including Sandipala had successfully bid and won tenders in Indonesia in 2012. It appeared that Paulus's point was that this did not mean Sandipala was profitable or that he had assets and income that were not being disclosed. Their request to make a statement was rejected, after which their counsel proceeded to present his submissions and arguments on committal. At the conclusion of counsel's submissions, the court provided an opportunity for counsel to confer with Paulus and Catherine as to whether there was anything else they wanted counsel to raise before the court.[16]

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15 NE, p 70, lines 6–13.

16 NE, p 87, lines 5–23.

The parties' positions

Paulus and Catherine

32 Paulus and Catherine's main explanation was that their failures to comply with the EJD Orders (attending hearings and providing answers to the EJD Questionnaires) were due to their *inability* to do so rather than because of *unwillingness*. This point relates to their assertion that following their bankruptcy in Indonesia, Paulus and Catherine were disqualified from acting for or speaking on behalf of Sandipala and that they were unable to access the documents of Sandipala. Further, it is asserted that their understanding was that under Indonesian law, it was unlawful for them to provide any answers to the EJD Questionnaire or any information relating to their incomes and assets. If they did attend and answer the questions, Paulus and Catherine believed that breaches of Indonesian law would have been committed since they were not permitted to say anything which would frustrate the Indonesian Curator's efforts to control and administer their assets, or which would enable parties other than the Curator to reach their assets. They also asserted that Oxel had commenced the EJD proceedings knowing of the impediment on them, and therefore the EJD proceedings were abusive and taken out for the purposes of harassment. In support, Paulus and Catherine rely on the advice of their Indonesian lawyer, as well as an opinion from a law professor.[17]

33 In addition, they submitted that if contempt was found, a fine or a suspended committal order was appropriate. By "suspended committal order", they meant that they should not be required to answer the EJD Questionnaires until their bankruptcy status in Indonesia was resolved[18] Their written

[17] 48th Affidavit of Paulus dated 6 December 2017, para 27 and p 159 (exhibiting the opinion of Professor Hamzah dated 8 August 2017); 5th affidavit of Paulus Sinatra Wijya dated 27 November 2017.

submissions stated that they were deeply remorseful of any inconvenience caused as a result of their inability to provide the answers" and that "there [was] no prejudice caused to Oxel from their inability to provide the answers to the [EJD Questionnaires]" and that the answers "could still be provided subsequently".[19]

34 Other points raised in the written submissions include: the fact that Paulus and Catherine were overseas when informed of the EJD hearings on 25 September 2017, 11 September 2017 and 1 November 2017; the costs and expenses of travelling to and from Singapore; the point that business meetings had already been arranged and the worry of potential loss of business arising from their failure to attend planned business meetings; and the fact that the Stay Application had been filed on 9 November 2017. Similar points were found in Paulus's 50th affidavit dated 9 January 2018 and Catherine's 5th affidavit dated 27 November 2017.

35 Finally, I note that Catherine also asserted in her 5th affidavit (sworn in Hong Kong and providing an address in Indonesia) that she was not a resident of Singapore and travelled frequently, and that she faced difficulties at the immigration checkpoint on account of her frequent trips to Singapore. Catherine also referred to her fear for her personal safety, that persons controlling Oxel were powerful and that that her life and safety would be in danger if her whereabouts were known. A similar assertion was made by Paulus in his 50th affidavit (sworn/affirmed in India and providing an address in Singapore).

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18 Paulus and Catherine's written submissions, para 13.

19 Paulus and Catherine's written submissions, para 10 and 11.

Oxel

36 Oxel sought an order of committal against Paulus and Catherine for flagrantly disobeying the EJD Orders for them to attend court and be examined on their assets (and to produce any relevant documents). To this end, Oxel complained that Paulus and Catherine had repeatedly failed to turn up in court for the EJD hearings:

(a) on 25 September 2017, pursuant to an Order of Court dated 21 August 2017 ("the first breach");

(b) on 11 October 2017, pursuant to an Order of Court dated 25 September 2017 ("the second breach"); and

(c) on 1 November 2017, pursuant to an Order of Court dated 11 October 2017 ("the third breach").

37 Oxel also pointed to the fact that Paulus and Catherine had not even provided answers to the EJD Questionnaires that they were required to answer. Oxel further alleged that Paulus and Catherine had instructed their lawyers to ignore Oxel's demands to satisfy the judgment, and to refuse service of the EJD Orders. This resulted in considerable delay and the need to apply for substituted service at a time when it was clear that G&C were acting for Sandipala, Paulus and Catherine.

38 Oxel denied having any responsibility or connection with the Indonesian bankruptcy proceedings and denied that the EJD Orders were commenced simply to harass Paulus and Catherine. Oxel denied any suggestion that there were powerful and well-connected people behind Oxel and that this was why Paulus and Catherine feared for their lives and safety.[20]

39 Oxel rejected the submission that Paulus's and Catherines's absences and breaches were because of their inability to comply on account of their bankruptcies in Indonesia. To this end, they referred to the opinion of their Indonesian lawyer.[21] Indeed, I note that at the 29 December 2017 hearing, the AR had rejected Paulus's attempt to rely on his Indonesian lawyer's affidavit so as to refuse to answer questions.[22]

40 Oxel also pointed out that Paulus and Catherine had moved to Singapore in 2012. In Paulus's affidavit of evidence-in-chief ("AEIC") for the Substantive Proceedings, Paulus asserted that he had been forced to leave Indonesia in early 2012 on account of fears for his and his family's safety.[23] Paulus's AEIC stated that he and his family had relocated to Singapore in early 2012.[24] He also averred that he and his family had remained in Singapore "up to the present."[25] Paulus's AEIC was filed on 5 February 2016. The address set out in Paulus's AEIC was the same Singapore address that appeared in his 48th affidavit dated 6 December 2017 and his 50th affidavit dated 9 January 2018. I pause to note that nothing at all was said about this property in Singapore (whether it was rented or owned or simply borrowed) in Paulus's and Catherine's answers to the EJD questionnaires. That said, I note that whilst Catherine provided the same Singapore address in her AEIC for the Substantive Proceedings, in her 5th affidavit sworn/affirmed in Hong Kong on 27 November 2017 she gave her address as a place in Indonesia. In making these observations, I note Paulus's

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20 35th Affidavit of Ika Kusuma dated 22 December 2017.

21 Affidavit of Soenardi Pardi dated 22 December 2017.

22 Oxel's written submissions, para 130.

23 Paulus's AEIC, para 204.

24 Paulus's AEIC, para 216.

25 Paulus's AEIC, para 211.

and Catherine's purported fear in respect of disclosing their true present whereabouts.

The law on contempt of court

41 The law on contempt of court is now found in the Administration of Justice (Protection) Act 2016 (No 19 of 2016) ("the AJPA"). Section 4(1) of the AJPA provides that any person who "intentionally disobeys or breaches any judgment, decree, direction, order, writ or other process of a court" commits a contempt of court. Section 35(1) of the AJPA clarifies that the AJPA does not apply to any act of contempt committed before the appointed day, namely 1 October 2017 (see the AJPA (Commencement) Notification 2017 (No S 541/2017)).

42 It follows from this that the AJPA only applies to the second and third breaches of the EJD Orders on 11 October 2017 and 1 November 2017. The first breach, which was on 25 September 2017, remains governed by the former common law of contempt and s 7(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), which provides that the High Court has power to punish for contempt of court. Further, under s 7(3), wilful disobedience by a corporation to any order punishable by attachment may be punished by attachment of the directors or other officers of the corporation who are responsible for, or are knowingly a party to, such wilful disobedience.

43 The Explanatory Note to the Administration of Justice Bill 2016 (No 23/2016) states that "this Bill seeks to state and consolidate the law of contempt of court and to define the powers of the Supreme Court, the State Courts, the Family Courts and the Youth Courts in punishing contempt of court and to regulate the procedure in relation to proceedings for contempt of court."

The explanatory note goes on to state that "[t]he provisions of the Bill will prevail over the common law to the extent of inconsistency. However, the common law rules will be preserved where they are not inconsistent with the provisions of the Bill (see clause 8). As stated by the Court of Appeal in *Pertamina Energy Trading v Karaha Bodas Co Ltd and others* [2007] 2 SLR(R) 518 ("*Pertamina Energy*") at [22], the rationale for the law of contempt is rooted firmly in the public interest, in that it aims to protect the administration of justice as well as public confidence in it, which is crucial for the rule of law and the maintenance of law and order in any civilised society.

44 The basic principles at common law and under the AJPA are similar. the standard of proof for finding contempt of court, whether at common law or under the AJPA, is the criminal standard of proof beyond a reasonable doubt (see *Pertamina Energy* at [31] and s 28 of the AJPA). Section 8(2) repeals all common law defences to contempt of court that are not set out in the AJPA. That said, under s 21, a defence applies where the alleged contemnor satisfies the court that the failure or refusal to comply with an Order of Court was wholly or substantially attributable to an honest and reasonable failure by that person at the relevant time to understand an obligation imposed on the person bound by the order, and that that person ought fairly to be excused. The burden in establishing a defence is on the contemnor on a balance of probabilities (s 29).

45 At common law, an action for civil contempt is directed at a party who is bound by an Order of Court but is said to have breached the terms of that Order. It is directed at securing compliance with the said Order, to specifically and generally deter contemptuous behaviour and to protect and preserve the authority of the Singapore courts: *STX Corp v Jason Surjana Tanuwidjaja and others* [2014] 2 SLR 1261 ("*STX Corp*") at [7]; *Global Distressed Alpha Fund*

I Ltd Partnership v PT Bakrie Investindo [2013] SGHC 105 ("*Global Distressed Alpha Fund*")) at [59].

46 A person can be held liable for contempt if he refuses and/or neglects to comply with an Order of Court which has been directed against him: O 45 r 5(1) of the Rules of Court. The court will, in determining whether the alleged contemnor's conduct amounts to contempt of court, adopt a two-step approach (*Monex Group (Singapore) Pte Ltd v E-Clearing (Singapore) Pte Ltd* [2012] 4 SLR 1169 ("*Monex Group*") at [31]):

(a) First, the Court will decide what exactly the Order of Court required the alleged contemnor to do. In determining what the Order of Court required, the Court will interpret the plain meaning of the language used. It will resolve any ambiguity in favour of the person who had to comply with the Order.

(b) Second, the Court will determine whether the requirements of the Order of Court have been fulfilled: *Monex Group* at [31]; *STX Corp* at [12] and [13]). To establish that there has been a contempt of court, the complainant will need to show that in committing the act complained of or omitting to comply with an Order of Court, the alleged contemnor had the necessary *mens rea*.

47 The threshold to establish the necessary *mens rea* for a finding of contempt of court is a low one: *STX Corp* at [8]; *Tan Beow Hiong v Tan Boon Aik* [2010] 4 SLR 870 ("*Tan Beow Hiong*") at [47]. It is only necessary for the complainant to show that the relevant conduct of the party alleged to be in breach of the Order was *intentional* and that it *knew* of all the facts which made such conduct a breach of the Order. This includes knowledge of the existence

of the order and its material terms: *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 ("*Mok Kah Hong*") at [86]; *Monex Group* at [30]; *Pertamina Energy* at [51]; *Tan Beow Hiong* at [47].

48 To this end, it is not necessary for the complainant to show that the alleged contemnor appreciated that he was breaching the Order. The motive or intention of the alleged contemnor and his reasons for disobedience are irrelevant to the issue of liability, and are relevant only to the question of mitigation. The liability is strict in the sense that all that is required to be proved is service of the Order and the subsequent omission by the party to comply with the Order: *STX Corp* at [8] and [9]; *Mok Kah Hong* at [86]; *Pertamina* at [51], [53] to [62]; *Tan Beow Hiong* at [47].

49 It is settled law that disobedience of an EJD order by failing to attend an EJD hearing amounts to a contempt of court.

(a) For example, in *Tahir v Tay Kar Oon* [2016] 3 SLR 296 ("*Tay Kar Oon (HC)*"), the defendant breached an EJD order by failing to attend court. Although she was legally represented, her lawyers were also absent from court on the date of the hearing. At that hearing, the court directed the defendant to comply with the EJD order. The defendant failed to attend the adjourned hearing. The defendant did not provide any reason for her breaches except to say that she had overlooked the court's orders or was not in the mood to read anything. The High Court found the defendant guilty of contempt. She had been clearly aware of the orders and directions but had intentionally breached them by not turning up in court. The High Court also held that the defendant was aware of the existence of the orders through her lawyers

but had intentionally and wilfully turned a blind eye in the hope of evading the inevitable: at [58]. On appeal, the Court of Appeal upheld these findings although the decision on the appropriate sentence was reversed: *Tay Kar Oon v Tahir* [2017] 2 SLR 342 ("*Tay Kar Oon (CA)*"). This will be discussed below.

(b) In *Global Distressed Alpha Fund*, the defendant disobeyed an EJD order by failing to attend eight EJD hearings. At those hearings, the defendant's solicitors gave various reasons for why the defendant could not attend, including that the defendant was on a family vacation and that he was "occupied with various engagements in respect of his work and family". The High Court held that the defendant's course of conduct clearly showed that he was in deliberate and flagrant breach of the EJD order. The High Court held that the defendant's excuse that he was occupied by various engagements was wholly unacceptable because he was bound by an Order of Court to attend the EJD hearing and that the court's Order was not an invitation that the defendant was entitled to turn down on account of his purportedly busy schedule: at [41]. The High Court held that the EJD order was a *mandatory* Order of Court: at [58]. The High Court found the defendant guilty of contempt of court. It found that the defendant's continued absence from all the EJD hearings without any valid reason displayed a conscious and deliberate decision on his part not to comply with the EJD order: at [53].

Whether Paulus and Catherine had committed contempt of court

50 In the present case it is clear that Paulus and Catherine had disobeyed the three EJD Orders as follows:

(a) the EJD Order made on 21 August 2017 requiring their attendance at the EJD hearing on 25 September 2017;

(b) the EJD Order made on 25 September 2017 requiring their attendance at the EJD hearing on 11 October 2017; and

(c) the EJD Order made on 11 October 2017 requiring their attendance at the EJD hearing on 1 November 2017.

51 The terms of the Orders were clear and unambiguous. Aside from attending the EJD hearings, Paulus and Catherine were required to produce relevant books and documents in their possession. All three EJD Orders were endorsed with penal notices. It is clear that Paulus and Catherine had knowledge of the Orders and had decided not to appear for examination. Paulus and Catherine had also failed to answer the EJD Questionnaires or to provide any documents or books relevant to their assets at the time of the breaches. Whilst the circumstances of the breaches have been touched upon earlier, I emphasise the key points here.

The first breach

52 By SUM 2543, Oxel obtained an EJD Order on 5 June 2017 against Paulus and Catherine as judgment debtors and officers of Sandipala. Paulus and Catherine were required to attend the EJD hearing on 19 June 2017.

53 Difficulties were encountered with service of the EJD Order. Oxel's counsel, D&N, received no response from a query it had made to Paulus and Catherine's counsel, G&C, as to whether they had instructions to accept service. This was despite the fact that Sandipala, Paulus and Catherine had filed an appeal on 12 June 2017 through G&C. Numerous unsuccessful attempts were

made to effect personal service of the EJD Order. On 5 September 2017, Oxel obtained an order for substituted service on G&C with the AR observing that it was clear that G&C was still acting for the judgment debtors who were evading service by not instructing their solicitors to accept service or by evading personal service. Substituted service was effected on 8 September 2017.

54 Paulus and Catherine failed to attend the hearing on 25 September 2017. Counsel for Paulus and Catherine also did not attend. Indeed, shortly before the start of the hearing, D&N contacted G&C to enquire whether Paulus and Catherine would be attending court. It appears that the reply was "I think my clients are in China" and "I think they are not turning up". Answers to the EJD Questionnaires were not provided. No communication or explanation was provided by Paulus or Catherine.

55 I note that at the time of the first breach on 25 September 2017, nothing had been mentioned in these EJD proceedings Paulus's and Catherine's bankruptcies in Indonesia or their fears of safety. Although an appeal had been filed several months earlier, no application had even been made for a stay of execution of the judgment. It is clear that Paulus and Catherine had decided not to comply with the EJD Order. The breach was intentional. The court was not given any explanation from Paulus, Catherine or even G&C. The explanation (unsatisfactory and vague as it was) was provided through D&N after their telephone query to G&C.

The second breach

56 This occurred when Paulus and Catherine failed to appear on 11 October 2017 for the EJD hearing. As before, answers to the EJD Questionnaires were also not provided. As in the case of the first breach, shortly before the hearing,

D&N called G&C and enquired whether Paulus and Catherine would be attending. D&N was informed that Paulus and Catherine would not be attending and that the Stay Application had been filed on 9 October 2017. No communication or explanation was made by Paulus or Catherine whether by email, affidavit or otherwise. The only explanation came from G&C and only as a result of an enquiry by D&N to G&C (who also did not attend the hearing).

57 It is clear that the fact that the Stay Application had been made does not excuse Paulus's and Catherine's attendance at the EJD hearing on 11 October 2017. I leave aside the question whether an application for a stay against a judgment pending appeal includes or may extend to an existing EJD order. The point is there is nothing before me to suggest that G&C had in fact advised Paulus and Catherine that their attendance was unnecessary. Indeed, I note counsel for Paulus and Catherine, who had only just applied for the stay, did not attend court to offer any explanation. In these circumstances, it is clear that the breach was deliberate and intentional.

The third breach

58 At the EJD hearing of 11 October 2017, the court ordered Paulus and Catherine to attend for examination on 1 November 2017. This EJD Order was served by letter and attachments to G&C endorsed with penal notice and enclosing questionnaires on 24 October 2011. On 31 October 2017, Oxel applied for leave to commence committal proceedings. At the EJD hearing on 1 November 2017, Paulus and Catherine were once again absent. This time, their counsel was present and informed the court that his instructions were to request an adjournment until after the stay application was determined. Reference was made to Paulus's and Catherine's bankruptcies in Indonesia. The court was also informed by G&C that whilst Paulus intended to appear at the

next EJD hearing date, counsel did not think that Catherine intended to attend any EJD hearing and that she had concerns about the costs of travelling to Singapore. The EJD was adjourned to 1 December 2017 and Paulus and Catherine were ordered to answer the questionnaires by 27 November 2017.

Events after the third breach

59 On 27 November 2017, the High Court dismissed the stay application. Oxel was granted leave to commence committal proceedings. On the same day, Catherine filed her 5th affidavit setting out reasons, for the first time, why she had been unable to attend the previous EJD hearings.

60 On 1 December 2017, Paulus and Catherine failed to appear at the EJD hearing again. Their counsel who did attend informed the court that Paulus had informed him on 27 November 2017 that "he was travelling to the United States for an emergency family matter".[26] No explanation was provided for Catherine's absence.

61 On 6 December 2017, Paulus set out reasons by affidavit why he was unable to answer the EJD Questionnaire. Paulus also explained that his failure to attend on 1 December 2017 was because of a family gathering overseas to commemorate the one-year anniversary of his mother's passing.

62 On 29 December 2017, Paulus and Catherine attended the EJD hearing. This was the first time either had appeared before the court for an EJD hearing. No documents were produced, and Paulus and Catherine were ordered by the AR to produce certain documents by way of an affidavit that was to be filed and served by 12 January 2018. Whilst the transcript of the proceedings on

[26] See Affidavit of Jaspreet Singh Sachdev dated 22 December 2017, para 5.

29 December 2017 was not available at the time of the committal hearing before me, it appeared that Paulus's position was he had no assets whatsoever to his name and that the EJD proceedings had been brought simply for the purpose of harassment. An attempt by Paulus to rely on the affidavit of his Indonesian lawyer (on the impediment arising from the Indonesian bankruptcy) was rejected by the AR conducting the EJD hearing. Oxel submitted that whilst Paulus had appeared on 29 December 2017, he was "absolutely unrepentant" and that the attendance was a "calculated manoeuvre" for use in the committal proceedings.[27]

My findings on contempt of court

63 It was clear that the three breaches were committed by Paulus and Catherine with full knowledge of the terms of the EJD Orders and what they were required to do. The EJD Orders were clear and unambiguous. Even if Paulus and Catherine had not given instructions to accept service, there was no doubt that they were aware of the EJD Orders and that G&C was still acting for them in respect of the appeal against the Substantive Judgment and thereafter in the Stay Application.

64 Whilst Paulus and Catherine asserted that they believed they were unable to answer the EJD Questionnaires and to attend and answer questions on their assets and income (as well as those of Sandipala) because of their bankruptcies in Indonesia, I found that this provided no defence. The EJD proceedings were simply to obtain information on the assets and income and could not amount to an interference with the Indonesian bankruptcies. Indeed, if Paulus and Catherine's position was that they were not permitted under

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27 Oxel's written submissions, paras 129 and 131.

Indonesian law to comply with the EJD Orders, they could have at the very least attended at the first EJD hearing to explain their position and concerns. This was not done – not even through their counsel. To be clear, whilst Paulus and Catherine may have put in affidavits in the separate EJD proceedings brought by ST-AP that referred to their bankruptcies, they did not do so in the EJD proceedings brought by Oxel until late in the day.

65 As Judith Prakash J (as she then was) observed in *STX Corp* at [9], as long as there has been a deliberate breach of an Order of Court, the reasons for disobedience are irrelevant to establishing liability. That said, such reasons may be relevant in determining the appropriate sanction. I therefore found Paulus and Catherine guilty of contempt of court, and turned towards the issue of sentencing.

Sentencing

Applicable law

66 Section 12 of the AJPA provides a maximum punishment of a $100,000 fine and/or imprisonment for a term not exceeding three years where the High Court exercises its power to punish for contempt.

67 Under the AJPA, the common law rules on contempt of court continue to apply to the extent that they are consistent with the AJPA: ss 8(1) and (3). The sentencing principles which are set out and discussed below therefore apply to all three breaches.

68 On the question of what the appropriate sanction is, it is clear the sanction must depend on the facts of each case and the nature of the contempt. Possible sanctions include a fine and/or a term of imprisonment. In some cases,

a more nuanced sanction may be appropriate such as a suspended committal order requiring the contemnor to take certain steps such as to provide documents by a given date and to take other steps to purge the contempt. There is little doubt, however, that committal to prison is usually a measure of last resort: *Singapore Court Practice 2018* vol 1 (Jeffrey Pinsler gen ed) (LexisNexis, 2017) at para 52/1/4; *Sembcorp Marine Ltd v Aurol Anthony Sabastian* [2013] 1 SLR 245 ("*Sembcorp Marine*") at [47].

69 The Court of Appeal has, in a series of cases, set out the factors or guiding points relevant to sentencing. These include the recent decisions in *Tay Kar Oon (CA)* at [55]–[56] and *Mok Kah Hong* at [102]–[104]. It is clear from these decisions that the relevant factors include (but are not limited to) the following:

(a) whether the applicant has been prejudiced;

(b) whether the contempt is capable of being remedied;

(c) the extent to which the contemnor acted under pressure;

(d) whether the breach was deliberate or unintentional;

(e) the degree of culpability;

(f) whether the contemnor was placed in breach of the order by reason of the conduct of others; and

(g) whether the contemnor appreciated the seriousness of the deliberate breach; and

(h) whether the contemnor co-operated.

70 The Court of Appeal in *Mok Kah Hong* also remarked at [103] that in the case of a breach of a one-off nature, coercive considerations are not relevant to the sentencing decision. The position is different where the order breached required the contemnor to do something and the contemnor continuously refused to comply. In such a situation, coercive considerations come into play. Indeed, it goes without saying that the factors must in any case be applied to the facts at hand. For example, in some cases, the fact that the contemnor procured third parties to commit the contemptuous act has been held to be an aggravating factor: *Cartier International BV v Lee Hock Lee* [1992] 3 SLR(R) 340 as noted in *Sembcorp Marine* at [68]. Such acts reflect at the very least on the degree of culpability. The fact that the contemnor is an officer of the court is another relevant consideration. The question whether remorse is relevant also depends on other considerations such as whether the contemnor has taken steps to remedy the breach. As was said by the High Court in *Sembcorp Marine* at [68(g)], where the breach comprises removal of monies, the most sincere apology could not assist (purge the contempt) if the monies had not been paid back. That said, the High Court also commented that while remorse is a mitigating factor (at least in appropriate cases), the lack of remorse cannot be an aggravating factor unless it points towards contumacious breach with no intention of remedy.

71 In *Sembcorp Marine*, the High Court imposed a short custodial sentence of five days for a deliberate breach of a sealing order with the intention of enticing and procuring a third party to publish an article based on the sealed documents. The contemnor did not have a financial motive. The breach was particularly serious as it robbed any future court order of practical effect. In coming to the decision, the High Court examined precedents where a custodial sentence was found appropriate, including *Precious Wishes Ltd v Sinoble*

Metalloy International (Pte) Ltd [2000] SGHC 5 (a three-month custodial sentence was imposed for deliberate disregard of a *Mareva* injunction and where there was inability to recover the dissipated monies); *Re Tan Khee Eng, John* [1997] 1 SLR(R) 870 (a seven-day custodial sentence was imposed for failure to obey court order for appearance, failure to notify court or provide reasons, and where the contemnor was a lawyer); *Re Ho Kok Cheong Bankruptcy No 1235 of 1987* [1995] SGHC 121 (where the contemnor left Singapore some 300 times in breach of an order preventing him from travelling).

72 In *Global Distressed Alpha Fund*, the contemnor, an educated businessman who was aware of the serious consequences of a breach, was found to have committed eight breaches of the EJD order. The contemnor was aware that committal proceedings were contemplated but did not take any steps to purge the contempt. The judgment creditor was found to have suffered serious prejudice as the contemnor's conduct had prevented him from taking substantive steps to realise the fruits of litigation. Various reasons were offered as explanations for the contemnor's absence, including the assertion that he was out of Singapore and occupied by various engagements in respect of work and family: at [25] and [41]. The court noted at [40] that the fact an appeal had been instituted did not operate as an automatic stay of proceedings. The contemnor's argument that his failure to attend the 8th EJD hearing was because it would be contrary to an Indonesian ratification order was rejected: at [46]. This ratification order concerned an arrangement that had been entered into by the contemnor with some of his creditors under Indonesian bankruptcy laws and ratified by the Central Jakarta District Court. The court held at [46] that since the ambit of the EJD order was only to ascertain whether the contemnor had any assets, there was no reason why compliance with the EJD order would have contravened the Indonesian Ratification Order. In these circumstances, a fine

was inappropriate as being an insufficient deterrent. A sentence of seven days' imprisonment was imposed.

73 In *Tay Kar Oon (HC)*, the High Court imposed a term of eight weeks' imprisonment in respect of breaches of orders requiring the contemnor to attend two scheduled court hearings and to file an affidavit on assets and answers to an EJD questionnaire. The orders were obtained in October 2015. The applicant subsequently discovered that the contemnor had been made bankrupt in early November 2015. At the committal proceedings, the contemnor admitted liability. Sentencing was adjourned thrice to allow her time to purge the contempt. At the second hearing, an uncompleted questionnaire and a patently false asset disclosure affidavit was filed. The contemnor provided some bank account statements, but withheld others which would have disclosed breaches of a *Mareva* injunction. At the third hearing, the breaches were disclosed along with the missing bank statements. At the fourth and final hearing, the contemnor disclosed the existence of a personal bank account and some bank statements. At the final hearing, the applicant applied to withdraw the committal application and that stated he was prepared to abandon his previous submissions for a custodial sentence in the alternative. The applicant had reached an agreement under which the contemnor would assist in tracing the funds. The High Court held that in the circumstances (including the applicant's willingness to withdraw), it was appropriate to impose an eight-week imprisonment term as a deterrent and to protect the administration of justice and to maintain the court's authority.

74 On appeal in *Tay Kar Oon (CA)*, Tay Yong Kwang JA (for the Court of Appeal) at [38] agreed with the High Court's finding that the fact that the complainant had withdrawn (or was prepared to withdraw) the committal

proceedings was not a bar to the court exercising its jurisdiction over the matter or to make an order of committal. Civil contempt, like criminal contempt, exists to vindicate the court's authority and protect administration of justice alongside the interests of the party who obtained the orders that were breached. Nevertheless, the fact that the complainant wished to withdraw the committal proceedings was a factor to be taken into account in deciding the appropriate sentence, alongside the point that it appeared that the contemnor had substantially purged the contempt by complying with the various orders and directions. Other relevant factors included the medical report that the contemnor was suffering from a major depressive disorder due to anxiety at the time which may have hampered her ability to deal with the legal proceedings. In those circumstances, the Court of Appeal set aside the term of eight weeks' imprisonment and imposed a fine of $10,000, in default, ten days' imprisonment.

75 In *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR 60, a custodial sentence of six months was imposed in a case where there were multiple breaches of various orders: (i) failure to comply with a *Mareva* injunction; (ii) failure to disclose assets; (iii) failure to attend court for examination; (iv) continued breaches of the *Mareva* injunction. Another case where a substantial term of six months' imprisonment was imposed is *Maruti Shipping Pte Ltd v Tay Sien Djim and others* [2014] SGHC 227, in respect of breaches of a *Mareva* injunction and an *Anton Piller* order. Whilst these cases were not cited in parties' submissions, the short point is that there have been cases where a substantial term of imprisonment has been found to be appropriate in committal proceedings for contempt. That said, each case must of course turn on its own facts.

My findings on sentencing

76 In determining the appropriate sanction for Paulus and Catherine, I note first that Oxel encountered considerable delays in the EJD proceedings through no fault of their own. Right from the start, there were problems and difficulties in serving the EJD Orders including the uncertainty over whether G&C had instructions to accept service and so on. Neither Paulus nor Catherine, nor indeed, counsel, appeared at the EJD hearings of 25 September 2017 and 11 October 2017. The first time when counsel appeared on behalf of Paulus and Catherine was at the 1 November 2017 hearing where the court was informed that Paulus and Catherine were overseas, that the Stay Application had been filed, and that Paulus and Catherine had been made bankrupt in Indonesia.

77 In determining the appropriate sanction, it is right that the court considers whether the contemnors have taken steps since the breaches to purge the contempt. Reference has been made above to the events and steps that have occurred since the third breach. The fact that Paulus and Catherine finally provided answers to the EJD Questionnaires on 27 November 2017 was a relevant fact. The difficulty, however, was that the answers were bare denials of assets and income with almost no information or details provided aside from brief references to the acts of the Indonesian Curator. The answers to the EJD Questionnaires did not, for example, identify a single bank account in Singapore or elsewhere belonging to Paulus and/or Catherine over the past five years. This was notwithstanding their evidence at trial that their family had moved to Singapore in 2012 on account of their fears for safety. Indeed, from the time that the Substantive Proceedings were commenced, all the way through to the Substantive Judgment, it appeared that Paulus and Catherine were resident in Singapore at an address that was set out in their AEICs. And yet, in the EJD

Questionnaires nothing was said of that property at all, not even if it was owned, rented, borrowed from a friend or otherwise. The answers to the EJD Questionnaires did not even attempt to address the question of whether they had transferred assets to a third party over the past five years. It was only in response to a query from Oxel that a further response that there were no transfers was elicited. For these reasons, I found that although Paulus and Catherine provided their answers to the EJD Questionnaires, this did little to mitigate, let alone purge, the contempt.

78 Whilst Oxel and the AR had been given the indication that Paulus would attend the EJD hearing scheduled for 1 December 2017, Paulus did not in fact appear on that date. Instead his counsel informed the AR on 1 December 2017 that PT had informed him on the 27 November 2017 that he would not be attending, as he had to travel overseas for an "emergency family meeting". As a result, the AR ordered Paulus and Catherine to appear for examination on 29 December 2017. And yet, whilst Paulus and Catherine did turn up on the 29 December 2017, not a single document was produced. Aside from simple denials of assets or income, it appears that much of Paulus' answers (the bankruptcy issues aside) concerned the costs and inconvenience of attending. What is puzzling is that Paulus's reason for not attending on 1 December 2017 (as set out in his affidavit of December 2017) was that he had to attend a family meeting overseas to commemorate his mother's one-year death anniversary. Taking the dates at face value, it meant that on 1 November 2017, plans had not yet been made for the family gathering in connection with the death anniversary, but it was only sometime around 27 November 2017 that the gathering had been arranged thus impeding his attendance on 1 December 2017 in Singapore. Paulus could not be surprised, given his lack of transparency, if his reason for missing the 1 December 2017 EJD hearing was treated with scepticism.

79 Paulus and Catherine emphasise the fact that they did appear on 29 December 2017 for examination. Much was made about the waste of time said to have arisen because of Oxel's failure to question Catherine on 29 December 2017. Whilst I do not have sight of the transcript for the 29 December 2017 proceedings, there is no doubt that the proceedings were adjourned because Paulus and Catherine had not brought a single document relevant to the examination. Furthermore, I note that neither Oxel nor its counsel had been informed that Paulus and Catherine would indeed be appearing on 29 December 2017.[28] Whilst Paulus and Catherine were not under any obligation to inform Oxel that they would be attending, given the overall sequence of events including the three breaches and the repeated failures to attend hearings, the failure to inform Oxel or their lawyers of their settled intention to appear on the 29 December 2017 casts doubt on the sincerity of their desire to purge the contempt or to co-operate with the EJD Orders.

80 In any case, whilst Paulus had indicated that he would supply the documents ordered to be produced by the AR, it was apparent that he had failed to comply or substantially comply with what had been required. For example, he had been directed to set out the address of the office at which a safe containing his personal belongings was located. The response set out in his affidavit of 9 January 2018 was simply that "the assets of PT. Pakuan belong to the company and do not form part of my personal assets. Therefore, I believe that they are not relevant to this EJD hearing".[29] Another example was his response to the order that he provide a list of all cars owned by PT Pakuan and Sandipala, namely, that he believed that the cars owned by PT Pakuan were not

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28 See NE, pp 64–67.

29 50th Affidavit of Paulus dated 9 January 2018, para 9.

relevant to the proceedings and that he did not have information as to whether Sandipala and PT Pakuan owned the cars any longer.

81 Yet another example was the response to the order to provide a full list of all companies in which Paulus had shares and which, according to PT, had been seized by the curator in Indonesia. The response provided was that "the curator has not informed me or written to me about the assets or companies that have been seized by the Curator. Further, the assets of the company do not belong to me or [Catherine] as they belong to the companies".[30] The response was odd to say the least, and did not answer the question.

82 I note also that a good deal of Paulus's affidavit of 9 January 2018 in fact concerned his renewed request that Paulus and Catherine be allowed to provide their answers in writing or over video-link. In this regard Paulus referred to the expenses of travel to and from Singapore and their inability to meet the travelling expenses. Indeed, in this context, I note also that Paulus in his 48th affidavit of 6 December 2017 (sworn/affirmed in India) and Catherine in her 5th affidavit of 27 November 2017 asserted they were unable to attend the EJD hearings (the first and second breaches) because they were overseas and would have incurred expenses and loss of profits if they missed or changed the planned business meetings.

83 I pause to make clear that I refer to the events after the third breach for the purposes of assessing whether Paulus and Catherine taken steps to mitigate and/or purge the contempt for which I have found them liable. Looking at the three breaches and the events that transpired thereafter, I was not satisfied that Paulus and Catherine had shown any genuine remorse or taken real and

[30] 50th Affidavit of Paulus dated 9 January 2018, para 8.

substantial steps to address the breaches. After all that had been said about their impecuniosity and inability to meet expenses, Paulus and Catherine only gave bare assertions that Paulus's brothers were assisting with the travel expenses and that he and Catherine were helping them with their business. Yet, it was clear that Paulus travelled frequently and for business – indeed, his affidavit of 6 December 2017 was sworn or affirmed in India.

84 Leaving aside the claimed problems arising out of their bankruptcies and impecuniosity, Paulus and Catherine had also referred to their fear for their personal safety and that "the people controlling Oxel from behind are powerful well-connected individuals" and that they were "afraid that upon reading this affidavit and knowing my whereabouts, [their lives] and safety would be in danger."[31] If this were the reason why they did not inform Oxel or Oxel's lawyers in advance that they would attend the EJD hearing on 29 December 2017, the point was never made then, and in any case there was nothing at all before the court to support these fears expressed. Indeed, at the committal hearing on 12 January 2018, I specifically asked counsel after he had concluded his submissions as to whether there were any other matters which his clients would like him to address the court on. When I raised the point, aside from clarifying that there was no fear associated with coming to Singapore, their purported fears regarding safety remained vague in nature.[32] In these circumstances, I was not able to have regard to their expressed concerns for personal safety as a factor relevant to my decision on the appropriate sanction.

85 Compliance with an EJD order is not simply a matter of interest to the judgment creditor. Apart from this, there is also the need to generally deter

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31 48th Affidavit of Paulus, para 8; 5th Affidavit of Catherine at para 10.

32 NE, p 80, lines 2–12.

contemptuous behaviour and to protect and preserve the authority of the Singapore courts. Paulus's and Catherine's breaches were serious and repeated. The delay caused was considerable. They asserted, on the other hand, that no prejudice had been caused which could not be rectified. To this end, even at the committal hearing, the point was made that this court should adjourn decision until after the appeal or application for judicial review of the Indonesian bankruptcy order was determined, after which Paulus or Catherine would, if necessary, still be able to answer the EJD Questionnaires and so on. On this basis, it appeared that Paulus and Catherine are still unwilling to answer questions on their personal assets and Sandipala's assets unless and until their bankruptcy in Indonesia was finally resolved. This was not a sufficient answer to an order to attend and answer questions in respect of a judgment debt arising from a judgment by the Singapore courts. The EJD Orders were simply concerned with efforts to determine if the judgment debtors had assets against which execution might subsequently be sought. The effect of the bankruptcy order and appointment of the Curator in Indonesia would have to be considered only if assets were found and an order was sought against those assets by the judgment creditor in question.

86 Finally, I considered that Paulus and Catherine were well-educated and had the benefit of legal advice. Paulus, in particular, was clearly an experienced businessman who had for many years been competing for (and often securing) various tender projects in Indonesia. There was no evidence that the breaches of the orders were attributable at least in part to depression, such as in the *Tay Kar Oon* case.

87 In these circumstances, it was clear that a fine would have been inadequate. A short custodial sentence of seven days was necessary as

punishment for the contemptuous acts, and to generally deter such breaches so as to preserve the authority of the Singapore courts.

Conclusion

88 In summary, I found Paulus and Catherine guilty of contempt of court for their breaches of the EJD Orders, and sentenced them to seven days' imprisonment each.

89 After delivering my decision, counsel for Paulus and Catherine informed the court that an appeal would be brought against my decision. In these circumstances, I directed that the committal order be stayed pending the appeal. Bail was granted in the sum of $30,000 each, with one surety. Until bail was provided, Paulus and Catherine were to surrender their travel documents and not leave Singapore. The court was informed that the substantive appeal was due to be heard in the next few months. That being the case, I directed, with the consent of both sides, that the Committal Appeal be heard on an expedited basis, and if possible, at or about the same time as the hearing of the substantive appeal. Counsel agreed to limit the submissions for the Committal Appeal to ten pages.

90 Costs for the application for leave to commence committal proceedings were fixed at $1,000 plus reasonable disbursements. Costs for the committal proceedings were fixed at $12,000 plus reasonable disbursements.

George Wei
Judge

Davinder Singh s/o Amar Singh, Jaikanth Shankar, Jaspreet Singh Sachdev, Lin Xianyang Timothy and Low Wu Yang (Drew & Napier LLC) for the plaintiff in the counterclaim;
Govintharash s/o Ramanathan and Shafkat Fahmid Sifat (Gurbani & Co LLC) for the 2nd and 3rd defendants in the counterclaim.
