

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

[2023] SGHC 260

Originating Claim No 161 of 2023 (Summons No 1991 of 2023)

Between

Asian Eco Technology Pte Ltd

... Plaintiff

And

Deng Yiming

... Defendant

JUDGMENT

[Civil Procedure] — [Striking out]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND	2
THE PARTIES' CASES.....	6
MY DECISION	6
THE APPLICABLE LAW	6
THE OFFENDING MATERIALS ARE IRRELEVANT	12
THE OFFENDING MATERIALS SHOULD BE EXPUNGED.....	15
CONCLUSION.....	18

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Asian Eco Technology Pte Ltd v Deng Yiming

[2023] SGHC 260

General Division of the High Court — Originating Claim No 161 of 2023
(Summons No 1991 of 2023)

Hri Kumar Nair J

10 August 2023

14 September 2023

Judgment reserved.

Hri Kumar Nair J:

Introduction

1 HC/SUM 1991/2023 (“SUM 1991”) is an application by the claimant (“AET”) to strike out or expunge various pleadings, affidavits, exhibits and written submissions (or parts thereof) (“the Offending Materials”), made or filed by the defendant (“Deng”) in support of his defence in this action (“Deng’s Defence”) as well as to oppose AET’s application for summary judgment in HC/SUM 1488/2023 (“SUM 1488”). I grant AET’s application to expunge the Offending Materials, save for paragraph 5 of Deng’s Defence.¹ These are my reasons.

¹ Minute Sheet (10 Aug 2023) at p 4.

Background

2 The facts and issues in this action are set out in my grounds of decision granting AET’s application in SUM 1488 (*Asian Eco Technology Pte Ltd v Deng Yiming* [2023] SGHC 227) (“the SUM 1488 Grounds”) and I shall not repeat the same here. It suffices to state that AET had claimed against Deng for wrongfully converting, detaining and/or misappropriating 627 diamond seeds and loose diamonds (collectively, “the Diamonds”),² which it alleged it had earlier purchased from X Diamond Capital Pte Ltd (“XDC”), a company that was at all material times majority-owned and/or controlled by Deng.³

The Offending Materials

3 The Offending Materials are:⁴

(a) the following paragraphs and/or documents in the 1st Affidavit of Deng Yiming (“the 1st Deng Affidavit”) enclosed to the 1st Affidavit of Shermaine Lim Jia Qi filed on 31 May 2023 in SUM 1488:

(i) paragraphs 11–15 of the 1st Deng Affidavit;

(ii) tabs 4–7 of Exhibit “DYM-1” in the 1st Deng Affidavit;

(b) paragraphs 17–23 of Deng’s written submissions filed on 28 June 2023 in SUM 1488 (“Deng’s Written Submissions”) as they refer to the paragraphs and exhibits mentioned above;

² Statement of Claim at para 23.

³ 2nd Affidavit of Hua Lei (29 May 2023) (“HL-2”) at para 7.

⁴ HC/SUM 1991/2023; Minute Sheet (10 Aug 2023) at p 3–4; Claimant’s Written Submissions in HC/SUM 1991/2023 (3 Aug 2023) (“CWS”) at paras 8–10.

- (c) paragraph 5 of Deng’s Defence;
- (d) as the 1st Deng Affidavit that was originally enclosed to the 1st Affidavit of Shermaine Lim Jia Qi had since been filed in court on 12 July 2023 in SUM 1488, the same paragraphs and/or documents mentioned at (a) above;
- (e) the entirety of the 1st Affidavit of Xu Kang filed on 19 July 2023 in SUM 1991 (“the 1st Xu Affidavit”); and
- (f) paragraphs 11, 21–31, 37–44, tabs 1, 4 and 5 of Exhibit “DYM-3” in the 3rd Affidavit of Deng Yiming filed on 8 August 2023 in SUM 1991 (“the 3rd Deng Affidavit”).

4 The Offending Materials include, or refer to, the following documents:

- (a) a Business Times article dated 23 August 2022 titled “Wu Yongqiang resigns as executive chairman of Nutryfarm International” (“the Business Times Article”);
- (b) an announcement issued by Nutryfarm International Limited on the Singapore Exchange dated 8 March 2022 (“the Nutryfarm announcement”);
- (c) a “poison pen email” from an anonymous sender dated 9 November 2022 (“the Email”), and passages in the 1st Xu Affidavit, in which allegations were made of a personal relationship between Wu and one Ms “Samantha” Hua Lei (“Ms Samantha”), a director of AET; and

- (d) a draft unsigned version of the minutes of a meeting of Metech’s Remuneration Committee on 26 August 2022 (“the RC Minutes”).

5 In essence, Deng is relying on the Offending Materials to assert that AET’s parent company, Metech International Limited (“Metech”) and Ms Samantha were under the control or influence of one Wu Yongqiang (“Wu”), and Wu was using that control or influence to cause AET to “fabricate” and pursue this action against Deng in the hope that it would stifle XDC’s claim against Wu in HC/OC 9/2023 (“OC 9”).

6 For context, OC 9 was an action brought by XDC against Wu on 6 January 2023 for a sum of \$4,000,000 for shares in AET sold by XDC to Wu.⁵ On 4 July 2023, XDC entered judgment against Wu, after Wu obtained conditional leave to defend the action but failed to meet the condition.⁶ Enforcement proceedings against Wu are ongoing.⁷

7 Some of the Offending Materials (“the OA 148 Documents”) were also included in an affidavit filed by Deng (“the OA 148 Affidavit”) in *Re X Diamond Capital Pte Ltd (Metech International Ltd, non-party)* [2023] SGHC 201 (“*Re X Diamond Capital*”) and were ordered to be expunged by the court there.⁸ That action involved XDC’s application in HC/OA 148/2023 (“OA 148”) to be placed under judicial management. Metech, a creditor of XDC, opposed the application. Deng filed the OA 148 Affidavit in response, alleging that Metech was controlled by Wu and that Wu was “clearly

⁵ Statement of Claim in HC/OC 9/2023 (6 Jan 2023) at para 11.

⁶ HC/ORC 3016/2023.

⁷ HC/ORC 4132/2023.

⁸ 3rd Affidavit of Deng Yiming filed in HC/OA 148 2023 (5 May 2023) (“OA 148 Affidavit”).

making use of Metech, AGT and AET to go after [XDC] and [Deng], in hope [sic] of depriving [XDC] from pursuing its case against Mr Wu in OC 9”.⁹ Deng also stated that if XDC’s judicial management application was refused, “Metech will most likely pursue a winding up order against [XDC], with its preferred liquidator to be appointed” and that it would be “extremely likely that in such a scenario, [XDC’s] claim against [Wu] in OC 9 would be withdrawn”.¹⁰ To substantiate its claims against Wu in OA 148, XDC referred to the OA 148 Documents.

8 Goh Yi-han JC granted the application to expunge the OA 148 Documents as he found them irrelevant: *Re X Diamond Capital* at [18]. Although it was relevant for the court to consider if an application for judicial management was being made for collateral purposes other than those that would be served by such an order, Goh JC found the account presented by XDC implausible, such that the OA 148 Documents which it relied on to advance that account were irrelevant and liable to be expunged: *Re X Diamond Capital* at [16]. In any case, the OA 148 Documents did not even advance XDC’s account: *Re X Diamond Capital* at [17].

9 I note that in granting the application, Goh JC applied r 21 of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 (“the CIR Rules”) (see *Re X Diamond Capital* at [10]), which addresses the striking out of affidavits under certain Parts of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (“IRDA”) and which applied in OA 148 because it concerned an application for judicial management under s 90 of the IRDA. Rule 21 of the CIR Rules does not apply

⁹ OA 148 Affidavit at para 29.

¹⁰ OA 148 Affidavit at para 30.

in the present case and the applicable regime for striking out is that under the Rules of Court 2021 (“ROC 2021”).

The parties’ cases

10 Counsel for Deng submits that the Offending Materials are relevant to OC 161 and SUM 1488,¹¹ arguing that while the court in *Re X Diamond Capital* decided to expunge the OA 148 Documents on the basis that they were irrelevant, the issues in OA 148 are “distinctly different from the triable issues” in this action.¹² On the other hand, counsel for AET highlights Goh JC’s decision in *Re X Diamond Capital* to expunge and reiterates that the Offending Materials are irrelevant to the issues in this action, scandalous, and adduced for a collateral purpose.¹³

My decision

The applicable law

11 Under the ROC 2021, O 9 rr 16(1) and 16(4) are the applicable rules for the striking out of pleadings and affidavits respectively. They read as follows:

Striking out pleadings and other documents (O. 9, r. 16)

16.—(1) The Court may order any or part of any pleading to be struck out or amended, on the ground that —

- (a) it discloses no reasonable cause of action or defence;
- (b) it is an abuse of process of the Court; or
- (c) it is in the interests of justice to do so,

¹¹ Defendant’s Written Submissions in HC/SUM 1991/2023 (3 Aug 2023) (“DWS”) at para 11.

¹² DWS at para 12.

¹³ CWS at paras 13–14, 47, 51 and 58.

and may order the action to be stayed or dismissed or judgment to be entered accordingly.

...

(4) The Court may order any affidavit or other document filed in Court to be struck out or redacted on the ground that —

- (a) the party had no right to file the affidavit or document;
- (b) it is an abuse of process of the Court; or
- (c) it is in the interests of justice to do so.

12 Further, in respect of affidavits, O 15 r 25 of the ROC 2021 provides as follows:

Contents of affidavit (O. 15, r. 25)

25.—(1) An affidavit must contain only relevant facts.

(2) An affidavit must not contain —

- (a) vulgar or insulting words unless those words are in issue in the action; or
- (b) anything that is intended to offend or to belittle any person or entity.

13 There are some differences between these provisions in the ROC 2021 and their predecessor provisions in the Rules of Court (Cap 322, 2014 Rev Ed) (“ROC 2014”). Order 18 r 19(1) of the ROC 2014 is the predecessor provision for O 9 r 16(1) of the ROC 2021 (addressing the striking out of pleadings). However, there is no directly equivalent provision to O 41 r 6 of the ROC 2014 (which addresses the striking out of affidavits) (see *Re X Diamond Capital* at [13]), in place of which there is now O 9 r 16(4) and O 15 r 25 of the ROC 2021 (see *Singapore Rules of Court – A Practice Guide (2023 Edition)* (Chua Lee Ming editor-in-chief) (Academy Publishing, 2023) (“*Singapore Rules of Court – A Practice Guide*”) at para 15.215). For convenience, O 18 r 19(1) and O 41 r 6 of the ROC 2014 read as follows:

Striking out pleadings and endorsements (O. 18, r. 19)

19.—(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —

- (a) it discloses no reasonable cause of action or defence, as the case may be;
- (b) it is scandalous, frivolous or vexatious;
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the Court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

Scandalous, etc., matter in affidavits (O. 41, r. 6)

6. The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

14 On a preliminary note, I observe that O 15 r 25 of the ROC 2021 makes no direct reference to the striking out of affidavits. Rather, the provision simply stipulates what an affidavit must and must not contain – *ie*, that an affidavit must contain only relevant facts, and must not contain “vulgar or insulting words unless those words are in issue in the action” or “anything that is intended to offend or to belittle”. In my view, the principles enshrined in O 15 r 25 may be subsumed within the wording of O 9 rr 16(4)(b) and 16(4)(c) of the ROC 2021, which provide respectively that the court may order an affidavit to be struck out on the ground that it is an abuse of process or it is in the interests of justice to do so.

15 While there are some differences between O 9 r 16(1) of the ROC 2021 and O 18 r 19(1) of the ROC 2014, they have the same effect, with the exception of O 9 r 16(1)(c) replacing O 18 rr 19(1)(b) and 19(1)(c) of the ROC 2014 to

incorporate the Ideals as set out in O 3 r 1 of the ROC 2021, *ie*, to do what the interests of justice require: *Tiger Pictures Entertainment Ltd v Encore Films Pte Ltd* [2023] SGHC 255 at [16], citing *Singapore Rules of Court – A Practice Guide* at para 09.051. Although they have not been retained under the ROC 2021, O 18 rr 19(1)(b) and 19(1)(c) of the ROC 2014 have effectively been subsumed under O 9 rr 16(1)(b) and 16(1)(c) of the ROC 2021 (see Jeffrey Pinsler, *Singapore Court Practice* (LexisNexis, 2023) (“*Singapore Court Practice*”) at paras 9.16.2, 9.16.2A and 9.16.6). Pleadings (or parts thereof) which are scandalous, frivolous or vexatious, or which may prejudice, embarrass or delay the fair trial of the action, may be struck off as being either an abuse of process or against the interests of justice.

16 Overall, the authorities pre-dating the ROC 2021 remain relevant in assessing the merits of a striking out application under the ROC 2021: *Leong Quee Ching Karen v Lim Soon Huat and others* [2022] SGHC 309 at [23], citing *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 (“*Iskandar bin Rahmat*”) at [17]–[19] and *Eurogreen Building Products Private Limited v Savourer Pte Ltd* [2022] SGMC 53 at [13]. For present purposes, it suffices to summarise the Court of Appeal’s holdings in *Iskandar bin Rahmat* as regards the “abuse of process” and “interests of justice” grounds under O 9 rr 16(1)(b) and 16(1)(c) of the ROC 2021:

- (a) the inquiry into what constitutes an abuse of process of the court includes considerations of public policy and the interests of justice, and signifies that the process of the court must be used *bona fide* and properly and must not be abused; the court will prevent improper use of its machinery and the judicial process from being used as a means of vexation and oppression in the process of litigation (*Iskandar bin*

Rahmat at [18], citing *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 (“*Gabriel Peter*”) at [21]);

(b) the “interest of justice” ground gives effect to the court’s inherent jurisdiction to prevent injustice, such as where the claim is plainly or obviously unsustainable (*Iskandar bin Rahmat* at [19], citing *The Bunga Melati 5* [2012] 4 SLR 546 at [33]).

These principles likewise apply to O 9 rr 16(4)(b) and 16(4)(c) of the ROC 2021, which adopt identical language to O 9 rr 16(1)(b) and 16(1)(c).

17 However, O 9 rr 16(1) and 16(4) of the ROC 2021 are expressed in broader terms than O 18 r 19(1) and O 41 r 6 of the ROC 2014. In particular, the “interests of justice” ground under O 9 r 16(1)(c) has been noted to be “a new provision which has no precedent ... is residuary in nature and is intended to empower the court to terminate [an] action or dismiss a defence or make any other appropriate order if this outcome is necessary to achieve the interests of justice” (*Singapore Court Practice* at para 9.16.6).

18 Nevertheless, the grounds of “abuse of process” and “interests of justice” under O 9 r 16 of the ROC 2021 should not be construed too widely. An overly liberal interpretation of the grounds under O 9 r 16 may invite a deluge of striking out applications and appeals arising out of these applications. The various rules and procedures under the ROC 2021 must be read and understood in light of the Ideals under O 3 r 1, which emphasise, *inter alia*, fairness, efficiency, and practicality in court processes.

19 The Ideals are “akin to constitutional principles by which the parties and the Court are guided in conducting civil proceedings”: see Civil Justice Commission (“CJC”), *Civil Justice Commission Report* (29 December 2017)

(Chairman: Justice Tay Yong Kwang) at para 3. Indeed, under O 3 r 1(3), it is mandatory for the court to seek to achieve the Ideals in all its orders and directions. While the CJC in formulating the Ideals recognised that all of the Ideals may not be achieved in every case – for example, “fair access to justice” in a certain case may be at odds with “expeditious proceedings” – the Ideals are to be applied conjunctively, as dictated by the circumstances of each case, and they serve as a guide to the court, rather than a formula to be followed: see Ministry of Law and the New Rules of Court Implementation Team, *Response to Feedback from Public Consultation on the Civil Justice Reforms: Recommendations of the Civil Justice Commission and the Civil Justice Review Committee* (11 June 2021) (Chairman: Justice Ang Cheng Hock) at para 16.

20 To give effect to the Ideals in the context of striking out applications, the court should only allow striking out or expunging of irrelevant material where doing so would serve a broader purpose. Examples include removing scandalous allegations, substantially reducing the time and costs of trial or further proceedings, or preventing collateral attacks on the parties or their witnesses. This approach would best balance and effectuate the Ideals of fairness, efficiency, and practicality. If irrelevancy were the only criteria, parties might be encouraged to engage in satellite litigation over any material alleged to be irrelevant on matters peripheral to the case. That would cause delays in court proceedings, inefficiency in the use of court resources and an increase in costs, which would be contrary to the Ideals.

21 O 9 r 16, as well as O 15 r 25’s stipulation that an affidavit “must contain only relevant facts” (which as noted above at [14] may be subsumed within O 9 rr 16(4)(b) and 16(4)(c) of the ROC 2021), should be read in light of these observations.

22 I now apply these principles to the present case.

The Offending Materials are irrelevant

23 Deng did not challenge, or offer contrary evidence to, AET’s case that he had taken possession of the Diamonds and did not respond to AET’s written demand that they be returned. The crux of the dispute was whether:

- (a) AET owned the Diamonds, having purchased them from XDC;
or
- (b) as pleaded in the Defence, XDC had only loaned the Diamonds to AET on the instructions or request of Wu and/or Ms Samantha, and AET was accordingly not entitled to their return.¹⁴

24 For the reasons set out in the SUM 1488 Grounds, I found that AET had purchased the Diamonds from XDC, and Deng had no basis to refuse to return them: the SUM 1488 Grounds at [17]. I noted that Deng did not dispute or challenge AET’s case that XDC had received substantial sums of moneys: the SUM 1488 Grounds at [14] and [27]. However, he refused to engage with AET’s evidence, including documentary evidence, which showed that:

- (a) moneys were paid to XDC by AET, or on AET’s direction;
- (b) the moneys were for the purchase of the Diamonds from XDC ;
and
- (c) Deng had himself signed an audit confirmation to AET on behalf of XDC acknowledging that some of the Diamonds were purchased by AET from XDC using the moneys that had been remitted to XDC.

¹⁴ Defence (18 Apr 2023) at paras 3(8), 3(16) and 3(23).

(the SUM 1488 Grounds at [14], [17], [27] and [34])

25 More pertinent to this application is what relevance the Offending Materials have to AET’s case or Deng’s Defence. Counsel for Deng accepts that they are not relevant to the issue of whether the Diamonds were sold or loaned by XDC to AET.¹⁵ Instead, in Deng’s Written Submissions, he argues that the Offending Materials “highlight the following material and relevant information”:¹⁶

- (a) that Wu is a controller of AET (which operates through Metech);
- (b) that Ms Samantha was previously promoted from Deputy CEO to CEO and executive director of Metech on Wu’s recommendation, as Wu himself was unable to assume directorship of Metech, AGT and/or AET, due to Wu’s run-in with SGX from March to August 2022, as he is involved in *inter alia* 18 civil suits in China;
- (c) that Ms Samantha had a personal relationship with Wu outside Metech and would usually take instructions from Wu on Metech’s matters, and by consequence, AET’s matters; and
- (d) that Wu’s influence over Metech is also evidenced by how he was able to arrange for Metech’s payment of cash bonuses to AET’s board and monthly consultant payments to himself without having sought the approval of Metech’s board and without the knowledge of Metech’s remuneration committee, even though approval of the same is required.

¹⁵ Minute Sheet (10 Aug 2023) at p 3.

¹⁶ DWS at para 6.

26 Further, Deng argues that the Offending Materials are “relevant as it shows how [Wu] is the ultimate controller of Metech, and therefore AET”,¹⁷ and that this goes towards:

(a) “demonstrating [Wu’s] ulterior motive, which is to utilise his companies (including Metech and AET) against XDC and [Deng], in order to stifle XDC from pursuing its claim against [Wu] in [OC 9]”;¹⁸ and

(b) “the very heart of the issue – that [Wu] is commencing a barrage of claims against [Deng] and XDC in order to stifle XDC from pursuing its claim against [Wu] in [OC 9]”.¹⁹

27 These broad allegations do not come close to establishing any relevancy to this action. Even if Wu was in control of AET or was otherwise able to influence it to commence proceedings against XDC, and even if it was beneficial to Wu for AET to bring this claim, that is not sufficient to establish a triable issue or some other reason for trial, particularly given Deng’s inability or failure to respond to the material issues. In this regard, as noted above at [24], Deng failed or refused to engage the evidence of AET’s purchase of the Diamonds, including his written acknowledgement of the same, which entirely debunked his Defence that the Diamonds were loaned by XDC to AET.

28 There is a further point. As stated above at [6], XDC entered judgment against Wu in OC 9 on 4 July 2023, as Wu had failed to meet the condition imposed on him for defending the claim. Wu’s appeal in HC/RA 96/2023

¹⁷ DWS at para 10.

¹⁸ DWS at para 10.

¹⁹ DWS at para 31.

against the order granting conditional leave was dismissed on 17 July 2023.²⁰ No further appeal was filed. In other words, at the time this application was heard on 10 August 2023, there was no issue of Wu using this action to stifle XDC's claim in OC 9. Indeed, on 13 July 2023, XDC applied and obtained an order to examine Wu as an enforcement respondent.²¹ Deng offered no explanation as to how this action was still being used to "stifle XDC", particularly as it was against him personally and not XDC. That Deng continues to argue the relevancy of the Offending Materials when the basis of his alleged concern has ceased to exist only underscores how contrived his arguments are.

The Offending Materials should be expunged

29 The Offending Materials are not only irrelevant but are also of an offensive and scandalous nature, such that striking out is justified. The Offending Materials essentially seek to cast aspersions on Wu, Ms Samantha, and the management of Metech. They are relied on to show that Ms Samantha and the management of Metech are under the control and influence of Wu, who is neither a director nor a majority shareholder of the company. This implies that Ms Samantha and the management of Metech are not properly discharging their duties as officers of Metech and AET. Further, the Offending Materials assert, or are relied on to assert, that Wu is using his control and influence to cause AET to "fabricate" and pursue this action against XDC to stifle its claim against him in OC 9. This is a serious allegation of impropriety and breach of fiduciary duties.

²⁰ HC/ORC 3257/2023.

²¹ HC/ORC 3204/2023.

30 Likewise, the allegation of a personal relationship between Wu and Ms Samantha is completely irrelevant and scandalous. In this regard, the adducing of the Email is particularly egregious and revealing of Deng’s motives. It was, on Deng’s own case,²² sent by an *anonymous* person and contained material which he could neither verify nor confirm. Its contents are completely unreliable. Indeed, Goh JC had in OA 148 (*Re X Diamond Capital* at [19]) ruled it to be inadmissible hearsay evidence, albeit in a different statutory context from the present case.

31 I note that hearsay evidence contained in affidavits filed in applications for summary judgment is *prima facie* admissible – O 3 r 5(7) of the ROC 2021 provides that in all applications to the court in an action (which includes applications for summary judgment), supporting affidavits “may contain statements of information or belief with their sources and grounds clearly stated”: see *HSBC Trustee (Singapore) Ltd v Lucky Realty Co Pte Ltd* [2015] 3 SLR 885 (“*HSBC Trustee*”) at [93], discussing the similar O 14 r 2(8) of the ROC 2014.

32 However, the sources and grounds for hearsay evidence must be *clearly stated* under O 3 r 5(7). As observed in *HSBC Trustee* at [90], the phrase “sources and grounds” in provisions enshrining exceptions to the rule against hearsay refers to “sources for the information [deposed to]” and “[the deponent’s] grounds for the beliefs [deposed to]”. In respect of the Email, Deng states that his source is an “anonymous sender” and he provides no further grounds to support his belief in the contents of the Email.²³ This cannot be considered as a statement of his sources and grounds for belief in respect of the

²² Reply Affidavit of Deng Yiming (12 Jul 2023) (“DY-1”) at para 12.

²³ DY-1 at para 12.

Email. In this regard, Deng is relying on the Email for the *truth of its content*, and not to prove that it was received – hence, clearly stated “sources and grounds” for his belief are required, without which there is no basis for the information he seeks to rely on. Thus, the Email is inadmissible.

33 In my view, the real purpose of the Offending Materials is to attack the characters of, and embarrass, Wu, Ms Samantha and/or the boards of Metech and AET, whether as an end in itself or to distract from the fact that Deng had no real defence.

34 Expunging the Offending Materials therefore serves the legitimate purpose of removing not just irrelevant material, but material which has been included to advance a collateral purpose of attacking or embarrassing Deng’s adversaries. It is clearly in the interests of justice to expunge.

35 I also find that it is an abuse of process for Deng to include and rely on the Offending Materials, particularly as they had previously been expunged in OA 148. Deng’s argument that the issues in that application are “distinctly different” is a hollow and specious attempt to justify the unjustifiable, and a cynical excuse to continue his personal agenda.

36 However, I make no order with respect to striking out paragraph 5 of Deng’s Defence. I note that the striking out of pleadings has more serious consequences than the striking out of affidavits (*X Diamond Capital* at [14]), and it is “only in plain and obvious cases” that this power should be invoked (*Gabriel Peter* at [18]). In any event, all that paragraph 5 pleads is that Wu was a controller of Metech, AGT and AET and that Ms Samantha was appointed CEO of Metech and to the board of Metech, AGT and AET on Wu’s recommendation. While AET may disagree with those assertions, there is

nothing inherently objectionable about them. They were also pleaded in response to paragraph 5 of AET’s Statement of Claim, which, *inter alia*, introduced Metech and AGT, and pleaded that Ms Samantha was a director of both. It was therefore presented in the Defence as part of the factual background to the dispute. None of the other Offending Materials were pleaded.

37 AET argues that paragraph 5 of Deng’s Defence was a “Trojan horse” which allowed the other Offending Materials to be introduced. But this acknowledges that the pleading is simply irrelevant without more. It is not in the interests of justice to strike out pleadings, which, on their face, do nothing more than briefly plead background facts. The expunging of the other Offending Materials is sufficient to deal with the mischief which AET complains of.

Conclusion

38 I therefore grant AET’s application to expunge the Offending Material save in respect of paragraph 5 of Deng’s Defence. Deng is to refile the relevant affidavits and submissions with the relevant Offending Material removed or redacted. The 1st Xu Affidavit is to be expunged in its entirety.

39 I also order the sealing of the affidavits filed in respect of SUM 1991.

40 I shall hear parties on costs.

Hri Kumar Nair J
Judge of the High Court

Yam Wern Jhien, Bethel Chan Ruiyi and Tan Li Jie Stanley (Setia
Law LLC) for the plaintiff;
Zhulkarnain bin Abdul Rahim, Sean Chen Siang En, Shermaine Lim
Jia Qi and Cheong Wei Wen John (Dentons Rodyk & Davidson LLP)
for the defendant.
