BMP *v* BMQ and another appeal
[2013] SGHC 263

Case Number	: Divorce No 5 of 2011(Registrar's Appeal Subordinate Courts Nos 193 and 194 of 2012)
Decision Date	: 05 December 2013
Tribunal/Court	: High Court
Coram	: Lionel Yee JC
Counsel Name(s)	: Peter Cuthbert Low and Choo Zheng Xi (Peter Low LLC) for the plaintiff; Khoo Boo Teck Randolph and Anusha Prabhakaran (Drew & Napier LLC) for the defendant.
Parties	: BMP — BMQ

Contempt of court – Civil contempt

5 December 2013 Judgment reserved.

Lionel Yee JC:

1 The court's power to compel obedience to its orders and rulings in civil proceedings through penal sanctions is founded not only on the need to vindicate the rights of litigants but also on the need to uphold its authority and protect the administration of justice: see *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 at [22]–[27]. However, because of the summary and quasi-criminal nature of the court's jurisdiction in civil contempt as well as the fact that the liberty of the respondent is at stake, it is important that there be compliance with the relevant procedural rules and safeguards. One such procedural safeguard is that any application for an order of committal must be made with the prior leave of the court, as prescribed by O 52 r 2 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("Rules of Court"). It is this first stage of applying for leave to apply for an order of committal that is in issue in this case.

Background

The Mareva injunction

2 The present dispute arises in the context of pending divorce proceedings. The plaintiff wife ("the Plaintiff") filed for divorce on 3 January 2011 against the defendant husband ("the Defendant"). On the same date, the Plaintiff also applied *ex parte* for a Mareva injunction to restrain the Defendant from dealing with certain assets which included the matrimonial property ("Matrimonial Property"). On 4 January 2011, the Plaintiff was granted a Mareva injunction in the following terms:

> **Disposal of assets**
>
> 1. The Defendant is restrained from removing or disposing of the following assets:
>
> (1) the [Matrimonial Property] or the net sale proceeds if the said property has been sold;
>
> …

(4) any shares and securities in the following companies:

…

(h) [E] Pte Ltd;

…

(5) the following insurance policies:

(a) [Insurance Policy No. xxx]; and

…

EXCEPTIONS TO THIS ORDER

4. This order does not prohibit the Defendant from dealing with or disposing of any of his assets in the ordinary and proper course of business. The Defendant shall account to the Plaintiff within three (3) days for the amount of money spent in this regard.

Commencement of committal proceedings

3 On 8 August 2011, the Plaintiff took out an *ex parte* application in SUM 13716 of 2011 ("SUM 13716") for leave to apply for an order of committal against the Defendant on the ground that the Defendant was in contempt of court for failing to comply with the Mareva injunction. SUM 13716 was supported by an affidavit by the Plaintiff as well as a statement pursuant to O 52 r 2(2) of the Rules of Court ("the Statement") which particularised the Defendant's alleged contempt as follows:

Disobedience of The Said Injunction Dated 4 January 2011

8. The Defendant had – in breach of the said Injunction – disposed of and/or dealt with and/or diminished the value of the said 4 types of matrimonial assets which are the subject matter of the said Injunction.

9. Firstly, the Defendant had disposed of and/or dealt with and/or diminished the value of the Matrimonial Property by [surreptitiously] taking out a further mortgage on the Matrimonial Property. And, the Defendant had failed – and, continues to fail – to account for the mortgage loan amount of **$378,000**.

10. Secondly, the Defendant had disposed of and/or dealt with his shares in [[E] Pte Ltd]. And, the Defendant had failed – and, continues to fail – to account for the proceeds of the sale of his shares in [[E] Pte Ltd].

11. Thirdly, the Defendant had disposed of and/or dealt with the insurance monies of **$81,747.50** he received in respect of his [Insurance Policy No. xxx]. And, the Defendant had failed – and, continues to fail – to account for the said $**81,747.50** which he received around May 2011.

[emphasis in original]

On 15 August 2011, the district judge hearing SUM 13716 granted leave to the Plaintiff to apply for

committal and the Plaintiff duly applied for an order of committal against the Defendant in SUM 14076 of 2011 ("SUM 14076").

4 The Defendant then filed SUM 19300 of 2011 ("SUM 19300") on 15 November 2011, seeking *inter alia* to strike out SUM 14076 and to set aside the order of 15 August 2011 granting leave to the Plaintiff to apply for committal. The Defendant's submissions in SUM 19300 were essentially that: [note: 1]

(a) The Statement was defective in that it was insufficiently particularized and charged the Defendant with breaches of non-existent obligations.

(b) The Plaintiff did not produce an affidavit of service to prove that the Mareva injunction dated 4 January 2011 had been personally served on the Defendant.

(c) The Plaintiff did not make full and frank disclosure of the facts at the *ex parte* hearing in SUM 13716, such as the fact that the Mareva injunction contained an exception for dealings "in the ordinary and proper course of business".

Conversely, the Plaintiff submitted that the Statement sufficiently set out the grounds for committal and that the Defendant was being overly pedantic so as to circumvent the Mareva injunction. [note: 2] There was no requirement that the Statement should state whether and how the Mareva injunction was served; in any case, the court could rectify any procedural defects and as long as the defendant actually had notice of the injunction, a lack of valid service would not invalidate it.

5 SUM 19300 was heard by a district judge ("the District Judge") who set aside part of the order of 15 August 2011 but also granted leave to the Plaintiff to apply for an order of committal against the Defendant in certain respects. The District Judge made the following orders on 2 November 2012: [note: 3]

1) Order of Court granting leave to apply for an Order of Committal against the Defendant be set aside with respect to the following.

i) the [Matrimonial Property]

...

2) Plaintiff is granted leave to apply for an Order of Committal for contempt of the Court Order of 4 January 2011 with respect to paragraph (1)(4)(b) – [E] Pte Ltd shares and 5(a) [Insurance Policy No. xxx].

3) Cost reserved to Judge hearing the Committal Order.

6 Both parties were dissatisfied with the outcome of SUM 19300 and each filed an appeal. The Defendant filed RAS 193 of 2012 ("RAS 193") on 15 November 2012 against paras (2) and (3) of the District Judge's orders above. The Plaintiff filed RAS 194 of 2012 ("RAS 194") on 16 November 2012 against para (1) of the District Judge's orders above. The District Judge released his grounds of decision on 29 April 2013 ("the GD").

RAS 193 and RAS 194

7 I first heard RAS 193 and RAS 194 on 12 June 2013. At this hearing, the Plaintiff argued that

the District Judge had erred in setting aside the order of 15 August 2011 granting leave to apply for committal against the Defendant with respect to the Matrimonial Property based on his finding that the Defendant had no notice of the Mareva injunction until 17 January 2011 (see [38]–[42] of the GD). The Plaintiff submitted that the issue of whether and when the Defendant had notice of the Mareva injunction should have been heard by the trial judge hearing the committal application and not the District Judge and that even if the District Judge was entitled to decide this issue, he erred in finding that that the Defendant had no knowledge of the Mareva injunction. The Plaintiff's position was that the Defendant became aware of the Mareva injunction through his mother between 7 January 2011 and 10 January 2011 and that the Defendant breached the Mareva injunction when he took out a further mortgage of about $378,000 on the Matrimonial Property and withdrew $350,000 of this sum on 14 January 2011. [note: 4]

8 The Defendant's position on this issue was that there was no proof that the Mareva injunction had been personally served on the Defendant. Further, the Plaintiff was barred by the doctrine of issue estoppel from arguing that the Defendant had notice of the Mareva injunction through his mother because the issue of the mother's knowledge of the Mareva injunction had already been considered and dismissed in separate contempt proceedings taken out by the Plaintiff against the Defendant's mother. [note: 5] As for the further mortgage on the Matrimonial Property, the Defendant highlighted that this mortgage was taken out by late December 2010 and thus pre-dated the Mareva injunction which was issued on 4 January 2011. [note: 6] Given these arguments, I directed parties to address the court at the next hearing on the applicable legal principles for the granting of leave to apply for an order of committal.

9 At the second hearing on 21 October 2013, it was common ground that a *prima facie* case of contempt needs to be shown in order to obtain leave to apply for an order of committal. However, the parties disagreed on whether this threshold had been met in the present case. Further, counsel for the Defendant emphasised that given the grave nature of committal proceedings, the relevant procedural rules and safeguards had to be strictly complied with. The Defendant maintained its position that the Plaintiff had violated important procedural safeguards by *inter alia* failing to set out sufficient particulars of the alleged contempt in the Statement under O 52 r 2(2) of the Rules of Court and failing to prove personal service of the Mareva injunction and to make full and frank disclosure at the *ex parte* application for leave to apply for an order of committal; these were essentially the same arguments it raised in SUM 19300 (see [4] above). Before me, counsel for the Defendant also submitted that the present committal application was meaningless because any dissipated assets could be accounted for when the ancillary matters were resolved.

Issues

10 A number of issues arise from the present appeals, namely:

(a) the threshold for granting leave to apply for an order of committal under O 52 r 2;

(b) what is required of a statement under O 52 r 2(2); and

(c) whether there is a need to prove, during the *ex parte* hearing of an application for leave to apply for an order of committal, that the order upon which the defendant is sought to be committed has been duly served.

Requirements for application for leave to apply for an order of committal

Threshold for granting leave

11 In Singapore, committal for contempt of court is usually a two-stage process, as prescribed by O 52 of the Rules of Court. First, an *ex parte* application must be made for leave to apply for an order of committal under O 52 r 2 ("the leave stage"). Second, if such leave is granted, an application for an order of committal may then be made within 14 days of the granting of leave under O 52 r 3 ("the committal stage"). The respondent may also apply to court under O 32 r 6 of to set aside any *ex parte* order granting leave to apply for an order of committal, as was done in this case. Contrary to the Plaintiff's assertions, the judge hearing such an *inter partes* application to set aside leave is not prevented from disturbing the findings of the judge who granted the *ex parte* order. The Plaintiff relied on *Neo Mei Lan Helena v Long Melvin Anthony & Another* [2000] SGDC 28 ("*Neo Mei Lan*") at [15] as authority for the proposition that the District Judge in this case was not in a position to disturb the findings of the district judge who had earlier granted leave to the Plaintiff to apply for committal against the Defendant. [note: 7] But in the passage cited to me, the district judge in *Neo Mei Lan* (who was hearing an application to set aside an *ex parte* injunction) was only stating that she would not go behind the decision of the judge to go ahead with the *ex parte* hearing; the district judge in *Neo Mei Lan* in fact rightly went on to determine, based on the evidence and the arguments of both parties, whether the *ex parte* injunction should be continued or discharged.

12 The Plaintiff further suggested that a respondent could only object to the granting of leave to commence committal proceedings in "exceptional circumstances" which were limited to those stated by Kan Ting Chiu J in *Ang Boon Chye and another v Ang Tin Yong* [2011] SGHC 124 ("*Ang Boon Chye*") at [12]:

> The defendant should intervene and object to the plaintiffs' application at this preliminary stage [of applying for leave to commence committal proceedings] *only in exceptional circumstances such as*:
>
> (a) the Order of Court had been complied with;
>
> (b) the plaintiffs waived their rights to the accounts;
>
> (c) the plaintiffs had undertaken not to take out committal proceedings,
>
> or on other grounds which go to the plaintiffs' entitlement to apply for leave to commence committal proceedings.
>
> [emphasis added]

However, it is clear from the quote above that Kan J was only giving examples of exceptional circumstances and was not setting out an exhaustive list of permissible objections to the granting of leave. Moreover, these statements were made in the context of the defendant's position that "although he had not complied with the court order, his failure did not tantamount to contempt of court"; thus Kan J held that the defendant should not have objected at the leave stage (since he was not alleging that he had complied with the court order) but rather should have put forward his case at the second stage of the proceedings when the plaintiffs applied for committal against him: *Ang Boon Chye* at [13].

13 The observations made in *Ang Boon Chye* are not inconsistent with the test of a *prima facie* case of contempt at the leave stage. As stated above, counsel for both parties submitted that the test of a *prima facie* case of contempt, as laid down by the Malaysian courts, should similarly apply in determining whether leave to apply for an order of committal should be granted under O 52 of the

Rules of Court. I agree. Valuable guidance can be found in Malaysian practice, given the similarity of their provisions on committal for contempt of court to ours as well as the dearth of Singapore cases on this issue.

14 The Malaysian courts have consistently held that leave to issue committal proceedings will be granted if a *prima facie* case of contempt has been made out. As in Singapore, the procedure for committal in Malaysia has its roots in English practice and thus O 52 r 3 of the Malaysia Rules of Court 2012 (formerly O 52 r 2 of the Malaysia Rules of the High Court 1980) is materially similar to O 52 r 2 of our Rules of Court. *Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217 held at 221–222 that:

> In the appeals before us, leave to issue committal proceedings has been granted. This means that the learned High Court judge has accepted that there was *a prima facie case for contempt* against the appellants. It may well be that on the hearing of the motion proper, the appellants will be acquitted of any charge of contempt. … [emphasis added]

Subsequent cases have also held that leave to issue committal proceedings will be granted if a *prima facie* case for contempt is shown: see *Ronald Philip Devereux & Anor v Majlis Perbandaran Langkawi Bandaraya Pelancongan & Ors* [2012] 4 MLJ 665 at [2]; and *Woodsville Sdn Bhd v Tien Ik Enterprises Sdn Bhd & Ors* [2009] 3 MLJ 191 at [29]. The following observation was made by VT Singham J in *Foo Khoon Long v Foo Khoon Wong* [2009] 9 MLJ 441 at [21]:

> … At the time when the court had granted leave on 11 June 2007, it is pertinent to observe that there was only a *prima facie case of contempt* which was based on an ex parte application. In other words, it is merely a vetting process on an ex parte basis to consider if there was a prima facie [case] of contempt and the court did not go into the merits… [emphasis added]

15 I have also considered whether any guidance can be had from English practice. Up to 2012, proceedings for committal for contempt of court were mostly governed by O 52 of the English Rules of the Supreme Court ("RSC"), which was similar to O 52 of our Rules of Court in many respects. However, under O 52 rr 2 and 4 of the English RSC, leave or permission to make an application for an order of committal was only required if the application was to a Divisional Court; leave or permission to make an application for an order of committal was not required if the application was made to a court other than a Divisional Court. There is little guidance or case law on what threshold should apply when leave is sought from the Divisional Court. Order 52 of the English RSC was replaced by Part 81 of the English Civil Procedure Rules ("CPR") by virtue of the Civil Procedure (Amendment No. 2) Rules 2012. Pertinently, s 2 of Part 81 of the English CPR, which deals with committal for breaches of judgments or orders to do or abstain from doing an act, contains no provision requiring the applicant to obtain the court's permission before making an application for committal: see *Civil Procedure* vol 1 (Sweet & Maxwell, 2013) at para 81.4.1.

16 There is substantial jurisprudence on the principles applicable to the granting of permission to bring committal proceedings for making false statements of truth under r 32.14 of the English CPR. This rule provides that proceedings for contempt of court may be brought against a person if he makes (or causes to be made) a false statement in a document verified by a statement of truth without an honest belief in its truth. However, rr 81.17–18 of the English CPR state that a committal application in relation to a false statement of truth may only be made by the Attorney-General or with the permission of the court. The cases have held that the following principles apply when such permission is sought: (1) the discretion to grant such permission should be exercised with great caution; (2) there must be a strong *prima facie* case shown; (3) the court should be careful not to stray at this stage into the merits of the case; (4) the court should consider whether the public

interest requires the committal proceedings to be brought; and (5) such proceedings must be proportionate and in accordance with the overriding objective: see *Kirk v Walton* [2009] 1 All ER 257 at [29], cited with approval by *Barnes (t/a Pool Motors) v Seabrook* [2010] EWHC 1849 (Admin) at [39]; *Berry Piling Systems Ltd v Sheer Projects Ltd* [2013] EWHC 347 (TCC) ("*Berry Piling Systems*") at [29]; and *Royal & Sun Alliance Insurance Plc v Kosky* [2013] EWHC 835 (QB) at [2].

17 Thus permission to bring committal proceedings for making false statements of truth under the English CPR will be granted if there is shown, among other things, a strong *prima facie* case and not just a *prima facie* case: see *Berry Piling Systems* at [30]; and *Kabushiki Kaisha Sony Computer Entertainment Inc (t/a Sony Computer Entertainment Inc) v Ball & Ors* [2004] EWHC 1192 (Ch) at [17]–[18]. However, this higher standard should not apply to an application for leave under O 52 of our Rules of Court because the policy considerations underlying rr 32.14 and 81.17–18 of the English CPR are somewhat different. The latter rules were introduced into the English CPR as a means of policing statements of truth, which are not made on oath. In *Malgar Ltd v RE Leach (Engineering) Ltd* [2000] FSR 393, Sir Richard Scott VC drew a distinction between committal proceedings in respect of a breach of an injunction, which could be brought by private individuals without permission, and committal proceedings brought under r 32.14 of the English CPR, which could only be brought by private individuals with the permission of the court. Sir Richard Scott VC stated that the latter category of proceedings involved interference with the course of justice and allegations of public wrong, not private wrong; therefore the court from which permission is sought would be concerned to see that the case was one in which the public interest required the committal proceedings to be brought. In *Berry Piling Systems* at [30] it was also observed that "the strong prima facie case requirement is a primary one because there is often a public interest in a given case (and as a matter of deterrence) to pursue people who it strongly appears have deliberately misled the court and where such misleading may well have led to an interference with justice." However, the present case deals with the former category of committal proceedings brought by a private individual to enforce an injunction in his or her favour; such proceedings bear both a private and public character. I am therefore of the view that the lower standard of a *prima facie* case should apply at the leave stage under O 52 of our Rules of Court.

18 That being said, the requirement for leave under O 52 of the Rules of Court is an important procedural safeguard and the court will not simply rubber-stamp an application for leave to apply for an order of committal. As stated by the Malaysian Court of Appeal in *Tan Sri G Darshan Singh v Tetuan Azam Lim & Pang* [2013] 5 MLJ 541 ("*Tan Sri G*") at [15]–[16], the leave procedure should not be used as a tool for oppression and thus the court will require full and frank disclosure from the applicant and the proper procedure to be followed before it will grant leave to commence committal proceedings.

19 It should also be noted that at the leave stage, the court should not venture into or purport to decide the merits of the substantive committal application. This is because the respondent should be allowed the full opportunity at the committal hearing to respond to the allegations made against him by filing an affidavit in reply denying the allegations or providing some explanation for not complying with the judgment or order of court.

Statement required under O 52 r 2(2)

20 I now examine the provisions of O 52 r 2:

> **Application to Court (O. 52, r. 2)**
>
> **2.**—(1) No application to a Court for an order of committal against any person may be made

unless leave to make such an application has been granted in accordance with this Rule.

(2) An application for such leave must be made by ex parte originating summons or by summons in the proceedings, as the case may be, to a Judge and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed when the application is made, verifying the facts relied on.

Order 52 r 2(2) requires that the application for leave be supported by two documents: (1) a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought (the "O 52 r 2(2) statement"); and (2) an affidavit verifying the facts relied on.

21 Although the Plaintiff already filed an O 52 r 2(2) statement on 11 August 2011, counsel for the Plaintiff contended in his written submissions that an O 52 r 2(2) statement was not required for committal proceedings commenced in the Subordinate Courts, relying on the following commentary in *Singapore Civil Procedure 2013* (G P Selvam gen ed) (Sweet & Maxwell Asia, 2013) at para 52/2/3:

52/2/3 Application at the Subordinate Court—A statement is not required but the required information is to be included in the affidavit.

A similar observation is made in *Singapore Court Practice 2009* (Jeffrey Pinsler gen ed) (LexisNexis, 2009) at para 52/2/1. However, I am not persuaded that this observation was correct. Order 1 of the Rules of Court provides that the Rules of Court apply, save for a few exceptions, to all proceedings in the Supreme Court and Subordinate Courts. In 1996, the Rules of Court unified the civil procedures in the Supreme Court and Subordinate Courts, which were formerly governed by the Rules of the Supreme Court and the Rules of the Subordinate Courts respectively. Interestingly, O 51 r 2(2) of the Rules of the Subordinate Courts (Cap 321, R 1, 1993 Ed), which was repealed by the Rules of Court 1996, provided that an application for leave to apply for an order of committal had to be supported by an *affidavit* (rather than a statement) setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought. This perhaps sheds some light on why the above commentaries allude to a different procedure being applicable in the Subordinate Courts as compared to the High Court. Be that as it may, the Rules of Court now provide that the required information must be stated in a supporting statement instead of in an affidavit and I can see no exception made for committal applications made at the Subordinate Courts. This was ultimately conceded by counsel for the Plaintiff.

Degree of particularity required in an O 52 r 2(2) Statement

22 The O 52 r 2(2) statement is an important procedural safeguard and serves the purpose of giving the respondent sufficient notice of the allegations made against him. In *Summit Holdings Ltd and another v Business Software Alliance* [1999] 2 SLR(R) 592 ("*Summit Holdings*") at [17], Yong Pung How CJ likened the purpose of the O 52 r 2(2) statement to that of a criminal charge:

… The purpose of the statement is to set out distinctly the grounds which the applicants are proceeding upon and to allow the respondents to have the opportunity of answering them, and, in this respect, its rationale is similar to that of a criminal charge, which is required to be sufficiently particularised so that the accused knows the case that he is meeting and has the opportunity of refuting the allegations.

Summit Holdings concerned an application for committal and there was a preliminary question as to

whether the applicants were entitled to rely on grounds not set out in the O 52 r 2(2) statement. Under O 52 r 5(3) of the Rules of Court, an applicant at the hearing of the application for an order of committal may not rely on grounds other than those in the O 52 r 2(2) statement, unless the court hearing the application grants leave. Yong CJ declined to grant such leave to the applicants in *Summit Holdings*, finding (*inter alia*) that "the rules concerning an application for committal should normally be strictly construed and complied with" and that the respondent's rights would be seriously prejudiced if it did not know the precise case that it would have to meet and summary proceedings were used against it: *Summit Holdings* at [15], [18] and [20].

23 Similarly, in the Malaysian case of *Syarikat M Mohamed v Mahindapal Singh & Ors* [1991] 2 MLJ 112 ("*Syarikat*") at 114, KC Vohrah J emphasised the need for an O 52 r 2(2) statement to "contain enough information with sufficient particularity to enable the person alleged to be in contempt to meet the charge", since "committal proceedings are quasi-criminal proceedings and [where] the liberty of the subject is involved, the procedural rules applicable must be strictly enforced".

24 It follows that any deficiencies in an O 52 r 2(2) statement cannot be cured by references to other documents such as the accompanying affidavit verifying the facts relied upon: see *Syarikat* at 115; and *Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458 ("*Lim Pang Cheong*") at [37]. Nor can any deficiencies be cured by explanations by way of submissions from counsel from the bar, either orally or in writing; every essential particular must be in the statement itself and verified by an affidavit: *The New Straits Times Press (M) Bhd & Ors v Ahirudin bin Attan* [2008] 1 MLJ 814 at [16]. As Nicholls LJ observed in *Harmsworth v Harmsworth* [1987] 1 WLR 1676 ("*Harmsworth*") at 1683:

> ***So the test is, does the notice give the person alleged to be in contempt enough information to enable him to meet the charge?*** In satisfying this test it is clear that in a suitable case if lengthy particulars are needed, they may be included in a schedule or other addendum either at the foot of the notice or attached to the notice so as to form part of the notice rather than being set out in the body of the notice itself. But a reference in the notice to a wholly separate document for particulars that ought to be in the notice seems to me to be a quite different matter. I do not see how such a reference can cure what otherwise would be a deficiency in the notice. As I read the Rules and as I understand the decision in *Chiltern District Council v. Keane*, the Rules require that the notice itself must contain certain basic information. ***That information is required to be available to the respondent to the application from within the four corners of the notice itself. From the notice itself the person alleged to be in contempt should know with sufficient particularity what are the breaches alleged.*** A fortiori, in my view, where the document referred to is an affidavit, which does not set out particulars in an itemised form, but which leaves the respondent to the committal application to extract and cull for himself from an historical narrative in the affidavit relevant dates and times and so forth, and to work out for himself the precise number of breaches being alleged and the occasions on which they took place.
>
> …
>
> I turn to consider whether, on this footing, the test which I have mentioned is satisfied in this case. ***In applying that test the contents of the notice are to be read fairly and sensibly as they would be read by a reasonable person in the position of the alleged contemnor to whom the notice is addressed*** . Would such a person, having regard to the background against which the committal application is launched, be in any doubt as to the substance of the breaches alleged?

[emphasis added in bold italics]

25 The test is therefore whether the O 52 r 2(2) statement is of sufficient particularity such that it gives the person alleged to be in contempt enough information to enable him to meet the charges against him, from the perspective of a reasonable person in the position of the alleged contemnor. In articulating this test, Nicholls LJ approved the earlier case of *Chiltern District Council v Keane* [1985] 1 WLR 619 ("*Chiltern*") where Sir John Donaldson MR said at 622:

> … The test, as I have said, is: *does it give the person alleged to be in contempt enough information to enable him to meet the charge?* If, for example, a defendant is subject to an injunction to leave a stated house not later than a particular time on a particular day, then it would be sufficient to say that he had failed to comply with that order, because it only permits of one breach, namely failure to leave the house by the time stated. But where the order is not in such a simple form and *it is possible for the defendant to be in doubt as to what breach is alleged, then the notice is defective*. [emphasis added]

It should be noted that *Chiltern* was concerned with O 52 r 4(2) of the English RSC which requires the grounds on which committal is sought to be stated in the notice of motion and not an accompanying statement. As seen above, *Harmsworth* also refers to a "notice" instead of a statement because the applicable provision there was O 29 of the County Court Rules 1981, which required a notice to show cause why a committal order should not be made to be personally served on the alleged contemnor. Nevertheless, I am of the opinion that the principles underlying the need for such notices to contain sufficient particularity as to the alleged breaches are equally applicable to the O 52 r 2(2) statement under our Rules of Court.

26 I should, however, draw attention to three important caveats, two of which were highlighted by Woolf LJ in *Harmsworth*. First, the requirement of sufficient particularity in an O 52 r 2(2) statement does not mean that it needs to be drafted as though it was an indictment in criminal proceedings: *Harmsworth* at 1686. Second, if the O 52 r 2(2) statement fails to set out sufficient details of the alleged breaches of the original order, the court has jurisdiction to entertain a fresh application in the proper form founded on the same alleged contempt: *Harmsworth* at 1687. Thus, if an application for leave to apply for an order of committal or an application for an order of committal is dismissed on the ground that the O 52 r 2(2) statement does not set out the grounds of the committal application by specifying the breaches complained of, the applicant is not precluded from bringing fresh committal proceedings founded on the same contempt in compliance with the proper procedure: see *Jelson (Estates) Ltd v Harvey* [1983] 1 WLR 1401. The third point is of a more general nature and it is that the court may exercise its discretion to waive irregularities in committal applications in exceptional cases: see O 2 of the Rules of Court. In *Harmsworth* Nicholls LJ said (at 1684) that in committal applications, as opposed to other applications, the importance which the law attaches to the liberty of the subject means that "normally the procedural rules must be strictly complied with" and "it would only be in an exceptional case that in the absence of the consent of the respondent it would be just to waive an irregularity in a committal application". Moreover a distinction should be drawn between a failure to observe procedural safeguards laid down in O 52 and mere technical irregularities. The former is fatal to committal proceedings, whereas the latter is not: *Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193 ("*Arthur Lee*") at 195. The following statements by Cross J in *Re B (JA) (An Infant)* [1965] 1 Ch 1112 at 1117–1118 (cited in *Arthur Lee* at 195 and *Lim Pang Cheong* (see [24] above) at [29]) are instructive:

> Committal is a very serious matter. The courts must proceed very carefully before they make an order to commit to prison; and rules have been laid down to secure that the alleged contemnor knows clearly what is being alleged against him and has every opportunity to meet the

allegations. For example, it is provided that there must be personal service of the motion on him even though he appears by solicitors, and that the notice of motion must set out the grounds on which he is said to be in contempt; further, he must be served as well as with the motion, with the affidavits which constitute the evidence in support of it.

It is clear that if safeguards such as these have not been observed in any particular case, then the process is defective even though in the particular case no harm may have been done. For example, if the notice has not been personally served the fact that the respondent knows all about it, and indeed attends the hearing of the motion, makes no difference. In the same way, as is shown by *Taylor v. Roe*, if the notice of motion does not give the grounds of the alleged contempt or the affidavits are not served at the same time as the notice of motion, that is a fatal defect, even though the defendant gets to know everything before the motion comes on, and indeed answers the affidavits.

When, however, one passes away from safeguards which are laid down in the interests of the contemnor and comes to consider mere verbal deficiencies in the documents in question - cases where the documents do not comply strictly with the rules, but it is impossible that in any conceivable case the contemnor could be in any way prejudiced by the defects - then it seems to me that there is no reason why the courts should be any slower to waive such technical irregularities in a committal proceeding than they would be in any other proceeding. …

[emphasis added]

Test of particularity to be enforced at the leave stage

27 The pertinent question is then whether the test of sufficient particularity of the O 52 r 2(2) statement should be strictly enforced at the leave stage instead of simply at the committal stage. In my judgment, it is appropriate and necessary for the court to examine the sufficiency of the O 52 r 2(2) statement at the leave stage before leave is granted to commence committal proceedings. It would be prejudicial to subject the respondent to committal proceedings in circumstances where he does not know with sufficient precision the allegations of contemptuous conduct that he has to meet and therefore does not have the full opportunity to defend himself. The matter should not be allowed to proceed further if the notice of the charges brought against him is faulty. I find support for this proposition in the case of *Tan Sri G* where the Malaysian Court of Appeal stated at [16]:

… Any question whether the ex-parte leave to commence committal proceedings was wrongly obtained must be dealt with first since it is the foundation in the process of committal proceedings. Two wrongs do not make a right. A Court of law will not lightly allow its processes to be abused. If the process of the court was wrongly used to obtain the ex parte order for leave, that leave will be set aside first.

Proof of service

28 As highlighted by the Plaintiff, the Rules of Court do not expressly require an O 52 r 2(2) statement to set out whether and how the order of court was served on the person against whom an order of committal is sought for breach of that order. However, under O 45 r 7(2) of the Rules of Court, one of the preconditions to the enforcement of an order (or a judgment) by an order of committal is that a copy of the order sought to be enforced must be served personally on the respondent. Order 45 rr 7(6)–(7) go on to provide that the court nevertheless has the discretion to dispense with personal service or proceed with enforcement of the order despite a lack of personal service in certain circumstances:

(6) An order requiring a person to abstain from doing an act may be enforced under Rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this Rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either —

(a) by being present when the order was made; or

(b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

(7) Without prejudice to its powers under Order 62, Rule 5, the Court may dispense with service of a copy of an order under this Rule if it thinks it just to do so.

29 Order 45 r 7 of the Rules of Court makes it clear that in committal proceedings for failure to comply with a court order, the court will be concerned to know whether the respondent has been personally served with or otherwise has been notified of the court order. A court considering an application for leave to apply for an order of committal will therefore need to consider the issue of service or notice of the original order. In the context of the leave stage, the issue of whether the respondent has been served with or has notice of the original order also has a bearing on whether a *prima facie* case of contempt is made out. This is probably why the authors of *Singapore Civil Procedure 2013* commented at para 52/2/5 that:

> … The statement [under O 52 r 2] should clearly state when the injunction was obtained *and the order served on the respondent, whether the order was served personally or by substituted service*, and the specific acts committed by the respondent which are said to be in breach of the terms of the injunction. [emphasis added]

30 This issue was also discussed in the Hong Kong case of *Chou Yi Feng v Chou Yi Chen and others* [2002] HCA No 4393 of 2001 (unreported) ("*Chou Yi Feng*"). Under O 52 r 2 of the Hong Kong Rules of the High Court, *ex parte* leave must be granted before an application for an order of committal can be made and an application for such leave must be supported by a statement and affidavit similar to those required under O 52 r 2 of our Rules of Court. In *Chou Yi Feng*, it was opined that the statement presented to the court in support of an *ex parte* application for leave to commit should refer (among other things) to personal service on the contemnor; if personal service is unnecessary, *eg*, service has been dispensed with or substituted service has been ordered and effected, this should also be referred to in the statement: *Chou Yi Feng* at [44]. This is because the statement should enable the court and the contemnor to know what case the contemnor has to meet, and service of the order (upon which the committal proceeding is founded) is almost always an important factor in the exercise of the court's discretion as to whether leave to commit should be granted: *ibid*. Thus in *Chou Yi Feng* the judge found that the statement filed pursuant to O 52 r 2 was defective in failing to make any reference to service, whether personal or otherwise.

31 I hesitate to lay down a strict requirement that the O 52 r 2(2) statement must set out the details and manner of service of the court order on the respondent, since this is not among the requirements explicitly stipulated by the Rules of Court. However, given that: (1) the respondent's knowledge of the court order at the time of its alleged violation is an essential element of contemptuous conduct; (2) at the leave stage, the court has to be satisfied *prima facie* that the court order which is the subject of the committal proceedings has been duly served on the respondent or that the respondent has received notice of the court order; and (3) the O 52 r 2(2) statement must provide the respondent with sufficient information to enable him to meet the allegations made against him, the details and manner of service of the court order on the respondent

should, at least as a matter of good practice, be set out in the O 52 r 2(2) statement and evidence of service must certainly be included in the affidavit which supports the application.

32 Having discussed the applicable legal principles to an application for leave to apply for an order of committal under O 52 r 2 of the Rules of Court, I turn to whether both parties' appeals should be allowed or dismissed.

Whether the Plaintiff's appeal in RAS 194 should be allowed

33 I deal first with the Plaintiff's appeal against the District Judge's decision on 2 November 2012 setting aside the order of court dated 15 August 2011 granting leave to apply for an order of committal against the Defendant with respect to the Matrimonial Property.

34 While the District Judge was correct to consider the issue of whether and when the Defendant had notice of the Mareva injunction, I agree with the Plaintiff that the District Judge had applied an incorrect evidential test in purporting to make a final determination on this issue. The District Judge stated at [41]–[42] of the GD:

> 41. On the evidence, I found that there was indeed a Letter of Offer for the mortgage issued on 22 December 2010 and accepted on 27 December 2010. The letter from [F] LLP dated 6 January 2011 informed the mortgagee bank that the monies could be disbursed and the monies, according to the defendant, were disbursed on 14 January 2011, 3 days before 17 January 2011 when the defendant was handed the divorce papers and the injunction by his [employer]. *On a balance of probabilities, I accepted the defendant's version.*
>
> 42. *I therefore found that the defendant only knew about the injunction on 17 January 2011, long after the mortgage transaction has been completed and after the monies were disbursed.* In view of that, I set aside the order granting leave to commit the defendant with respect to [the Matrimonial Property].
>
> [emphasis added]

35 At the leave stage, the applicant only needs to present a *prima facie* case that the respondent has had notice of the court order made against him and that he is in contempt of that order. To refuse leave on the grounds that the Plaintiff had failed to prove, on a balance of probabilities, that the Defendant had notice of the Mareva injunction by a certain date, was to apply a higher evidential threshold than was required at the leave stage.

36 I then consider whether the District Judge was correct nevertheless in exercising his discretion to set aside the order granting leave to the Plaintiff to apply for an order of committal against the Defendant with respect to the Matrimonial Property. As stated above at [3], para 9 of the Statement filed by the Plaintiff under O 52 r 2(2) alleged that the Defendant had "disposed of and/or dealt with and/or diminished the value of the Matrimonial Property" in breach of the Mareva injunction by "taking out a further mortgage on the Matrimonial Property" and that the Defendant had failed "to account for the mortgage loan amount of $378,000".

37 I note, at the outset, that neither the Statement nor the supporting affidavit filed by the Plaintiff on 8 August 2011 specifies when and how the Defendant is alleged to have received notice of the Mareva injunction, although there is some indirect reference in the supporting affidavit to the fact that the Defendant eventually had notice of the Mareva injunction (which is not disputed in any case, the only issue being *when* this occurred). The allegation that the Defendant received notice of the

Mareva injunction between 7 January 2011 to 10 January 2011 (as stated in the Plaintiff's written submissions) is a crucial allegation because the various events concerning the Matrimonial Property all took place around the time when the Mareva injunction was issued and allegedly served on the Defendant.

38 Turning to the substantive complaints in para 9 of the Plaintiff's Statement itself, in my judgment, these are too vague to give proper notice to the Defendant of the case he has to meet or they make allegations of contemptuous conduct which the Plaintiff is not in fact asserting. The first part of para 9 that reads "taking out a further mortgage on the Matrimonial Property" is clear enough but it is evident that this conduct alone could not amount to contempt because it was not disputed that the mortgage was taken out by the Defendant in December 2010 and therefore the mortgage pre-dated the Mareva injunction of 4 January 2011. In any case, counsel for the Plaintiff clarified before me that the conduct allegedly amounting to contempt was not the taking out of the further mortgage *per se* but how the Defendant dealt with the disbursed loan. So the first part of para 9 alleges contemptuous conduct by the Defendant which the Plaintiff is not accusing the Defendant of.

39 As for the second part of para 9 of the Statement which alleges a failure "to account for the mortgage loan amount of $378,000" on the part of the Defendant, I am of the view that this does not give the Defendant sufficient notice of the charge made against him. The Statement does not specify which part of the Mareva injunction the Defendant is alleged to have breached or the details of the Defendant's alleged failure to account for the mortgage loan amount. I agree with the Defendant that strictly speaking, there is no "duty to account" for such a mortgage loan in the Mareva injunction. [note: 8]

40 Moreover, a reasonable person in the position of the Defendant could construe para 9 of the Statement as referring to the exception in para 4 of the Mareva injunction where the Defendant is not prohibited "from dealing with or disposing of any of his assets in the ordinary and proper course of business" but "shall *account* to the Plaintiff within three (3) days for the amount of money spent in this regard"[emphasis added] since this is the only part of the Mareva injunction where the word "account" appears. But as it turned out, the Plaintiff's complaint had nothing to do with this obligation to account. It was only clarified in the Plaintiff's supporting affidavit and in submissions by her counsel that the complaint was actually about the withdrawal by the Defendant on 14 January 2011 of $350,000 out of the mortgage loan of $378,350.46 that was disbursed into the family's bank account, and not about the lack of notice by the Defendant. [note: 9] However, all these details were simply not apparent from the Plaintiff's Statement under O 52 r 2(2) which was not only inadequate but also inaccurate and misleading in articulating the contemptuous conduct complained of. In these circumstances, I am unable to regard para 9 of the Statement as properly setting out the case which the Defendant has to meet.

41 The District Judge was therefore correct to set aside the *ex parte* order granting leave to the Plaintiff to apply for committal with respect to the Matrimonial Property, albeit for different reasons.

Whether Defendant's appeal in RAS 193 should be allowed

42 The Defendant's appeal in RAS 193 is in relation to the District Judge's order of 2 November 2012 granting leave to the Plaintiff to apply for an order of committal against the Defendant with respect to the Defendant's shares in [E] Pte Ltd (the "Shares") and the insurance policy in para 5(b) of the Mareva injunction (the "Insurance Policy").

43 At the outset, I cannot agree with the Defendant's argument that the Plaintiff's committal application was meaningless and should fail because the court could deal with any issues of alleged

dissipation by the Defendant by making the appropriate determinations on the division of the matrimonial assets. Civil contempt is not merely a means by which individual litigants can enforce orders in their favour; it is also intended to uphold the authority of the court in the public interest: see David Eady & A T H Smith, *Arlidge, Eady & Smith on Contempt* (Sweet & Maxwell, 4th Ed, 2011) at para 12–5. Thus, while the Defendant is correct in that the court can account for any dissipated assets during the determination of ancillary matters, this does not detract from the fact that in the present case, a court order was made in the form of a Mareva injunction preventing the Defendant from dealing with or disposing certain assets. Where the Defendant is alleged to have breached this Mareva injunction, the court is not precluded from making a committal order against the Defendant simply because the resultant effects of this breach can be remedied through some other means.

44 With respect to the Shares and the Insurance Policy, as with the Matrimonial Property, it would appear that the District Judge applied an incorrect evidential test in purporting to make final determinations on whether the Defendant was in breach of the Mareva injunction. At [46] of the GD, the District Judge found that the disposal of the Shares was made in breach of the injunction ordered and that the Defendant could not rely on the "ordinary and proper course of business" exception in the Mareva injunction (see [2] above). At [49] of the GD the District Judge similarly "came to the view that the surrender of the Insurance Policy was in breach of the injunction and that it was not a transaction which came within the 'ordinary course of business' exception". I agree with the Defendant that these findings should only have been made at the committal stage and that at the leave stage, the standard of a *prima facie* case of contempt should apply instead. [note: 10] Having said that, it is clear that the District Judge would have been satisfied that a *prima facie* case had been made out on the facts. However, in deciding on whether leave should be granted, consideration should also have been given to whether the Plaintiff's Statement sufficiently particularised the breaches complained of.

The Shares

45 The complaint raised by the Plaintiff in para 10 of the Statement filed pursuant to O 52 r 2 was that "the Defendant had disposed of and/or dealt with" the Shares and that he had failed "to account for the proceeds of the sale of" the Shares (see [3] above).

46 According to the Defendant, there were three tranches of sales of the Shares to his business partner:

(a) 49% or 147,000 of the Shares on 6 January 2011. [note: 11]

(b) 39% or 117,000 of the Shares on 16 February 2011. [note: 12]

(c) 12% or 36,000 of the Shares on 28 February 2011. [note: 13]

47 The Defendant says that the transaction pertaining to the first tranche was concluded before the Defendant received any notice of the Mareva injunction whereas the Defendant had given the Plaintiff notice of the second and third tranches of share sales through letters dated 19 February 2011 and 4 March 2011 respectively. [note: 14] It was not disputed by the parties that these two letters had been received by the Plaintiff. Before me, counsel for the Plaintiff sought to clarify that the Plaintiff's position was that:

(a) the sale of the first tranche of shares had taken place sometime after 7 January 2011 when the Defendant already had notice of the Mareva injunction;

(b) with regard to the second and third tranches, the Defendant did not provide adequate information to the Plaintiff on what the proceeds of the sale were used for and in any case, the proceeds were not applied for legitimate business purposes so as to fall within the exception in the Mareva injunction; and

(c) the Plaintiff was not taking issue with the fact that the notice given by the Defendant in respect of the third tranche was more than three days after the sale took place.

48 However, none of these assertions were set out in the Plaintiff's Statement. The Statement says nothing in particular about any of the tranches; nor does it state when the offending transactions took place or how many Shares they involved. As with the Matrimonial Property (see [37] above), the Statement and the supporting affidavit also say nothing about when the Defendant is alleged to have received notice of the Mareva injunction even though this is important in ascertaining which transactions, especially the sale of the first tranche of shares, were done in contempt of the Mareva injunction. In addition, para 10 of the Statement alleges a failure to account for the proceeds of sale of the Defendant's Shares but does not specify which part of the Mareva injunction is in issue or the details of the Defendant's alleged failure to account.

49 Strangely enough, the Plaintiff's position as stated at [47] above was not even contained in the Plaintiff's first set of written submissions dated 8 January 2013, which only alleged that the Defendant had disposed of 66,000 of the Shares and moreover, that this had taken place on completely different dates, namely between 14 April 2011 and 2 August 2011. [note: 15] At the hearing before me on 21 October 2013, counsel for the Plaintiff could not explain how this figure of 66,000 was arrived at. Thus, on 28 October 2013, I directed counsel for the Plaintiff to provide this explanation, with a right of response given to counsel for the Defendant if necessary. Counsel for the Plaintiff in a letter dated 29 October 2013 explained that a search with the Accounting and Corporate Regulatory Authority ("ACRA") dated 14 April 2011 showed that the Defendant held 66,000 shares in [E] Pte Ltd but another ACRA search on 2 August 2011 showed that the Defendant only held one share in [E] Pte Ltd. This was also stated in the Plaintiff's affidavit filed on 8 August 2011 in support of her application for leave to apply for committal against the Defendant. [note: 16]

50 This is all very well but it is different from the Plaintiff's position set out at [47] above and the fact remains that the Plaintiff's Statement itself does not set out with sufficient particularity what the charges made against the Defendant are with respect to the Shares. All the Statement does is to refer generally to the supporting affidavit dated 8 August 2011 and a laundry list of no less than 22 other affidavits. Particulars of the alleged breaches may well be contained in the Plaintiff's written submissions or affidavits but as I have observed, such particulars must be made available to the Defendant within the four corners of the Statement itself and the Defendant should not have to comb through the affidavits or submissions to ascertain for himself the occasions on which and the manner in which he is alleged to have breached the Mareva injunction. Moreover, the fact that counsel for the Plaintiff had to clarify at the hearings before me and subsequent to the hearings the exact scope of the allegations made against the Defendant amply demonstrates the inadequacy of the Plaintiff's Statement in giving the Defendant proper notice of the charges made against him.

The Insurance Policy

51 Paragraph 11 of the Plaintiff's Statement alleges that the Defendant has "disposed of and/or dealt with the insurance monies of $81,747.50 he received in respect of his [Insurance Policy]" and the Defendant has failed "to account for the said $81,747.50 which he received around May 2011" (see [3] above).

52 It is not disputed that the Defendant through his lawyers wrote to the Plaintiff on 1 June 2011 to inform her that the Insurance Policy had matured but unlike the communications relating to the 2nd and 3rd tranche of the Shares, the Defendant's letter of 1 June 2011 did not claim that the monies received were going to be applied for business purposes and simply stated that the monies were to be used to pay off the Defendant's debts. The Statement however does not set out any of these facts.

53 Counsel for the Plaintiff clarified before me that the Plaintiff was only taking issue with the disposal of the insurance monies and not the failure to account to the Plaintiff under the exception in the Mareva injunction. If that is the case, then leave clearly should not have been granted to the Plaintiff to apply for committal against the Defendant on the ground set out in the second part of para 11, *viz*, that the Defendant failed "to account for the said $81,747.50 which he received around May 2011". Apart from the fact that the Statement does not specify what "accounting" had not been done, it is, for the reasons set out at [40] above, inaccurate and misleading in articulating the contemptuous conduct which the Plaintiff is alleging.

54 What is left is the first part of para 11 of the Statement, *viz*, the allegation that the Defendant had "disposed of and/or dealt with the insurance monies of $81,747.50 he received in respect of his [Insurance Policy]". While I accept that the Defendant would probably have understood what the alleged contemptuous conduct was from this part of the Statement, I nonetheless do not consider it appropriate to grant the Plaintiff leave to apply for committal proceedings in respect of this transaction alone. First, the Statement should have included more details than it did, such as the date and manner of the alleged disposal, given the fact that the Plaintiff did receive the Defendant's letter of 1 June 2011. Second, the fact remains that the Plaintiff has not articulated, either in the Statement or the supporting affidavit, when and how the Defendant had notice of the Mareva injunction. Third, even if the first part of para 11 is permissible, this would constitute only one small remnant of the entire Statement's allegations of contemptuous conduct, the rest of which has been found to be irregular. Last and in any case, as I indicate below, the Plaintiff is not precluded by my decision from re-applying for leave in a proper manner with respect to the Matrimonial Property, the Shares and the Insurance Policy and, if she chooses to do so, all the allegations should be dealt with in a single application.

Conclusion

55 For the reasons set out above, I dismiss the Plaintiff's appeal in RAS 194 and allow the Defendant's appeal in RAS 193. I therefore set aside para 2 of the District Judge's orders on 2 November 2012 granting leave to the Plaintiff to apply for committal against the Defendant with respect to the Shares and the Insurance Policy. The Plaintiff is however not precluded by my decision from re-applying for leave to apply for committal on the same grounds with an O 52 r 2(2) statement in the proper form.

56 Parties will however do well to remember that committal orders should ordinarily be a remedy of the last resort, especially in family proceedings such as the present. As stated in the headnote of *Re M (Minors) (Access: Contempt: Committal)* [1991] 1 FLR 355 (approved in *Tan Beow Hiong v Tan Boon Aik* [2010] 4 SLR 870 at [63]):

> … Committal orders in family cases were remedies of very last resort and should only be considered where there was a continuing course of conduct and where all other efforts to resolve the situation had been unsuccessful. The court would take that measure where it was clear that a person was deliberately and persistently refusing to obey a court order. …

57 On the issue of costs, the District Judge in SUM 19300 reserved costs to the judge hearing the committal order. The Defendant in its notice of appeal in RAS 193 prayed for costs of SUM 19300 to be agreed or taxed and costs of RAS 193 to be paid by the Plaintiff. The Plaintiff, on the other hand, simply prayed for the costs of RAS 194 to be provided for. Having considered these positions, I direct parties to agree on costs within seven days failing which I will hear the parties on costs.

[note: 1] Defendant's RA vol 4 at pp 2057–2071.

[note: 2] Defendant's RA vol 4 at pp 2392–2402.

[note: 3] Defendant's RA vol 1 at p 14.

[note: 4] Plaintiff's Submissions dated 8 June 2013 at para 19.

[note: 5] Defendant's Submissions dated 12 June 2013 at paras 4.3, 8 and 9.

[note: 6] Defendant's Submissions dated 7 January 2013 at para 20.3; Defendant's Submissions dated 12 June 2013 at para 15.5.

[note: 7] Plaintiff's Submissions dated 14 October 2013 at paras 10–12.

[note: 8] Defendant's Submissions dated 7 January 2013 at para 17.5.

[note: 9] Plaintiff's Submissions dated 8 January 2013 at paras 32 and 40; Plaintiff's Affidavit filed on 8 August 2011 at para 17.

[note: 10] Defendant's Submissions dated 18 October 2013 at paras 2.9 and 19.2.

[note: 11] Defendant's RA vol 3 at pp 1343–1347.

[note: 12] Defendant's RA vol 3 at pp 1239–1243.

[note: 13] Defendant's RA vol 3 at pp 1348–1352.

[note: 14] Defendant's RA vol 2A at pp 547–548; Defendant's RA vol 3 at p 1745.

[note: 15] Plaintiff's Submissions dated 8 January 2013 at paras 42(2)(b) and 47.

[note: 16] Plaintiff's Affidavit filed on 8 August 2011 at paras 28–31.

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