

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 244

Originating Summons No 365 of 2020

Between

- (1) Shankar's Emporium Pte Ltd
- (2) Malaya Silk Store Pte Ltd
- (3) Liberty Merchandising Company Pte Ltd

... Plaintiffs

And

- (1) Jethanand Harkishindas Bhojwani
- (2) Lakshmi Prataprai Bhojwani Mrs
Lakshmi Jethanand Bhojwani

... Defendants

GROUND OF DECISION

[Civil Procedure] — [Judgments and orders]

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Shankar's Emporium Pte Ltd and others
v
Jethanand Harkishindas Bhojwani and another

[2020] SGHC 244

High Court — Originating Summons No 365 of 2020
Tan Puay Boon JC
25 September 2020

10 November 2020

Tan Puay Boon JC:

Introduction

1 The first defendant, Jethanand Harkishindas Bhojwani (“the Husband”), is the trustee of a discretionary trust of which the second defendant, Lakshmi Prataprai Bhojwani (also known as Mrs Lakshmi Jethanand Bhojwani) (“the Wife”), was one of the beneficiaries. The Husband had previously been ordered to give an account of the trust property to the Wife in HC/OS 1407/2017 (“OS 1407/2017”), by way of the court order, HC/ORC 50/2019 (“ORC 50/2019”) dated 21 November 2018. Specifically, a list of documents (“P1”) was annexed to ORC 50/2019 detailing the categories of documents that the Husband was obliged to furnish. This obligation was made more specific in relation to the period of time for which the account had to be given in HC/OS 1339/2019 (“OS 1339/2019”), as extracted in HC/ORC 2356/2020 (“the Order”) dated 9 March 2020.

2 The present originating summons, HC/OS 365/2020 (“OS 365/2020”), was an application by three companies (“the Companies”) for the Order to be varied to provide that nothing in the Order and ORC 50/2019 should be taken as compelling the production or disclosure of the categories of documents at S/Ns 5, 7, and 8 in P1 (“the Corporate Documents”) by any of the three companies to either the Husband or the Wife. The three categories of documents are laid out at [12] below.

3 Having heard the parties, I dismissed the Companies’ application. The Companies have appealed, and I now furnish the grounds for my decision.

Background

Parties

4 Given the considerable overlap between the present application and the prior proceedings, the detailed background can be found in my grounds of decision in OS 1339/2019, *Jethanand Harkishindas Bhojwani v Lakshmi Prataprai Bhojwani (alias Mrs Lakshmi Jethanand Bhojwani)* [2020] SGHC 216 (“*Jethanand*”). I summarise the main points briefly.

5 The underlying dispute arose from the last will and testament (“the Will”) of the late Harkishindas Ghumanmal Bhojwani (“the Testator”). The Husband is one of the Testator’s three sons: *Jethanand* at [4].

6 The three Companies are all incorporated in Singapore. They are Shankar’s Emporium Pte Ltd (“SE”), Malaya Silk Store Pte Ltd (“MSS”), and Liberty Merchandising Company Pte Ltd (“LMC”). The Husband is a director of all three Companies. Various family members related to the Testator and the Husband are involved in the management of the Companies. The Companies’

involvement in the dispute between the Husband and the Wife arose from the fact that various shares in the Companies (“the Shares”) are part of the subject matter of a trust established by the Testator’s Will, for which the Husband is a trustee and the Wife (previously) one of the beneficiaries.

The Will and the trust

7 The Testator’s Will established five discretionary trusts: *Jethanand* at [6]. The relevant trust in this case was established by cl 5 of the Will. The property in this trust (“the Clause 5 Trust”) was defined by cl 5.1(iv) of the Will to include, *inter alia*, the Shares in the Companies, as follows:¹

- (a) 9,000 shares in MSS;
- (b) 150,000 shares and one founder’s share (and any conversion therefrom to shares of any other class) in SE; and
- (c) one share in LMC.

8 The Husband is the trustee of the Clause 5 Trust. The Will defined the beneficiaries of the trust as, *inter alia*, the Wife and their three sons: *Jethanand* ([4] *supra*) at [7]. The exact nature of the Clause 5 Trust is not at issue in the present case, and it is sufficient to note that the Husband was given a discretionary power of appointment.

9 The Testator passed away on 4 March 2007 and on 1 August 2008, the Shares were transferred to the Husband: *Jethanand* at [10]. As such, from that

¹ Wife’s Affidavit (“WA”) at pp 98–99.

date onwards, the Husband held the Shares in the Companies as a trustee for the Clause 5 Trust.

History of the dispute

10 Over the course of several actions, the courts have addressed the issue of the Husband's obligation to account for the trust property to the Wife.

OS 1407/2017 and CA 231/2018

11 The Wife commenced OS 1407/2017 seeking an account of the trust property from the Husband. On 21 November 2018, the High Court granted the Wife's application on the following terms as recorded in ORC 50/2019 (later amended in HC/SUM 1941/2019):

1. The [Husband] is to provide an account of the trust property by furnishing the documents set out in the document marked 'P1' in its amended form.
2. The time frame for furnishing the documents is from 6 to 10 weeks, as set out in P1, to be completed by 3 months, in batches.
3. Where the documents do not exist, the [Husband] is to file an affidavit to state that fact and provide an explanation if necessary. This should be filed by the end of 3 months from the date of this order.
4. Liberty to apply.

...

12 The annexed document, P1, provided a list of documents which the Husband was to disclose to the Wife. The present proceedings concern three categories of documents in that list, at S/Ns 5, 7, and 8, which I have referred to as the "Corporate Documents". I reproduce the relevant parts of P1 as follows:

S/N	Description of Document
5.	<p>Full financial statements evidencing the book value of the Shares under the Trust Assets: these would include the audited financial statements of the companies listed in Clause 5.1(4)(b)-(j) of the Will from FY 2007 to FY 2018, or until such time as they are wound up or struck off.</p> <p>The audited financial statements for FY 2018 are to be provided when they are available.</p> <p>Audited Financial Statements would ordinarily include statements by directors, independent auditors' reports, consolidated statement of profit or loss and other comprehensive income, statements of financial position, statement of changes in equity, consolidated statements of cash flows, and notes to the financial statements.</p>
7.	<p>Documents evidencing any rights issues by the companies as identified in Clause 5(1)(iv) of the Will ("Companies") from 1 August 2008 till present (e.g. Relevant company resolutions; Return of Allotment of Shares)</p> <p>These documents should include those relating to the Founder's Share in [SE], which forms part of the Trust Assets</p>
8.	<p>Documents evidencing any conversion of the 1 Founder's Share in [SE] to 1 ordinary share including any shareholders' resolution, minutes of meeting or other documents explaining the reason for the conversion and the rights of the Founder's Share which have been extinguished.</p>

13 The Husband appealed against the decision. On 17 September 2019, the Court of Appeal heard the appeal in CA/CA 231/2018 ("CA 231/2018") and dismissed it. As part of the appeal, the Court of Appeal considered the range of documents in P1 and affirmed the High Court's orders on the documents to be provided: *Jethanand* ([4] *supra*) at [16].

HC/SUM 3013/2019

14 The Companies had previously made an application in HC/SUM 3013/2019 (“SUM 3013/2019”) on 17 June 2019 for leave to intervene in OS 1407/2017. This application was filed after ORC 50/2019 but before the appeal in CA 231/2018 was heard. The relevant prayers in SUM 3013/2019 were as follows:

...

2. Leave be granted for the [Companies] to intervene and be added as the 2nd, 3rd and 4th Defendants in this Originating Summons;

...

4. Leave be granted for the following sentence to be added after paragraph 1 of the Order of Court dated 21 November 2018 (HC/ORC 50/2019) (**‘November Order’**): ‘save that nothing in this order should be construed as compelling production or disclosure to the [Wife] or [Husband] herein by any of the 2nd, 3rd, or 4th Defendants of the documents itemized in S/Nos. 5, 7 and 8 of “P1”.’

...

[emphasis in original]

15 In view of the fact that the appeal was pending, the High Court adjourned SUM 3013/2019 to a date to be fixed after the appeal, since SUM 3013/2019 would have been rendered otiose if the appeal had been allowed: *Jethanand* at [84]. After the appeal was determined on 17 September 2019, the Companies wrote to court on 4 March 2020 for a hearing date to be fixed for SUM 3013/2019.² However, before a hearing date could be fixed, the Companies wrote in on 18 March 2020 to indicate that they would be seeking

² Correspondence dated 4 March 2020.

leave to withdraw SUM 3013/2019.³ In the meantime, as noted below, the Companies commenced OS 365/2020. Leave to withdraw and the relevant costs orders were granted on 9 April 2020.

OS 1339/2019

16 After CA 231/2018, the Husband executed a number of deeds purporting to exclude the Wife from any future interest in the Clause 5 Trust, by way of his discretionary power of appointment. The application in OS 1339/2019 was concerned primarily with the effect of these deeds. In *Jethanand*, I held that the deeds executed on 10 January 2020 were sufficient to exclude the Wife's interest as a beneficiary from that date onwards. This meant that her entitlement to an account from the Husband had ceased by 10 January 2020: *Jethanand* at [78].

17 While the focus of OS 1339/2019 was on the effect of those deeds, the Husband had also raised the issue of the scope of the documents to be disclosed, citing issues relating to the Companies. He argued that the scope of the documents should be varied to account for those issues. In that case, I held that issue estoppel prevented the Husband from revisiting the scope of the documents on the basis of the alleged objections by the Companies: *Jethanand* ([4] *supra*) at [39]. In any event, I would not have granted the variation sought by the Husband, since the Companies were not before me in OS 1339/2019 (*Jethanand* at [84]) and, as between the Husband and the Wife, the Husband's difficulty, if any, in obtaining the documents did not warrant a variation of the Wife's *entitlement* to the account: *Jethanand* at [86].

³ Correspondence dated 18 March 2020.

18 In substance, the Order modified ORC 50/2019 such that the Husband's obligation to account was given an endpoint, and reads as follows:

1. The [Husband] shall furnish an account of the trust of the trust properties under the Last Will and Testament of Harkishindas Ghunmanmal [sic] Bhojwani made on 20.10.06 to the [Wife] in accordance with HC/ORC 50/2019, for the period when the [Wife] was a beneficiary of the Trust, up to and including 9 January 2020, the day before the [Husband] executed the Deed of Appointment and Deed on 10 January 2020.

2. The deadline for provision of the documents under paragraph 1 herein shall be 30 days from the date of the order made herein.

...

The order arising from OS 1339/2019 is the subject of the application for variation in OS 365/2020.

The application

19 On 27 March 2020, the Companies filed OS 365/2020, in which they sought the following reliefs:

1. Leave be granted to the [Companies] for the Order of Court dated 9 March 2020 made by the Honourable Judicial Commissioner Tan Puay Boon (**JC Tan**) in HC/OS 1339/2019 (**March Order**) to be varied as follows (with additions reflected in underline):

'Nothing in HC/ORC 50/2019 dated 21 November 2018 made in HC/OS 1407/2017 and the Order of Court dated 9 March 2020 made in HC/OS 1339/2019 should be construed as compelling production or disclosure by any of the [Companies] to the [Husband] or [the Wife] herein of the documents itemized in S/Nos 5, 7 and 8 of "P1" annexed to HC/ORC 50/2019.'

2. The costs of and incidental to this application be provided for by this Honourable Court; and

3. This Honourable Court makes such further or other Order or other direction as it deems fit and/or necessary.

[emphasis in original]

20 In effect, the Companies sought a variation of the Order in order to define the scope of the Order and the prior order in ORC 50/2019.

Parties' cases

21 In their written submissions, the Companies framed the issue in OS 365/2020 as whether the Companies were required by law to provide the Corporate Documents to the Wife in the context of the Wife's dispute with the Husband.⁴ The Companies answered this question in the negative. They argued as follows. First, in response to allegations raised in the Wife's affidavit, there was no abuse of process and the application was not a backdoor appeal.⁵ Second, their respective articles of association prevented the Companies from recognising the Wife's equitable interest in the Shares⁶ and also restricted the scope of members' rights to inspect the Companies' books and documents.⁷ Third, s 199(3) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act") was limited to an inspection by a director for the purposes of managing the company and nothing else.⁸ Fourth, the Companies could bring the present application for a variation of the Order because they were third parties whose rights and interests have been affected by an order of court.⁹

⁴ Companies' Written Submissions ("CWS") at para 3.

⁵ CWS at paras 12–22.

⁶ CWS at paras 23–24.

⁷ CWS at paras 25–29.

⁸ CWS at paras 30–35.

⁹ CWS at paras 36–37.

22 Before me, counsel for the Companies, Mr Suresh Damodara (“Mr Damodara”), clarified that OS 365/2020 had been brought out of an “abundance of caution”¹⁰ and that the real concern of the Companies was to ensure that they would not be in breach of the Order.¹¹ Hence, OS 365/2020 sought a clarification to make it clear that since the Companies were not “privy to” the prior order of court, the said order could not possibly apply to compel the Companies to produce the Corporate Documents.¹² Indeed, when queried as to what the situation would be if the Wife wanted the documents even if OS 365/2020 were granted, Mr Damodara stated that the Companies would deal with that application when it came up.¹³ In summary, Mr Damodara expressed the Companies’ position as follows: “[A]ll we are inviting the Court [to do] is – with abundance of caution – to make it clear that [the Order] doesn’t bind the [Companies] by way of compulsion order to produce documents upon request by the [Husband].”¹⁴

23 The Husband did not take a position on the Companies’ application.¹⁵ Instead, his affidavit evidence and submissions were concerned primarily with the Wife’s allegations of intentional delay and collusion with the Companies.

¹⁰ Notes of Evidence (“NE”) at p 16, ln 8–9.

¹¹ NE at p 16, ln 11–13.

¹² NE at p 36, ln 22–26.

¹³ NE at p 36, ln 32–p 37, ln 1.

¹⁴ NE at p 37, ln 4–7.

¹⁵ NE at p 33, ln 9–10.

24 The Wife's main arguments were as follows. First, the Companies did not have the *locus standi* to seek a variation of the Order.¹⁶ Second, the Husband as registered shareholder and the Wife as beneficial shareholder were entitled to the Corporate Documents, pursuant to s 203(3) of the Companies Act.¹⁷ The Companies' respective articles of association did not prevent the Companies from disclosing and producing the documents.¹⁸ Third, the Husband already had possession of, or access to some, if not all, of the Corporate Documents.¹⁹ Fourth, the issues in OS 365/2020 were *res judicata* as they were already resolved in CA 231/2018 and OS 1339/2019.²⁰ Finally, there were no grounds for varying the Order and the court is *functus officio* in relation to the Order.²¹

25 Before me, counsel for the Wife, Mr Alvin Yeo SC ("Mr Yeo"), urged the court to consider not just the prayer in OS 365/2020, but also to decide that the Corporate Documents *ought to be* produced.²² In other words, in the interest of resolving the disputes between the parties, Mr Yeo asked not just that OS 365/2020 be *dismissed*, but also that a *positive* determination be made by the court that the Companies are obliged to produce the Corporate Documents.²³ At

¹⁶ Wife's Written Submissions ("WWS") at paras 33–45.

¹⁷ WWS at paras 46–55.

¹⁸ WWS at paras 56–60.

¹⁹ WWS at paras 61–72.

²⁰ WWS at paras 73–81.

²¹ WWS at paras 82–94.

²² NE at p 48, ln 8–22.

²³ NE at p 48, ln 31–p 49, ln 3.

the same time, Mr Yeo recognised that future proceedings might be brought against the Companies for the Corporate Documents, if needed.²⁴

Issues

26 As the brief summary of the parties' cases in these proceedings show, there were differing views on the scope of OS 365/2020 and what the court should determine. While I acknowledge that there were a number of peripheral issues surrounding the present application, these were ultimately not before me for determination. For reasons that I will elaborate on below, I considered it appropriate to determine OS 365/2020 on the narrow grounds relating to the specific prayer for variation sought.

27 I begin with what this case was not. This was not an application by the Wife or the Husband for the Companies to disclose and produce the Corporate Documents. Correspondingly, it was not an application by the Companies for a declaration that they could resist any application by the Wife or the Husband for the Corporate Documents. Neither was it an application by the Companies to restrain the Husband from disclosing whatever subset of the Corporate Documents that was already in his possession. It was also not an action by the Wife against the Companies for interfering with the Husband's administration of the Clause 5 Trust.

28 As formulated, the prayer in OS 365/2020 was concerned with one thing only: clarifying that *the Order and ORC 50/2019* did not have the effect of *compelling* the Companies to produce or disclose any of the Corporate

²⁴ NE at p 50, ln 27–32.

Documents to the Husband and the Wife. The central question is therefore whether the terms of the Order and ORC 50/2019 compelled or could be interpreted as compelling the Companies to produce and disclose the Corporate Documents, such that the variation of the Order would be justified. Hence, the scope of the application was limited to the Order and ORC 50/2019 as the *sources* of the obligation, and limited to the question of whether the Companies were in truth *under an obligation* from those sources.

29 It is only if this question were answered in the affirmative that the issue of whether there was any rule of law or any disability in the Companies' powers that prevented the Companies from disclosing the Corporate Documents would arise in the first place. The various arguments relating to the articles of association and the Companies Act would only be relevant if the prior orders imposed such an obligation or if the orders of court could be construed as imposing that obligation. If the prior orders *did* compel production and disclosure, then these arguments would go towards urging the court to modify the obligation (assuming, for the sake of argument, that it would be possible to do so). If the prior orders could be *interpreted* as compelling production and disclosure (*ie*, if there is an ambiguity), then the argument would be that the court should adopt an interpretation of the prior orders that would be most consistent with these other rules. But, at the risk of repetition, these only arise if the central question – whether the Order and ORC 50/2019 compelled or could be interpreted as compelling the Companies to produce and disclose the Corporate Documents – had been answered in the affirmative.

30 While it was possible for the court to go further into the issue of whether the Companies could resist any application for production and disclosure by the Husband and the Wife, or whether, more generally, the Companies could

justifiably refuse production and disclosure of the Corporate Documents, I did not consider it appropriate to do so in this case.

31 First, this being the Companies' application, I preferred to allow the Companies to set the scope of their application, rather than to deal with issues that were not directly raised by the application and unnecessary for its disposal. Any determination I made must be focused on the relief sought by the Companies, rather than try to resolve all the issues as between the Husband, Wife, and Companies.

32 Second, any such determination would be purely hypothetical, because, on the evidence before me, there has not been any request by the Husband or Wife for production and disclosure ever since the earlier request in which the Companies took the position that ORC 50/2019 did not compel the Husband to seek the Corporate Documents that were not already in his possession.²⁵ It has since been clarified – and the Husband and Wife are also agreed – that the obligation in the Order and ORC 50/2019 extends to all documents in the Husband's possession, control, and power. No further request for documents has apparently been made since that clarification.

33 Third, relatedly, if the question of whether the Companies could resist a request for production and disclosure were to be determined *in vacuo*, the determination would be made without the benefit of having all the facts before the court. Specifically, in the absence of a particular request by the Husband and/or Wife accompanied by a list of documents, the following facts remained uncertain: (a) which documents did the Husband already have in his possession

²⁵ WA at p 81.

and would thus not need to be *requested* from the Companies; (b) which documents still remained to be produced and disclosed; and (c) which categories of documents fell into which rules of disclosure and production. The first question of fact affects the legal analysis as the dispute over those documents would raise different principles relating to the Husband's *use* of documents previously given by the Companies. That would involve the question of whether the Companies were entitled to restrain a shareholder from using documents already in his possession for the purpose of accounting for trust property. The latter two questions would be relevant as to whether the existing rules on disclosure of documents, for example, s 203(3) of the Companies Act, would cover the documents. Given the absence of facts, this was not an appropriate case for determining, in the abstract, whether the Companies could resist any application for the documents by the Husband and/or the Wife.

34 Fourth, these issues were of general importance, far beyond the scope of the present dispute. The position taken by the Companies would, as Mr Damodara accepted on the face of the proposition, also affect all of their other shareholders who may be trustees, including the Husband's two brothers who are also trustees for different trusts under the Will.²⁶ More generally, it would also have an impact on many companies whose shares are the subject matter of trusts. I considered it prudent not to make determinations that would affect a significant range of companies and individuals on an application that was directed at a narrower matter. This was especially given that the resolution of these issues was not necessary for my decision in OS 365/2020.

²⁶ NE at p 20, ln 29–31.

35 Hence, given the central question in this case, I focused my decision on whether the Order and ORC 50/2019 did actually compel production and disclosure of the Corporate Documents.

36 Apart from the central question in this case, there was also the issue of whether the relief sought by the Companies could be justified. Even if the Companies are not obliged by the Order and ORC 50/2019 to produce and compel the Corporate Documents, that did not necessarily mean that the Order should be varied as the Companies prayed for. I considered this as a second stage in the analysis.

37 Hence, bearing in mind the scope of the application and the parties' submissions, I identified the following two issues for my determination:

(a) Did the prior orders of court compel the Companies to produce and disclose the Corporate Documents?

(b) If (a) is answered in the affirmative, should the obligation be discharged or otherwise varied? Alternatively, if (a) is answered in the negative, should the court vary the Order according to the Companies' application?

38 In summary, I found that the prior orders of court did not compel the Companies to produce and disclose the Corporate Documents. However, I also decided that the court ought not to vary the Order according to the Companies' application.

Decision

Did any of the prior orders of court compel the Companies to produce and disclose the Corporate Documents?

39 At the outset, I acknowledge that the mere fact that a person was not a party to the proceedings in which a judgment or order was made does not necessarily mean that the judgment or order cannot be enforced against that person. Order 45 r 9(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“ROC”) provides that:

Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

40 This assumes that certain non-parties may be placed under obligations by court orders. Ultimately, the question of whether the non-party can be bound by the order of court depends on the construction of the order: see *Singapore Civil Procedure 2020* vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th Ed, 2020) (“*White Book*”) at para 45/9/1, citing *Anwar Siraj and another v Teo Hee Lai Building Construction Pte Ltd* [2014] 1 SLR 52. In this case, I found that it was unambiguous that the Order and ORC 50/2019 did not compel the Companies to produce and disclose the Corporate Documents. This is apparent from the terms of the orders themselves.

41 Nothing in the Order and ORC 50/2019 suggested that any obligation was imposed on the Companies. ORC 50/2019 stated that the *Husband* was to provide the documents in P1 as part of his duty to give an account of the trust property. The Order only modified the obligation as to the period of time for which the account had to be given. In other words, the only obligations created by the court orders were imposed on the Husband in his role as a trustee. The

mere fact that the Companies would be *involved* in the Husband's pursuit of complying with his obligations does not mean that the Companies were correspondingly *obliged* by the Order and ORC 50/2019. This is so even though the Husband's obligation extends to all documents in his possession, power, and control, since that obligation belongs to the Husband, and not to any other party. Nothing in the terms of those orders imposed a duty on the Companies.

42 Put another way, the Husband, as a trustee, had obligations that were personal to him. The prior orders of court merely set out the Husband's obligations to the Wife as trustee. He had to comply with those obligations, and in doing so, had to deal with the Companies in seeking the Corporate Documents. Whatever rights or obligations the Companies had *vis-à-vis* the Husband in relation to the production and disclosure of documents is not governed by the Order and ORC 50/2019, but by whatever rules governed the relationship between the Companies and the Husband, whether it be the articles of association, the Companies Act or some other source.

43 There may, conceivably, be a situation where the Companies act in such a way that gives the Wife a claim against the Companies for interfering with the administration of the Clause 5 Trust, or for aiding the Husband to breach his obligations as a trustee. These issues are not before the court in the present proceedings. In any event, it would appear that the rights of the Wife against the Companies would not be founded upon the Order or ORC 50/2019, but more generally on the law of trusts. Nothing in those prior proceedings have determined the Wife's and/or Husband's rights against the Companies, because these were simply not in issue.

Should the court vary the Order?

44 Having found that the Order and ORC 50/2019 did not compel the Companies to produce and disclose the Corporate Documents, the next question was whether the Order should be varied as prayed for by the Companies. I found that such a variation was not appropriate.

45 In my judgment, the Companies did not have standing to pursue variation of the Order. In the first place, the Companies had withdrawn their application to intervene in OS 1407/2017 and had never filed an application to do so in OS 1339/2019. Hence, they were never formally given leave to intervene in the prior proceedings. Having omitted to obtain leave to intervene previously, it should not be possible for the Companies to bypass that requirement simply by bringing a separate action in OS 365/2020 to vary a previous court order. The court would have to scrutinise the Companies' standing to bring the application. The Companies had to show in the present proceedings why they should be allowed to interfere in a court order that determined the rights and obligations between the Husband and the Wife.

46 The High Court in *VisionHealthOne Corp Pte Ltd v HD Holdings Pte Ltd and others (Chan Wai Chuen and another, third parties)* [2010] 3 SLR 97 ("*VisionHealthOne*") dealt with a similar situation where the plaintiff had applied for discovery against a non-party, the Bank of China Limited ("BOC"). The assistant registrar allowed the application. The documents ordered to be disclosed included documents pertaining to the second defendant's account with BOC. The second defendant appealed against the discovery order and the plaintiff sought to have the appeal struck out. The High Court held that the second defendant lacked the *locus standi* to challenge the discovery order on

appeal: *VisionHealthOne* at [20]. The High Court's reasoning is instructive (at [19]):

In the case of *Microsoft Corp v SM Summit Holdings Ltd* [1999] 3 SLR(R) 1017, Yong Pung How CJ held that the applicants who were prohibited by way of implied undertaking from using all documents and copies obtained pursuant to a search warrant and information extracted therein had *locus standi* to make an application to the High Court for the restriction to be lifted. Yong CJ held (at [18]) that:

As the applicants were parties directly affected by the restriction, they had a direct personal interest in seeking relief to vary the order of court and/or to be released from the implied undertaking. It followed they must have the *locus standi* to make an application for the restriction to be lifted.

Hence, it can be deduced that in order to demonstrate *locus standi* to file an appeal against an order, one has to show that one is affected or aggrieved by the court order and therefore has a personal interest in seeking variation or release from the said order. Further and in addition to that, where it is in the nature of an appeal, I take the view that the appellant must generally be a party to the application below that gave rise to the orders that form the subject of his appeal before he has standing to appeal against those orders.

47 While the High Court's reasoning was targeted at appeals, the citation of *Microsoft Corp and others v SM Summit Holdings and another* [1999] 3 SLR(R) 1017 ("*Microsoft*") at [18] shows that the principles relating to *locus standi* apply equally to applications to vary a prior court order. Such a party seeking a variation of a court order would have to show that it was "affected or aggrieved by the court order" (*VisionHealthOne* at [19]) and therefore had a "direct personal interest in seeking relief" (*Microsoft* at [18]). The Companies appeared to accept this principle, and argued simply that their interests were affected by the Order.²⁷

²⁷ CWS at para 36.

48 The difficulty with the Companies' argument on standing is that the Order and ORC 50/2019 did not impose any obligation on them at all. The orders were purely concerned with the Husband's obligations to the Wife. For the reasons I have expressed above, nothing in the orders affected the Companies. As such, there is no reason to suppose that they have been affected or aggrieved by the Order. Therefore, they did not have standing to seek a variation of the Order. The fact that they were also never parties to OS 1407/2017 or OS 1339/2019 further reinforced this conclusion.

49 In any event, I found that the circumstances did not justify an exercise of the court's power to vary the Order. Although the Companies did not expressly identify the legal basis of the court's power to do so, I surmised that they were relying on the court's inherent powers under O 92 r 4 of the ROC. As Mr Yeo rightly submitted, the court should only exercise these inherent powers in "exceptional circumstances where there is a clear need for it and the justice of the case so demands": *White Book* at para 92/4/2. As the Court of Appeal put it in *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 at [27], the "essential touchstone is really that of 'need'."

50 The fact of the matter is that, on the face of the Order and ORC 50/2019, the Companies were simply not placed under any obligation in relation to the Corporate Documents. This much is clear, and any variation proposed by the Companies would contribute nothing to the implementation of the Order. It would do no more than to state what is already apparent from the prior court order themselves. Further, given the scope of the variation sought, the variation would not serve to prevent future disputes from arising in relation to the Companies' duty to provide the Corporate Documents, if that duty arises from other sources of law. Even if the variation were granted, the issues surrounding

the Companies' duties to the Husband *qua* shareholder, the Wife's right to enforce her or the Husband's entitlement (if any) to the documents, and the Companies' duties not to interfere with the administration of the trust (if there are indeed such duties arising on the facts) would still remain to be determined. Finally, the Order and ORC 50/2019 are directed at setting out the rights and obligations as between the Husband and Wife, and the insertion of this caveat in the Order would simply distract from that purpose with no apparent benefit.

51 Therefore, this was clearly not a situation where there was a *need* to vary the Order. Given my conclusions above, I do not go on to deal with the questions of whether the court was *functus officio*, whether the issue was barred by *res judicata* or abuse of process, or the substantive issue of whether the Companies would be entitled to resist any request for documents or restrain the Husband from disclosing the documents already in his possession. I state, for the avoidance of doubt, that my decision in this case is without prejudice to any claims that the Wife and/or Husband may bring against the Companies for the Corporate Documents to be produced and disclosed on the basis of any other source of obligation other than the Order or ORC 50/2019, or any arguments that the Companies may have in resisting that production and disclosure.

Costs

52 While the Companies' position that the Order and ORC 50/2019 did not compel the Companies to produce and disclose the Corporate Documents was correct, this application was simply unnecessary and the relief sought was unjustified. There having been no application by the Husband or Wife for the documents yet, the issue was purely hypothetical. Matters may have been different if the Companies were raising this issue *to resist* any application for enforcement of the Order or ORC 50/2019 against them, or any request for

documents from the Husband or the Wife. But, in any event, even if a request had been made, the prayer in OS 365/2020 simply served no real purpose since it was limited to the question of whether the Order and ORC 50/2019 *imposed* an obligation to produce and disclose the Corporate Documents, without touching on any other potential source of obligation. Unfortunately, this action only served to increase costs and incur delay for the parties to the dispute.

53 As I found that the Companies lacked the *locus standi* to bring the application for variation, and the variation sought was simply unjustified and unnecessary, I concluded that the Wife had essentially succeeded in resisting the application. I therefore ordered that the Companies pay costs fixed at \$8,000 (inclusive of disbursements) to the Wife. I made no order as to costs for the Husband, as the Husband did not take a position on the substantive issue, and as counsel for the Husband did not press for a costs order.

Conclusion

54 Therefore, I dismissed OS 365/2020.

Tan Puay Boon
Judicial Commissioner

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