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

[2021] SGHC 149

Suit No 854 of 2020
(Summonses No 1432 and 1821 of 2021)

Between

Shanghai Afute Food and
Beverage Management Co Ltd

… *Plaintiff*

And

(1) Tan Swee Meng
(2) Stay Victory Industries Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Evidence] — [Witnesses] — [Examination]

[Contempt of Court] — [Civil contempt]

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Shanghai Afute Food and Beverage Management Co Ltd
v
Tan Swee Meng and another

[2021] SGHC 149

General Division of the High Court — Suit No 854 of 2020 (Summonses Nos 1432 and 1821 of 2021)
Chan Seng Onn J
23 April 2021

22 June 2021

Chan Seng Onn J:

1 HC/SUM 1432/2021 ("SUM 1432") was the plaintiff's application for an order of committal against the defendants and HC/SUM 1821/2021 ("SUM 1821") was the plaintiff's application to be at liberty to cross-examine the first defendant in relation to his affidavit filed on 13 April 2021 ("Tan's Reply Affidavit") pursuant to O 38 r 2 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court").

2 The plaintiff is Shanghai Afute Food and Beverage Management Co Ltd ("Shanghai Afute"), a company incorporated in Shanghai, the People's Republic of China.[1] Shanghai Afute is the owner of "After Coffee", a food and

[1] Affidavit of Ho Pei Jia Anna dated 30 December 2020 ("Ho's 2nd Affidavit") at para 4.

beverage brand and business that focuses on incorporating coffee with fresh fruits and vegetables in its beverages.[2]

3 The first defendant is Tan Swee Meng ("Tan"), a shareholder with 33% ownership in Shanghai Afute.[3] Tan is also a director and shareholder with 55% ownership in the second defendant, Stay Victory Industries Pte Ltd ("Stay Victory"), a company that operates cafes and coffee houses.[4] Ho Pei Jia Anna ("Ho") is the other director of Stay Victory.[5] I will refer to the first and second defendants collectively as "the defendants" in these grounds of decision.

4 HC/S 854/2020 is the plaintiff's claim against the defendants under the law of confidence and the tort of passing off. On 7 September 2020, the plaintiff filed HC/SUM 3820/2020, an application for injunctions and other orders against the defendants.

5 On 23 October 2020, I granted the injunctions sought by the plaintiff and made certain orders against the defendants in HC/ORC 6114/2020 (the "Orders"). They were as follows:

> (1) An *injunction restraining the 1st and 2nd Defendants* as well as their employees, servants, agents, associates, nominees, proxies, successors, assigns, or affiliates or any of them or otherwise howsoever ***from using the Plaintiff's recipe in any of the drinks sold by the 1st and 2nd Defendants***

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2 Ho's 2nd Affidavit at para 4.

3 Statement of Claim (Amendment No 1) dated 14 September 2020 ("SOC") at para 3; Defence dated 7 October 2020 ("Defence") at para 7.

4 Affidavit of Tan Swee Meng dated 13 April 2021 ("Tan's Reply Affidavit") at para 1; SOC at paras 10 to 11; Defence at para 9; Affidavit of Lee Eng Tat dated 7 September 2020 ("Lee's 1st Affidavit") at para 10.

5 SOC at para 10; Defence at para 9.

> until the trial of this action or further order of this Honourable Court;
>
> (2) An order that the 1st and 2nd Defendants not use the words "After Coffee" in the 1st and 2nd Defendants' Facebook and Instagram pages and in any form of advertisements, until the trial of this action or further order of this Honourable Court;
>
> (3) An *injunction to restrain the 1st and 2nd Defendants* as well as their employees, servants, agents, associates, nominees, proxies, successors, assigns, or affiliates or any of them or otherwise howsoever ***from using the Plaintiff's Confidential Information or any part thereof for any purpose***;
>
> (4) An order for the delivery up or destruction upon oath of all printed or written matter or documents containing the Plaintiff's Confidential Information …
>
> [emphasis added in italics and bold italics]

6 On 30 December 2020, the plaintiff made an *ex parte* application, HC/SUM 5714/2020 ("SUM 5714"), seeking leave to apply for an order of committal against the defendants for acting in contempt with regard to the Orders, pursuant to O 52 r 2 of the Rules of Court read with s 4 of the Administration of Justice (Protection) Act 2016 (Act 19 of 2016) ("AJPA"). After considering the plaintiff's submissions and Ho's affidavit evidence dated 30 December 2020, I granted leave to the plaintiff to apply for an order of committal against the defendants on 17 March 2021.

7 On 26 March 2021, the plaintiff filed SUM 1432 for an order of committal to be made against the defendants. In addition, on 20 April 2021, the plaintiff filed SUM 1821 for the plaintiff to be at liberty to cross-examine Tan in relation to Tan's Reply Affidavit, in which Tan denied that he had breached the Orders.

8 On 23 April 2021, after hearing parties' submissions, I allowed SUM 1821 and SUM 1432. I found that the defendants had acted in contempt by using the plaintiff's recipes, which were confidential information, in respect of a few beverages in the outlets. I imposed a fine of $30,000.00 for the contempt (in default, five weeks' imprisonment) on Tan.

9 The defendants have since filed an appeal against my decision to allow SUM 1821 and SUM 1432. I now set out the grounds of my decision.

Factual background

10 On or about 6 November 2019, one Lee Eng Tat ("Lee"), the majority shareholder of the plaintiff, acting on behalf of the plaintiff, and Tan executed a master franchise agreement for Singapore titled "After Coffee Agent Cooperation Agreement" (the "Master Franchise Agreement") which provided for Tan to be appointed as the official franchisee of the "After Coffee" brand in Singapore.[6]

11 The parties' accounts of what transpired subsequently differed materially. These differences are material to the resolution of the main trial. For these grounds of decision, the parties' differing accounts are only relevant as background:

(a) According to the plaintiff, Tan incorporated Stay Victory on 12 November 2019 to be used as the corporate vehicle to operate the franchise of "After Coffee" in Singapore pursuant to Clause 4 of the

6 Ho's 2nd Affidavit at p 22; Lee's 1st Affidavit at para 41.

Master Franchise Agreement.[7] Tan also became a shareholder of the plaintiff in consideration of an extension of a RMB5,000,000.00 loan to the plaintiff to open more "After Coffee" outlets in China.[8] Lee and Ho would take a minority stake in Stay Victory to give them a stake in Singapore's "After Coffee" franchise through Coffee Cupital Pte Ltd ("Coffee Cupital"), a company incorporated in Singapore.[9] Even after Tan became a shareholder, he remained a master franchisee for Singapore and parties continued to focus their efforts on establishing the "After Coffee" franchise in Singapore between December 2019 and June 2020.[10] The plaintiff disseminated to Tan and Stay Victory confidential information and trade secrets of its "After Coffee" business, including the recipes, standards and designs, branding, store get-up and design, staff training and store operations,.[11] On 23 December 2019, Tan (on behalf of Stay Victory) signed a letter of offer to take a lease at Vivocity for a period of three years for operation of a business named "After Coffee" (the "Vivocity Initial Lease").[12] Even in May 2020, Lee granted an interview to a magazine, 8 Days, to promote the opening of "After Coffee" at Vivocity.[13] The plaintiff's position was that it had been under

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7 Ho's 2nd Affidavit at p 23; Lee's 1st Affidavit at paras 42 to 43; Answers to interrogatories by Tan Swee Meng dated 13 April 2021 ("Tan's answers to interrogatories") at para 8.

8 Lee's 1st Affidavit at paras 49 to 51.

9 Lee's 1st Affidavit at paras 49(g) and 50(e).

10 Lee's 1st Affidavit at para 52.

11 Lee's 1st Affidavit at para 52.

12 Affidavit of Tan Swee Meng dated 7 October 2020 ("Tan's 1st Affidavit") at para 94; Lee's 1st Affidavit at p 190.

13 Lee's 1st Affidavit at para 59.

the continuing impression that the store at Vivocity was to be the franchisee of "After Coffee".

(b) In contrast, Tan claimed that he had suggested that the Master Franchise Agreement be terminated and replaced with a joint venture approximately two weeks after it was signed.[14] Instead of Stay Victory being the franchisee under the Master Franchise Agreement, it would be a joint venture company between Coffee Cupital and Tan.[15] Based on Lee's representation that he had lent RMB3,000,000.00 to the plaintiff towards redevelopment of the business, Tan agreed to lend RMB5,000,000.00 to further develop the business.[16] The breakdown in the relationship occurred when Lee was asked to show proof of his RMB3,000,000.00 expenditure on the development of the "After Coffee" brand.[17] As a result, Tan had "no choice but to continue some form of business as the lease for the shop premises was already acquired".[18]

12 Regardless of the true circumstances as to the parties' business relationship at the material time, it is undisputed that the defendants began operation of the "Beyond Coffee" store at Vivocity (the "Vivocity Outlet") in July 2020 which also retails beverages with a combination of fruits and coffee.[19] On 29 January 2021, the Vivocity Initial Lease was terminated and replaced

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14 Tan's answers to interrogatories at para 8.

15 Tan's 1st Affidavit at para 15.

16 Tan's 1st Affidavit at para 15.

17 Tan's 1st Affidavit at paras 15 and 17.

18 Tan's 1st Affidavit at para 19.

19 Tan's answers to interrogatories at para 4.

with a fresh lease on the same terms but signed by Umbrella Ventures Pte Ltd ("Umbrella Ventures") instead of Stay Victory.[20] Umbrella Ventures is owned by another company, Famous 5 Holdings Pte Ltd whose sole director and shareholder is Tan.[21]

13 On or around 20 February 2021, the defendants also commenced operation of a second "Beyond Coffee" store at Bukit Batok (the "Bukit Batok Outlet").[22] The Vivocity Outlet and the Bukit Batok Outlet will be collectively referred to as "the Outlets" in these grounds of decision.

SUM 1821

14 SUM 1821 was the plaintiff's application to cross-examine Tan in relation to Tan's Reply Affidavit. The plaintiff submitted that since Tan had made various vague or misleading responses in Tan's Reply Affidavit, cross-examination was necessary to clarify his position.[23] For instance, Tan made only bare assertions that the ingredients to the recipes of "Beyond Coffee" beverages had been changed, and refused to provide any evidence to that effect besides stating that a mixologist was hired to concoct new recipes.[24] As such, cross-examination was critical to establish whether Tan had intended to breach the Orders.[25]

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20 Tan's answers to interrogatories at para 1.

21 Affidavit of Ho Pei Jia Anna dated 21 April 2021 (Ho's 6th Affidavit") at pp 69 to 74.

22 Tan's answers to interrogatories at para 2.

23 Affidavit of Ho Pei Jia Anna dated 21 April 2021 ("Ho's 7th Affidavit") at para 11.

24 Ho's 7th Affidavit at para 13(c).

25 Ho's 7th Affidavit at para 12.

15 Tan opposed SUM 1821 on the basis that all the alleged breaches had been responded to in written evidence.[26] Cross-examination was intended to go into matters reserved for trial or not pleaded, and was a backdoor attempt to circumvent the requirement that any charge not stated in the contempt should not be traversed at the hearing.[27] Tan relied on the dicta of Lord Denning MR (as he then was) in *Comet Products UK Ltd v Hawkex Plastics Ltd and another* [1971] 2 QB 67 ("*Comet Products*") (at 75) to submit that cross-examination was generally unsuitable for civil contempt proceedings.

16 After considering the parties' submissions, I allowed SUM 1821. In my view, it was in the interests of justice to allow the plaintiff to cross-examine Tan in relation to the vague assertions made in Tan's Reply Affidavit. This was essential to assist this court in making a finding as to whether Tan had intended to breach the Orders. It would also provide an opportunity for Tan to provide convincing details to exculpate himself.

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26 Defendants' skeletal submissions opposing cross examination dated 22 April 2021 ("DWS2") at para 1.

27 DWS2 at para 1.

17 Tan relied upon the following portions of Lord Denning's judgment in *Comet Products* (at 74–75):

> So that brings me to the final question: Ought a judge to rule that Mr. Hawkins should be cross-examined on his affidavit? It is to be remembered that this power to cross-examine is *a matter for the discretion* of the judge who is trying the case. ***If the cross-examination could be limited to the particular circumstances of this alleged contempt, then it might be right to permit it.*** But in the course of the discussion, and particularly that of this morning, it has become plain that the plaintiffs, through their advisers, *desire a much wider cross-examination than that*. Mr. Sparrow has referred us to the importance of a wilful intent, or a fraudulent intent, in passing off actions; he says that he wishes to prove that the defendant intended to deceive … Mr. Sparrow wishes to cross-examine to show, not only that, in this new carton, the defendant was intending to deceive, but also to show that he had the intent all the way along; and in particular that he had the intent in regard to the original Home Hair Trimmer. ***It seems to me that such a claim to cross-examine does mean that he will be investigating the whole of the circumstances of the defendant, including the circumstances leading to the original action.*** However much he may disclaim it, it seems to me plain that Mr. Sparrow, if he were to cross-examine, would claim to investigate the defendant's state of mind from the beginning, and to cross-examine as to credit, as to character and so forth, all the way along the line.
>
> Now the question is: Ought leave to be allowed to cross-examine the defendant in such a way, and on such a scale, in these proceedings? Here we must have regard to the fact that this is in the nature of a criminal charge. It is not a claim to recover compensation from the defendant; it is a claim to enforce the injunction. The only permissible object of this application is to punish the defendant - to impose sanctions against him - for wilful disobedience to an order of the court. When the defendant is faced with such a charge, I feel that the genius of the common law should prevail. The common law would not wish him to be cross-examined ***in the way that is suggested***. Such a cross-examination would range over the whole of his state of mind on other occasions and in other circumstances, whereas the one issue is whether there has been a passing off of this red carton. If this cross-examination were to be pursued, I can see question after question put, and objection after objection raised, extending over a long time. I do not think that would be appropriate in what in effect is a criminal charge. ***Therefore as***

> ***a matter of discretion, as it is, the cross-examination ought not to be allowed.*** I think the judge would not have allowed it if he had known the range of cross-examination which it is sought to apply in this case.
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> [emphasis added in italics and bold italics]

18 In my view, *Comet Products* was of no assistance to Tan. It was clear to me from Lord Denning's judgment that the basis upon which he held that cross-examination of the defendant, as a *matter of discretion*, ought not to have been exercised was the *exceptionally wide scope of the cross-examination* sought by the plaintiff. In the learned judge's own words, the scope of cross-examination sought would be "investigating the whole of the circumstances of the defendant, including the circumstances leading to the original action". This was readily distinguishable from the present case. The plaintiff sought only to cross-examine Tan on Tan's Reply Affidavit, which pertained mainly to his responses on the alleged retention and use of confidential information of the plaintiff including the plaintiff's recipes. This was the very subject matter of the alleged contempt. The cross-examination could be limited specifically to that and did not need to traverse the entirety of the underlying breach of confidence and passing off claims.

19 I did not accept Tan's general proposition that cross-examination was generally unsuitable for civil contempt proceedings. A closer reading of the case pointed to the opposite. I found support in Megaw LJ's persuasive analysis in *Comet Products* (at 76–77) where he rejected a similar suggestion:

> … In general I think that in interlocutory proceedings, where there is a *bona fide application to cross-examine a deponent on his affidavit, that application should normally be granted.* There can be no suggestion here that the application on behalf of the plaintiffs is anything other than bona fide. But for Mr. Hawkins it was said that, *against a person whose committal for contempt of court is sought, such an order should be made only in the most*

> *exceptional circumstances**. I do not accept that. The general proposition I think is too widely stated.*** But the fact that it is a proceeding which may result in punishment, whether by imprisonment or fine or sequestration, is not irrelevant. It is a proper factor to be taken into consideration by the judge, along with other factors, in proceedings such as this where an application for cross-examination is resisted. What weight it will have depend on the circumstances of the particular case. In some cases it may have little or no weight. One feature which may make it of substantial weight is when it becomes apparent that the *necessary result of the cross-examination, while the cross-examination is perfectly properly conducted, is likely at the best to have a very small relevance to the issue which the judge has to decide in comparison with the effect it may have on the matters in the litigation, which are not properly in issue on the contempt motion.*
>
> [emphasis added in italics and bold italics]

20 Similarly, Cross LJ in *Comet Products* opined (at 77) that:

> … It is, I think, *only in a very exceptional case that a judge ought to refuse an application to cross-examine* a deponent on his affidavit. But this is a very exceptional case for counsel for the plaintiffs made it clear to us, as it was perhaps not made clear to the judge, that he proposed to use the opportunity of cross-examining Mr. Hawkins on this motion which relates only to the red and black box, for the purpose of investigating his state of mind when he put the gold and white box on the market … So the cross-examination would largely be directed to a collateral purpose. …
>
> [emphasis added]

21 As such, I did not understand *Comet Products* to be authority for the proposition that cross-examination was generally unsuitable for civil contempt proceedings. On the contrary, it is a matter of discretion for the judge taking into account the possible consequence of imprisonment, the scope of the intended cross-examination and the utility of the cross-examination to the inquiry in the contempt proceedings. Thus, given the utility of cross-examination for the purposes of determining whether Tan had intended to

disobey or breach the Orders, I exercised my discretion to allow the plaintiff to cross-examine Tan on a limited scope relating to the alleged continued use of the plaintiff's recipes.

SUM 1432

22 Before turning to my decision on SUM 1432, I briefly set out the law on contempt of court.

The law

23 The purpose of committal proceedings is to ensure compliance with orders of court and to punish the offender for his contempt (see *BTS Tankers Pte Ltd v Energy & Commodity Pte Ltd and others* [2021] SGHC 58 ("*BTS Tankers*") at [62]). Committal proceedings are usually a remedy of last resort when all other attempts to make the offender comply with orders of court fail (see *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 ("*Mok Kah Hong*") at [96]).

24 The law on contempt of court, in relation to disobedience or a breach of a court order, is stated in s 4(1)(*a*) of the AJPA which provides the following:

> **Contempt by disobedience of court order or undertaking, etc.**
>
> **4**.—(1) Any person who —
>
> (*a*) intentionally disobeys or breaches any judgment, decree, direction, order, writ or other process of a court; or
>
> …
>
> commits a contempt of court.

25 The case law has set out the following guidance on the element of intention (see *Mok Kah Hong* (at [86]) and *BTS Tankers* at [63]):

> … [A]s regards the issue of the requisite *mens rea* to establish contempt for disobedience of court orders, it is accepted that it is only necessary to prove that the relevant conduct of the party alleged to be in breach of the court order was *intentional* and that it *knew* of all the facts which made such conduct a breach of the order … This necessarily includes knowledge of the *existence* of the order and its material terms. It is, however, not necessary to establish that the party had *appreciated* that it was breaching the order. Therefore, the *motive* or *intention* of the party who had acted in breach of the order is strictly irrelevant to the issue of liability though it may have a material bearing in determining the appropriate penalty to be imposed.
>
> [emphasis in original]

26 Therefore, the contemnor need *only intend to do acts* which he knows would make him breach a coercive court order; his motive is strictly irrelevant to the issue of his liability (see also *Tan Beow Hiong v Tan Boon Aik* [2010] 4 SLR 870 at [47]; *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 4 SLR 828 at [47] and [48]; *Tay Yun Chwan Henry v Chan Siew Lee Jannie* [2018] SGHC 181 at [44]; and *VDZ v VEA* [2020] 4 SLR 921 at [33]).

27 It is well-established that the standard of proof that must be met for establishing contempt of court is that of beyond reasonable doubt (see s 28 of the AJPA).

The parties' cases

28 The plaintiff submitted that the defendants failed to comply with the Orders because, amongst other things, they failed to stop using the plaintiff's recipes – which were confidential information belonging to the plaintiff – in

respect of beverages sold at the Outlets.[28] This, in my view, was the sting of the plaintiff's case in SUM 1432. The plaintiff engaged Commercial Investigations (CPIS) LLP ("CPIS"), a private investigation firm, to conduct an investigation on the Vivocity Outlet and determine whether changes had been made to the recipes of the "Beyond Coffee" beverages as compared to the recipes of the original "After Coffee" beverages.[29] According to CPIS, on 29 November 2020, Tan's staff confirmed, in the presence of their store manager Bernice Chia ("Bernice"), that "no changes" had been made to the beverages.[30] As such, the plaintiff submitted that any changes made to the menu of "Beyond Coffee" were simply cosmetic.[31]

29 On 13 December 2020, the plaintiff wrote to the defendants asking them to set out the changes made to the "Beyond Coffee" beverages in compliance with the Orders.[32] On 24 December 2020, the defendants responded that since they no longer had the plaintiff's recipe booklet, they were unable to set out the exact changes made unless the plaintiff disclosed the recipes of the "After Coffee" beverages to them.[33] Despite taking the position that changes had been made to the recipes used in the Outlets, Tan refused to disclose the particulars of those changes.[34]

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28 Ho's 2nd Affidavit at para 16.

29 Ho's 2nd Affidavit at para 31.

30 Ho's 2nd Affidavit at para 32 and p 246.

31 Ho's 2nd Affidavit at para 33.

32 Ho's 2nd Affidavit at p 259.

33 Ho's 2nd Affidavit at p 264.

34 Plaintiff's written submissions dated 20 April 2021 ("PWS1") at paras 93 to 99.

30 Tan submitted that there was no continued use of the plaintiff's recipes in breach of the Orders because he took steps to change the recipes.[35] He claimed that by 27 October 2020, he had changed the entire menu at the Vivocity Outlet and was selling beverages with new recipes.[36] These changes included changes to the ingredients, manner of preparation of the ingredients and the beverages' names.[37] Tan had also engaged a mixologist to create new beverages for "Beyond Coffee".[38] As a result, different recipes were used.[39] Tan was unable to recall the recipes for the beverages he was selling without the original recipes and it would be unreasonable and impossible to expect him to identify the detailed differences in recipes (and proportions) of the changes made.[40]

My decision

31 It was undisputed that Tan had notice of the Order.[41] Having regard to s 4(1)(*a*) of the AJPA, the main issue in this case was whether the defendants had *intentionally disobeyed or breached* the Orders by continuing to use the plaintiff's recipes in the beverages sold at the Outlets. That the plaintiff's recipes were also confidential information belonging to the plaintiff was not disputed. Based on the parties' submissions and the evidence before me, I was satisfied beyond a reasonable doubt that the defendants had intentionally disobeyed the Orders by using the plaintiff's recipes, albeit with minor changes, in respect of

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35 Defendants' written submissions opposing contempt proceedings dated 20 April 2021 ("DWS1") at para 19.

36 Tan's answers to interrogatories at para 4.

37 Tan's answers to interrogatories at para 4.

38 Tan's answers to interrogatories at para 4.

39 DWS1 at Annex A, p 9.

40 DWS1 at Annex A, p 10.

41 Transcript (23 April 2021) at p 2 (lines 21 to 26).

a few beverages in the Outlets and thus committed contempt of court for the following reasons.

32 I noted Tan's admission that the defendants did utilise the plaintiff's recipes for the beverages sold when the Vivocity Outlet was initially opened in or around July 2020.[42] The Orders were made on 23 October 2020. However, Tan claimed that by 27 October 2020, he had changed the "entire menu and [was] selling beverages with new recipes".[43] I acknowledged that despite letters having been sent to the defendants requesting details of those changes (see [29] above), no details were forthcoming. I did not consider it too difficult to summarise the relevant changes made even if the defendants no longer had the exact recipes. Since the filing of SUM 5714 on 30 December 2020, the defendants had notice of the impending contempt proceedings, but no steps were taken by the defendants to clarify the changes made to the recipes of beverages sold at "Beyond Coffee". Thus, I accepted that an order of committal in this case was the last resort to ensure that the defendants comply with the Orders.

33 This case turned on Tan's evidence regarding the changes he made to the recipes of the beverages sold at the Outlets to comply with the Orders. However, upon cross-examination of Tan, it was clear to me that he was an untruthful witness. Tan gave evidence that on the second day after the Orders were made, he employed a freelance mixologist ("Jeffrey") to redesign the beverages.[44] Tan said that his instructions to the mixologist was to follow the

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42 Tan's answers to interrogatories at para 4.

43 Tan's answers to interrogatories at para 4.

44 Transcript (23 April 2021) at p 3 (lines 7 to 25).

existing menu which specified the ingredients of each beverage and develop it.[45] Within two hours, Jeffrey gave Tan a handwritten document of two to three pages where he wrote over 20 recipes (the "Mixologist's Recipes") with the quantities of the ingredients stated.[46] After receiving the Mixologist's Recipes, Tan said that he had checked the main ingredients in the Mixologist's Recipes against the plaintiff's recipes to "make sure that it's not the same recipe".[47] He claimed that he had asked one of his employees to have a look at the Mixologist's Recipes to see if there was a difference with the plaintiff's recipes because he did not want to get into trouble.[48] He also said that he told Bernice that the Mixologist's Recipes would be the new recipes and the old recipes were all to be disregarded.[49] He asked Bernice to "check as well" that the new recipes were different from the old ones and had handed over the same handwritten document to Bernice and asked her to enter the records into the computer.[50] He reminded Bernice to "ensure that the new recipe [was] followed".[51] The shop was able to start using the new recipes the very next day.[52]

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45 Transcript (23 April 2021) at pp 4 (lines 29 to 30) to 5 (lines 1 to 26) and p 8 (lines 25 to 30).

46 Transcript (23 April 2021) at pp 6 (lines 14 to 30), 7, 8 (lines 1 to 5) and 30 (lines 18 to 20).

47 Transcript (23 April 2021) at pp 9 (lines 27 to 30), 10 (lines 1 to 8), 11 (lines 1 to 6 and lines 28 to 30).

48 Transcript (23 April 2021) at p 27 (lines 1 to 13).

49 Transcript (23 April 2021) at pp 27 (lines 28 to 30) to 28 (lines 1 to 10).

50 Transcript (23 April 2021) at pp 29 (lines 22 to 28) to 30 (lines 1 to 7).

51 Transcript (23 April 2021) at p 33 (lines 12 to 18).

52 Transcript (23 April 2021) at p 38 (lines 1 to 8).

34 To give Tan the opportunity to corroborate his evidence, a WhatsApp call was made to Tan's employee, Bernice, *with* Tan's consent.[53] Parties had not raised any objections to hearing evidence from Bernice. I was of the view that it would be expedient in the interests of justice to do so. After hearing Bernice's evidence, I also obtained Bernice's confirmation that all she had told the court over the WhatsApp call was the truth.[54]

35 Far from corroborating Tan's evidence, Bernice's evidence materially contradicted it. Most importantly, Tan's claims to have passed the Mixologist's Recipes to Bernice and asked her to check that they were not the same as the plaintiff's recipes were undermined. When being asked about the Mixologist's Recipes, Bernice said that she did not have any recollection of them or being asked to compare them with the plaintiff's recipes.[55] She was never told by Tan to make sure that the beverages sold were different from those sold by "After Coffee".[56] Clearly, she could not have been asked to enter the new recipes from the Mixologist's Recipes into the computer records either. Bernice was not even aware of any court order being made against Tan or the company.[57]

36 Additionally, Tan's claim that he had changed the entire menu at the Vivocity Outlet to sell beverages with new recipes was not corroborated by Bernice.[58] According to Bernice, there was no major overhaul of all the recipes in one instance but there were minor incremental refinements instead made by

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53 Transcript (23 April 2021) at p 22 (lines 8 to 13).

54 Transcript (23 April 2021) at pp 74 (lines 22 to 23) to 75 (lines 1 to 5).

55 Transcript (23 April 2021) at p 51 (lines 2 to 26).

56 Transcript (23 April 2021) at p 50 (lines 21 to 30).

57 Transcript (23 April 2021) at p 48 (lines 17 to 23).

58 Tan's answers to interrogatories at para 4.

the staff and Jeffrey.[59] She recalled that there was a change in the display of the menu around the end of October 2020 but it seemed that it was more of an aesthetic change to the menu rather than a change to the content of the menu.[60] This raised severe doubts as to the truthfulness of Tan's evidence that he had changed the menu to comply with the Orders.

37 I also considered the alleged changes that Tan had purportedly taken to modify the plaintiff's recipes. In giving evidence, Tan was unable to remember the changes made to the plaintiff's recipes.[61] He said that he had no input into the changes because he was not trained.[62] He was also not familiar with the mixing and preparations of the beverages.[63] Tan said that Bernice would know how to prepare the beverages.[64] As it turned out, Bernice had excellent and precise memory of the ingredients and methods of preparation of the beverages she was questioned on.

38 For ease of comparison, I set out a table showing the comparison between the plaintiff's recipes for a sample of "After Coffee" beverages and Bernice's evidence as to the recipes of comparable "Beyond Coffee" beverages currently sold at the Outlets:[65]

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59 Transcript (23 April 2021) at pp 46 (lines 22 to 30), 49 (lines 15 to 25), 55 (lines 27 to 30) and 56 (lines 1 to 11).

60 Transcript (23 April 2021) at pp 49 (lines 26 to 31) and 50 (lines 1 to 10).

61 Transcript (23 April 2021) at p 16 (lines 2 to 9).

62 Transcript (23 April 2021) at p 3 (lines 16 to 25).

63 Transcript (23 April 2021) at p 11 (lines 15 to 18).

64 Transcript (23 April 2021) at p 18 (lines 7 to 29).

65 Ho's 2nd Affidavit at pp 35 to 42; Transcript (23 April 2021) at pp 59 to 74.

Beverage name		**Beverage ingredients**	
After Coffee	**Beyond Coffee**	**After Coffee**	**Beyond Coffee**
Good Morning	Go Banana's	Espresso (30g) Simple syrup (30g) Water (150g) Ice (80%) Banana milk foam	Espresso (30ml) Honey mix (20ml) Water (150ml) Ice (70-80%) Banana milk foam Torched banana slices
Miss Pineapple	Pineapple Pop	Pineapple slices (30g) Pineapple concentrate (30g) Simple syrup (10g) Ice (80%) Soda water (150g) Cold extraction (50g)	Pineapple slices (30g) Pineapple concentrate (30ml) Honey mix (10ml) Ice Soda water (150ml) Cold extraction (50ml) Torched star anise (1 piece)
Must try	Tomato Tango	Tomato halves (8) Lime slices (3) Passionfruit syrup (30g)	Cherry tomatoes (4-5) Lime wedges (3) Passionfruit syrup (25ml)

		Simple syrup (10g) Water (150g) Cold extraction (50g) Seaweed (1)	Honey mix (10ml) Water (150ml) Cold extraction (50ml) Seaweed (1) Mint leaf (1)
Be lost	Something about Mary	Lemon slices (3) Rosemary stems (3) Passionfruit syrup (20g) Passionfruit flesh (10g) Simple syrup (15g) Apple juice (200g) Ice (150g) Cold extraction (50g)	Lemon slices (3) Rosemary stems (2) Passionfruit syrup (23g) Passionfruit flesh (10g) Honey mix (10ml) Apple-grape juice (200ml) Coffee or fruit extract (50ml) Ice (70%) Torched rosemary stem (1)

39 I observed that the main ingredients used in the sample of beverages were substantially *the same* even though there were minor differences. Even the names appeared to bear some degree of similarity. As Bernice explained, honey mix was a standard ingredient added to all the beverages.[66] This was in replacement of "simple syrup" in the plaintiff's recipes. There was also the

[66] Transcript (23 April 2021) at p 64 (lines 1 to 7).

addition of garnishes or toppings such as torched banana slices in "Go Banana'", a torched star anise in "Pineapple Pop", a mint leaf in "Tomato Tango", a torched rosemary in "Something about Mary". In "Something about Mary", apple juice was changed to "apple-grape juice" and there was the possibility of replacing "cold extraction" (*ie*, coffee[67]) with fruit extract. However, in my view, these changes were not sufficient to comply with the spirit of the Orders. It did not suffice for Tan to simply ensure that he was not using *identical* recipes with the plaintiff. Since the Orders were made to ensure that the defendants would also not use any of the plaintiff's confidential information for *any purpose*, it would be undermining the spirit of the Orders to allow the defendants to use the substance of the recipes but make only minor changes to "technically" comply with the Orders.

40 In effect, Tan's instructions to Jeffrey revealed that he intended to continue using the plaintiff's recipes even after the Orders. It was telling that when cross-examined on why his instructions to Jeffrey were not to come up with beverages that were significantly different from the plaintiff's recipe, Tan revealed that he was phasing out their recipes because of commercial interests and the money spent on publicity.[68] The relevant evidence given was as follows:

> Q Why *didn't you tell Jeffrey to come up with drinks that are more significantly different from the after coffee recipe*, my client's recipe? Why must they match or be similar to after coffee drinks? Why don't you just come up with another egg? Why must it be salted egg yolk for example? Why must it be tomato when it could have been apple?
>
> A ***A lot of money had been spent on PR***. It's---it's social media, Instagram and a lot of publicity. ***I can't just change the name or the ga---I just change the drink completely***

67 Transcript (23 April 2021) at p 68 (lines 9 to 10).

68 Transcript (23 April 2021) at pp 36 (lines 23 to 30) and 37 (lines 1 to 7).

> ***because they will look at the company in a very different manner*** on the very day but through the days ***and through the months, we are actually phasing out their recipe.***
>
> Court: Phasing out the plaintiff's recipe?
>
> Witness: Yes, because it's---
>
> Q I'm going to repeat what you just said. You said "Through the months and the days, we are phasing out the plaintiff's recipes", that's your evidence?
>
> A We can't run a company and---and change again every---immediately because social media had been posted, sharing, Facebook, influencer, blogger has all been written on it. And we have---and we have customer follow us, ***fans so we can't change overnight.***
>
> [emphasis added in italics and bold italics]

41 The plaintiff submitted that Tan's response that the phasing out would take months and his acknowledgment of the commercial interest in not changing the beverages immediately betrayed his intention to continue using the plaintiff's recipes in breach of the Orders.[69] I agreed with this. Tan's admission as to the commercial motive fortified my finding that Tan had intentionally made only cosmetic changes to the plaintiff's recipes but kept the substance of the plaintiff's recipes intact. Thus, I found that the defendants had committed contempt of court in respect of the few beverages identified (see [38] above).

Sentence

42 As the Court of Appeal set out in *Mok Kah Hong* (at [104]), the following non-exhaustive factors should be considered by the court in determining the appropriate sentence for civil contempt by disobedience:

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69 Transcript (23 April 2021) at p 100 (lines 5 to 16).

(a) whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

(b) the extent to which the contemnor has acted under pressure;

(c) whether the breach of the order was deliberate or unintentional;

(d) the degree of culpability;

(e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;

(f) whether the contemnor appreciates the seriousness of the deliberate breach; and

(g) whether the contemnor has co-operated.

43 The plaintiff submitted that the breach was not a one-off breach but were continuing breaches that went "towards the heart of the Order" with no attempt made to correct the breaches.[70] As such, an imprisonment term was appropriate and, in the alternative, a substantial fine should be imposed.[71]

44 The defendants submitted that any breaches were only unintentional and there was no bad faith or flagrant disregard of the Orders.[72] On the contrary, Tan took steps to change the recipes.[73] As such, a warning would serve as an

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70 PWS1 at paras 108 to 110.

71 PWS1 at para 112.

72 DWS1 at para 19.

73 DWS1 at para 19.

adequate deterrent and Tan was ready and willing to remedy any breaches deemed as such by this court.[74]

45 Having regard to the guidance set out in *Mok Kah Hong*, I held that a fine of $30,000.00 (in default, five weeks' imprisonment) was an appropriate sentence to impose on Tan in this case. I noted that he did make some attempts to modify some of the recipes and employ Jeffrey. However, there was undeniable prejudice occasioned to the plaintiff by the defendants' continued use of the plaintiff's confidential recipes despite the Orders. Tan's breach of the Orders was also deliberate to some extent given that he admitted to the commercial interests behind his decision not to make radical "overnight changes" but only to make minor modifications to the plaintiff's recipes. I did not find it necessary to impose a separate fine on Stay Victory.

Conclusion

46 For the reasons set out above, I found that the defendants had committed contempt of court by using the plaintiff's recipes, which were confidential information of the plaintiff, in respect of a few beverages in the Outlets in breach of the Orders. I imposed a fine of $30,000.00 (in default, five weeks' imprisonment) on Tan to be paid by 12 noon on 10 May 2021. I ordered the defendants to immediately cease using any of the plaintiff's recipes in the beverages sold at the Outlets. I also warned Tan that if there was any further contempt, the punishment would be unlikely to be a fine.

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74 DWS1 at para 20.

47 As for costs, I ordered the defendants to pay to the plaintiff the sums of $3,000.00 and reasonable disbursements for SUM 5714, and $12,000.00 and reasonable disbursements for SUM 1821 and SUM 1432.

Chan Seng Onn
Judge of the High Court

Chia Jin Chong Daniel and Tan Ei Leen (Coleman Street Chambers LLC) for the plaintiff;
Chan Yew Loong Justin and Jaspreet Kaur Purba (Tito Isaac & Co LLP) for the respondents.