IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 267

Suit No 373 of 2012

Between

AERO-GATE PTE LTD

… Plaintiff

And

ENGEN MARINE
ENGINEERING PTE LTD

… Defendant

GROUNDS OF DECISION

[Contempt of Court] — [Civil contempt]
[Contempt of Court] — [Sentencing]

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Aero-Gate Pte Ltd
v
Engen Marine Engineering Pte Ltd

[2018] SGHC 267

High Court — Suit No 373 of 2012, Summons No 2151 of 2016, Summons Nos 235 and 236 of 2017
Vinodh Coomaraswamy J
12 July; 1, 10, 22 August; 15 November 2016; 10 April; 1 August 2017; 19 February; 5 March; 9, 30 April; 5, 9 July; 21 August 2018

17 December 2018

Vinodh Coomaraswamy J:

Introduction

1 In the three committal applications before me, the plaintiff seeks to commit two individuals to prison for contempt of court. The plaintiff's case is that the corporate defendant in this action has, in several material respects, breached a mareva injunction granted against it. But the plaintiff does not pursue the defendant for those alleged breaches. Instead, it pursues two representatives of the defendant for their involvement in its alleged breaches.

2 The two respondents to the committal applications are: (i) Mdm Selvarajoo Mageswari, the sole director of the defendant;[1] and (ii) Mr

[1] Affidavit of SM dated 10 June 2016, paragraph 5.

Ramasamy Tanabalan, the general manager of the defendant.[2] Mdm Mageswari and Mr Tanabalan are husband and wife.[3]

3 The plaintiff alleges that each respondent has committed seven separate contempts of court. I have found Mdm Mageswari to be in contempt of court on three of the seven contempts alleged against her. I have found Mr Tanabalan to be in contempt of court on only one of the seven contempts alleged against him. For these contempts, the plaintiff submits that each respondent should be committed to prison for a term of three years.[4] I have declined to commit either respondent to prison at all. Instead, I have ordered that: (i) Mdm Mageswari pay a fine of $25,000, in lieu of which she is to be sentenced to a term of imprisonment of one month; and (ii) Mr Tanabalan pay a fine of $50,000, failing which he is to be sentenced to a term of imprisonment of two months.

4 The plaintiff has been represented throughout this action, including in these contempt proceedings, by Mr Navinder Singh of KSCGP Juris LLP. The respondents were represented at the trial of this action and on appeal by Mr Palaniappan Sundararaj of Straits Law Practice LLC. In these committal applications, Mr Simon Tan of Attorneys Inc LLC appeared for the defendant once in the early stages of these committal applications. Thereafter, on various occasions, he appeared for the respondents. Most critically, he presented closing submissions of law for the respondents on both liability and sentencing. However, it is fair to say that the respondents have appeared for the most part in person in these committal proceedings.

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2 Affidavit of RT dated 3 June 2016, paragraph 1.

3 Affidavit of TLCA dated 12 April 2016, page 47.

4 Notes of argument dated 21 August 2018, page 9, lines 17 to 19.

5 The plaintiff has appealed against my decision on liability and sentencing in respect of both respondents. The respondents have not appealed against any aspect of my decision. I now set out the grounds for my decision.

Background facts

The writ and the injunction

6 The plaintiff provides engineering services to the oil and gas industry.[5] The defendant fabricates, assembles, modifies and installs marine engines and generators.[6]

7 In 2011, the plaintiff entered into a contract with the defendant under which the defendant was to manufacture ten diesel generators customised for an Iranian client of the plaintiff.[7] Disputes arose under that contract. As a result, in May 2012, the plaintiff issued the writ in this action against the defendant.

8 Three months after issuing the writ, in August 2012, the plaintiff applied[8] *ex parte* for and obtained[9] a mareva injunction against the defendant. The injunction is largely in the standard form prescribed by the Supreme Court Practice Directions, adapted to the facts of this case.

9 In September 2012, on the plaintiff's application, the mareva injunction was amended. The amendments describe with more accuracy certain specific

5 Affidavit of TLCA dated 12 April 2016, paragraph 6; affidavit dated 19 July 2016 at paragraph 4; affidavit of TLCA dated 20 June 2016, paragraph 8.

6 Affidavit of SM dated 10 June 2016, paragraph 4.

7 Affidavit of TLCA dated 12 April 2016, paragraph 9, page 39 and page 45.

8 SUM3982/2012 filed on 6 August 2012; affidavit of TLCA dated 12 April 2016, page 12.

9 ORC3984/2012 dated 7 August 2012; affidavit of TLCA dated 12 April 2016, page 220.

assets which the plaintiff wished to bring expressly within the ambit of the injunction.[10] Nothing turns on the amendments or on the period that elapsed between original injunction and the amendments. I therefore draw no distinction between the original injunction and the amended injunction.

10 The mareva injunction restrained the defendant from disposing of its assets in Singapore up to $1.5m[11] until trial or further order.[12] As a separate obligation, the injunction also ordered the defendant to preserve until the trial of this action eight specific items of machinery which were then in the defendant's possession but for which the plaintiff claimed to have paid and therefore to own.[13] These eight assets formed part of the subject-matter of the plaintiff's claim in this action.[14] Soon after commencing this action, the plaintiff made an unsuccessful application for a mandatory injunction requiring the defendant to deliver up these eight assets.[15]

11 The mareva injunction contains the following express provisions which are of relevance to the applications before me:

> (a) Paragraph 1(a) prohibits the defendant from removing from Singapore, disposing of, dealing with or diminishing the value of any of its assets in Singapore up to the value of $1.5m.[16]

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10 ORC4005/2012 dated 11 October 2012; affidavit of TLCA dated 12 April 2016, page 229.

11 Affidavit of TLCA dated 12 April 2016, page 236.

12 Affidavit of TLCA dated 12 April 2016, page 239.

13 Affidavit of TLCA dated 12 April 2016, page 96.

14 Affidavit of TLCA dated 12 April 2016, page 232.

15 Affidavit of TLCA dated 12 April 2016, page 82.

16 Affidavit of TLCA dated 12 April 2016, page 236.

(b) Paragraph 1(b) specifies that the prohibition in paragraph 1(a) includes two specific groups of assets: (i) the property and assets of the defendant's business and the proceeds of sale of any of those assets; and (ii) a specific Singapore dollar bank account which the defendant held with Standard Chartered Bank, identified in the injunction by its account number ("the SCB SGD account").[17]

(c) Paragraph 1(c) permits the defendant to deal with its assets or to remove them from Singapore so long as the total unencumbered value of its assets which are still in Singapore remains not less than $1.5m.[18]

(d) Paragraph 2 of the mareva injunction obliges the defendant to inform the plaintiff "in writing at once" of all of its assets worldwide, "giving the value, location and details of all such assets", and to confirm this information in an affidavit to be filed within 21 days after service of the order on the defendant.[19]

(e) Paragraph 3 permits the defendant to spend "S$1,500 a week towards their [*sic*] ordinary living expenses" and also "$2,000 a week on legal advice and representation". However, the paragraph obliges the defendant, before spending any money in this way, to tell the plaintiff's solicitors where the money is to come from.[20] The reference in the plural to "living expenses" is, of course, wholly inapposite for a single corporate defendant. But again, nothing turns on that.

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17 Affidavit of TLCA dated 12 April 2016, page 236.

18 Affidavit of TLCA dated 12 April 2016, page 236.

19 Affidavit of TLCA dated 12 April 2016, page 237.

20 Affidavit of TLCA dated 12 April 2016, page 237.

(f) Paragraph 4 provides that the injunction does not prohibit the defendant from dealing with or disposing of its assets "in the ordinary and proper course of business" provided that the defendant accounts to the plaintiff "monthly for the amount of money spent in this regard".[21] The account of "money spent" in the ordinary course of business is no doubt intended to include an account of assets disposed of in the ordinary course of business.

(g) Paragraph 7 provides that the defendant cannot do anything prohibited by the injunction whether "itself or by its directors, officers, employees or agents or in any other way".[22]

(h) Paragraph 8 puts third parties on notice that the effect of the injunction is to make it a contempt of court "for any person notified of [the injunction] knowingly to assist in or permit a breach" of the injunction and that any third party doing so may be sent to prison or fined.[23]

The mareva injunction was endorsed with a penal notice addressed to Mdm Mageswari as required by O 45 r 7(4)(*b*).[24]

The trial and judgment

12 The plaintiff's action was tried before me in 2012 and 2013. In March 2013, I entered judgment[25] for the plaintiff on its claim and dismissed the

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21 Affidavit of TLCA dated 12 April 2016, page 237.

22 Affidavit of TLCA dated 12 April 2016, page 238.

23 Affidavit of TLCA dated 12 April 2016, page 238.

24 Affidavit of TLCA dated 12 April 2016, page 242.

25 JUD488/2013; affidavit of TLCA dated 12 April 2016, page 243.

defendant's counterclaim for $96,000 (see *Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2013] 4 SLR 409). After judgment was entered against the defendant at first instance, the mareva injunction continued in force as a post-judgment mareva injunction in aid of execution.

13 Although the defendant appealed against my decision, the Court of Appeal reversed only my decision to dismiss the defendant's counterclaim. The judgment on the claim substantially in favour of the plaintiff was not disturbed on appeal.[26] The mareva injunction continued in force after the appeal.

14 The upshot is that plaintiff is a substantial judgment creditor of the defendant. That is so even after taking into account the defendant's counterclaim for $96,000 allowed on appeal.

15 The judgment in this action at first instance required the defendant to: (i) deliver up the eight assets specifically identified in the mareva injunction or account to the plaintiff for the proceeds of their sale (see [10] above); (ii) to pay a liquidated sum of US$252,000 to the plaintiff; and (iii) to pay damages to the plaintiff to be assessed.[27] Those damages were assessed in November 2015 at just over US$606,000.[28] In addition, the defendant still owes the plaintiff a balance sum of just over $53,000 arising under a number of costs orders in this action and the appeal.[29] Interest continues to accrue at the usual rate on the principal judgment debt as well as on the costs ordered.

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26 ORC304/2014 in CA39/2013; affidavit of TLCA dated 12 April 2016, page 247.

27 JUD488/2013; affidavit of TLCA dated 12 April 2016, page 243.

28 JUD8/2016; affidavit of TLCA dated 12 April 2016, page 249.

29 Plaintiff's written submissions dated 29 September 2017, paragraphs 10 and 11.

16 The plaintiff has made several attempts to levy execution upon the defendant. Further, and in parallel with these committal applications, the plaintiff has used the examination of judgment debtor procedure in an attempt to obtain information from Mdm Mageswari in aid of execution.[30] Both avenues ultimately proved fruitless. The result is that the plaintiff has recovered only a small fraction of the judgment debt which the defendant owes. That recovery is probably insufficient even to cover its legal costs. The more frustrated the plaintiff became with the progress and results of the execution and examination of judgment debtor proceedings, the stronger its resolve became in these committal applications to have each respondent sentenced to imprisonment for a lengthy term of years.

The defendant files an affidavit of assets in 2012

17 As I have mentioned, paragraph 2 of the mareva injunction required the defendant to file an affidavit disclosing all of its assets. Pursuant to this obligation, on 28 August 2012, the defendant filed an affidavit of assets[31] affirmed by Mdm Mageswari as its sole director.

18 The defendant's affidavit of assets disclosed total assets said to be worth $4.4m comprising 70 sets of physical assets said to be worth $3.26m, trade receivables said to be worth S$1.1m and cash and bank balances said to be worth just over $44,000.[32] The 70 sets of physical assets were all machinery, with some sets of assets comprising more than one unit of the same machinery. For convenience, I will refer to each set of physical assets as though it were a single asset.

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30 Plaintiff's written submissions dated 29 September 2017, paragraph 15.

31 Affidavit of SM dated 28 August 2012, paragraph 6.

32 Affidavit of SM dated 28 August 2012, paragraph 8.

19 The affidavit of assets disclosed that, of the 70 assets listed in the affidavit, 67 assets worth $3.09m were then located at the defendant's premises at 12 Tuas Avenue 11, two assets worth $125,000 were located at the premises of Transvictory Winch System Pte Ltd ("Transvictory") at 20 Third Chin Bee Road and one asset worth $35,000 was located at Offshore Marine Centre in Tuas South.[33]

Closure of the Standard Chartered Bank accounts

20 In March 2014, Mdm Mageswari issued a letter of instructions to Standard Chartered Bank to close the SCB SGD account. Standard Chartered Bank had frozen the account ever since it had been notified of the mareva injunction.

21 In view of Mdm Mageswari's letter, Standard Chartered Bank lifted the freeze on the account, released the balance to the defendant and closed the account.[34]

The defendant moves assets in 2014

22 In June 2013, the defendant's landlord gave the defendant notice to vacate its business premises at 13 Tuas Avenue 11.[35] For various reasons, the defendant did not actually vacate these premises until March 2014.[36]

23 In March 2014, the defendant wrote to the plaintiff to inform the plaintiff that the defendant had discontinued its operations at 13 Tuas Avenue 11 and to

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33 Affidavit of SM dated 28 August 2012, paragraph 6.

34 Affidavit of SM dated 16 January 2017, page 36.

35 Affidavit of RT dated 3 June 2016, paragraph 6 and page 32.

36 Affidavit of RT dated 3 June 2016, paragraphs 6 and 21.

inform the defendant of the new location of 36 out of the 70 assets listed in the affidavit of assets. Mr Tanabalan made all arrangements for storage of the defendant's assets.[37]

24 The March 2014 letter informed the plaintiff that, as a result of the move: (i) five assets were located at Transvictory's premises; (ii) 19 assets were located at the premises of Singatac Engineering Pte Ltd ("Singatac") at 21 Tuas Basin Lane; (iii) 11 assets were located at the car park at the premises of Engen Spares Pte Ltd and Engen Offshore Pte Ltd at 1 Soon Lee Street ("the Soon Lee Street premises"); and (iv) one asset comprising three units of the same machinery was split, with two units located at Singatac's premises and one unit located at the Soon Lee Street premises.[38] I shall refer to the five assets stored at Transvictory's premises as "the Transvictory assets". I shall refer to the 20 assets stored at Singatac's premises as "the Singatac assets". I shall refer to the 12 assets stored at the Soon Lee Street premises as "the Soon Lee Street assets".

25 The defendant's March 2014 letter valued the 36 assets listed in the letter at just over $1.5m.[39] The letter made no mention of the remaining assets which had been disclosed in the affidavit of assets. The defendant was advised that it was not obliged to disclose the location of the remaining assets because the assets whose location had been disclosed added up in value to $1.5m, thus reaching the limit specified in paragraph 1(a) of the mareva injunction (see [11(a)] above).[40] On that basis, the defendant considered itself free under

37 Affidavit of RT dated 3 June 2016, paragraph 5.

38 Affidavit of RT dated 3 June 2016 at pages 20 to 23; affidavit of TLCA dated 19 July 2016 at page 20.

39 Affidavit of TLCA dated 19 July 2016 at page 22.

40 Affidavit of TLCA dated 21 November 2016 at pages 106 and 107, paragraphs 3(a), 3(c) and 3(d); plaintiff's written submissions dated 29 September 2017, paragraph 60.

paragraphs 1(c) and 3 of the injunction (see [11(c)] and [11(f)] above) to deal with the remaining assets listed in the affidavit of assets. It did so.[41]

26 The Soon Lee Street premises – at which more than 11 of the 36 assets listed in the March 2014 letter were stored – are the premises of Engen Spares Pte Ltd[42] and Engen Offshore Pte Ltd.[43] The respondents do not, on the face of the record, currently have any interest or control in either company. But the plaintiff points out that the defendant shares a name and logo with both companies and that the respondents' two children are the sole shareholders and directors of both companies. The plaintiff further points out that Engen Offshore Pte Ltd was incorporated only in August 2013[44] and that Mdm Mageswari was a director of Engen Spares Pte Ltd right up until June 2013.[45] Both those dates are shortly after March 2013, when I entered judgment in this action against the defendant.[46] The plaintiff suggests that both companies are in fact owned and controlled by the respondents and that the defendant has diverted its assets to these companies in breach of the mareva.[47] That is denied by the respondents.[48] The evidence which the plaintiff has put before me does not suffice to establish this suggestion on the balance of probabilities.

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41 Plaintiff's written submissions dated 29 September 2017, paragraph 60.

42 Affidavit of TLCA dated 20 June 2016 at page 69.

43 Affidavit of TLCA dated 20 June 2016 at page 62.

44 Affidavit of TLCA dated on 20 June 2016, paragraph 26.

45 Affidavit of TLCA dated 20 June 2016, paragraph 29 and page 66.

46 JUD488/2013; affidavit of TLCA dated 12 April 2016, page 243.

47 Affidavit of TLCA filed on 20 June 2016, paragraphs 26 to 30; affidavit of TLCA filed on 28 June 2016, paragraph 29.

48 Affidavit of RT dated 7 July 2016 at paragraph 24; affidavit of RT dated 8 July 2016 at paragraph 33; affidavit of TLCA dated 21 November 2016 at page 111, paragraph 22.

Singatac disposes of the Singatac assets

27 According to Mr Tanabalan, in January 2016, he went to Singatac's office to pay the principal of Singatac, Mr Tan Soon Keong ("Mr Tan"), the sum of $24,000 being the arrears of rental then due for storage of the Singatac assets. Mr Tanabalan was denied entry to Singatac's premises on that occasion. Mr Tan later told Mr Tanabalan that Singatac had scrapped all of the Singatac assets for non-payment of rental.[49]

28 In evidence before me is a statutory declaration from Mr Tan[50] setting out his version of the same events. He corroborates Mr Tanabalan's evidence in material respects. Mr Tan says that he agreed in February 2014 to rent space in the Singatac premises to Mr Tanabalan to store the Singatac assets for two months at a rent of $1,200. Mr Tanabalan failed to remove the Singatac assets upon the expiry for the two months and was uncontactable for the next eight months. In December 2014, Mr Tan scrapped the Singatac assets for just under $9,000[51] because they were obstructing certain construction works which he was obliged to undertake.

29 The only difference of substance between Mr Tanabalan's version of events and Mr Tan's version of events is that Mr Tanabalan asserts that Mr Tan was aware that the Singatac assets were subject to the mareva injunction.[52] Mr Tan denies any such knowledge.[53] Nothing of relevance in these committal applications turns on Mr Tan's state of knowledge.

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49 Affidavit of RT dated 3 June 2016, paragraph 8.

50 Affidavit of TLCA dated 11 November 2016, paragraph 27 and pages 304 to 313.

51 Affidavit of TLCA dated 11 November 2016, page 312.

52 Affidavit of RT dated 3 June 2016 at paragraph 8.

53 Affidavit of TLCA dated 11 November 2016 at paragraph 27; page 302 at paragraph 8; page 305 at paragraph 3.

Transvictory disposes of the Transvictory assets

30 Also according to Mr Tanabalan, and also in January 2016, he drove past Transvictory's premises to check from the outside whether the Transvictory assets were still stored there. He could not see any sign of any of the Transvictory assets.[54] The principal of Transvictory is one Mr Richard Chiang ("Mr Richard").[55] A few days later, Mr Tanabalan found out from a security guard at Transvictory's premises that Mr Richard had sold all of the Transvictory assets in late 2015. Mr Tanabalan then spoke to Mr Richard directly. He confirmed to Mr Tanabalan that all of the Transvictory assets had indeed been sold because the defendant had failed to repay a loan of $300,000 which it owed to Transvictory.[56]

31 Transvictory flatly denies Mr Tanabalan's evidence.[57] Transvictory's position is that: (i) Transvictory has no knowledge of whether in fact Mr Tanabalan stored any of the defendant's assets at the Transvictory premises; (ii) Transvictory did not dispose of the Transvictory assets; (iii) Mr Richard never told Mr Tanabalan that Transvictory had disposed of the Transvictory assets; (iv) Transvictory was unaware that the Transvictory assets were subject to a mareva injunction; and (v) Transvictory allowed Mr Tanabalan to have uninhibited access to the Transvictory assets on Transvictory's premises in order to store and retrieve the Transvictory assets; and (vi) Mr Tanabalan could well have removed the Transvictory assets himself.

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54 Affidavit of RT dated 3 June 2016, paragraph 10.

55 Affidavit of TLCA dated 11 November 2016 at page 316.

56 Affidavit of RT dated 3 June 2016, paragraph 12.

57 Affidavit of TLCA dated 11 November 2016, paragraph 33 and pages 313 to 315.

32 Mdm Mageswari lodged a police report in January 2016, alleging that the Singatac assets had been disposed of because of the defendant's "inability to pay the rental" and that the Transvictory assets had been "disposed [*sic*] for non payment [*sic*]".[58]

Writs of seizure and sale

33 As I have mentioned (see [16] above), the plaintiff has attempted to levy execution upon the defendant at various stages of this action. I now summarise those attempts.

Writ of seizure and sale in 2013

34 In January 2013, the plaintiff's representatives visited the defendant's premises at 13 Tuas Avenue 11 together with the sheriff to inspect the assets covered by the mareva injunction.[59]

35 In September 2013, in execution of the plaintiff's judgment, the sheriff seized 19 of the defendant's assets under a writ of seizure and sale. In the affidavit of assets, Mdm Mageswari had valued these 19 assets at $1.05m. In October 2013, the plaintiff's valuer, Exaco (S) Pte Ltd ("Exaco"), valued these 19 assets at $117,400.[60]

Writ of seizure and sale in 2014

36 In April 2014, the plaintiff inspected the Singatac assets.[61] In June 2014, the sheriff seized two engines at the Singatac premises under a writ of seizure

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58 Affidavit of TLCA dated 12 April 2016, page 257 to 258.

59 Affidavit of RT filed on 3 June 2016 at paragraph 6.

60 Affidavit of TLCA dated 28 June 2016, paragraph 20.

61 Affidavit of TLCA dated 19 July 2016 at paragraph 12.

and sale.[62] This writ of seizure was not followed through and there was no sale of these two engines by auction.[63]

37 The defendant sent two further letters in May 2014 relating to the location of the Transvictory, Singatac and Soon Lee Street assets. It appears that this was in connection with the plaintiff's attempts to have these assets seized and sold pursuant to the writ of seizure and sale.[64]

Writ of seizure and sale in 2016

38 In January 2016, after its damages had been assessed, the plaintiff again levied execution on the judgment.[65] In February and March 2016,[66] the plaintiff's solicitors asked the defendant for the current location of all assets frozen by the mareva injunction.[67] In March 2016, the defendant replied[68] to say that the defendant had not changed the location of the assets frozen by the mareva injunction since the last update. This was presumably the update in March 2014. However, the defendant also informed the plaintiff that Mr Tanabalan had visited both Transvictory's premises and Singatac's premises in January 2016 and had discovered that all of the Transvictory assets and Singatac assets had been disposed of without the defendant's knowledge or consent.

39 In July 2016, Mr Tanabalan affirmed an affidavit stating that the Soon Lee Street assets remained at the Soon Lee Street premises.[69] In September

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62 Affidavit of RT dated 3 June 2016 at paragraph 8.

63 Respondents' written submissions dated 10 April 2018, paragraph 4(c).

64 Affidavit of RT filed on 3 June 2016 at page 28 and 29.

65 Affidavit of TLCA dated 20 June 2016, paragraph 12.

66 Affidavit of TLCA dated 20 June 2016, paragraph 12.

67 Affidavit of TLCA dated 12 April 2016, pages 250 and 251.

68 Affidavit of TLCA dated 12 April 2016, page 252.

2016, in the course of the examination of judgment debtor proceedings, Mdm Mageswari affirmed an affidavit to the same effect.[70] In November 2016, the plaintiff therefore applied for an obtained a writ of seizure and sale in respect of the Soon Lee Street assets.[71]

40 Upon executing the writ of seizure and sale in December 2016, the plaintiff found only seven of the Soon Lee Street assets at the Soon Lee Street premises. The remaining five of the Soon Lee assets were missing.[72] Mr Tanabalan, who was present when the writ of seizure and sale was executed, informed the plaintiff's representative that the missing items had been moved but was evasive about where they had been moved to.[73]

41 In January 2017, in anticipation of the sale of the seized assets, the plaintiff appointed Exaco to value the seven assets seized at the Soon Lee Street premises.[74] According to the Exaco report, many of these assets had been misdescribed in the defendant's March 2014 letter and were worth much less than the value stated in that letter.[75]

42 The March 2014 letter had valued these seven assets at $188,000 in total. In January 2017, Exaco valued these seven assets at $15,600.[76] These seven assets were eventually sold at auction for $2,100.[77]

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69 Affidavit of RT dated 8 July 2016, paragraph 29.

70 Affidavit of TLCA dated 21 November 2016, paragraph 12, page 107 at paragraphs 4(a) and 4(b); page 110, paragraph 16.

71 Affidavit of TLCA dated 13 April 2017 at paragraph 9 and page 13.

72 Affidavit of TLCA dated 29 March 2017 at page 88; affidavit of TLCA dated 13 April 2017 at paragraph 9.

73 Affidavit of TLCA dated 13 April 2017 at paragraph 11.

74 Affidavit of TLCA dated 13 April 2017 at paragraph 14.

75 Affidavit of TLCA dated 13 April 2017 at paragraph 15.

The contempt proceedings

The plaintiff applies for leave to bring contempt proceedings

43 In March 2016, after learning that all the Transvictory and Singatac assets had been disposed of, the plaintiff put Mdm Mageswari on notice that it intended to commence proceedings against her for contempt of court arising from those disposals.[78]

44 In April 2016, I granted the plaintiff leave to commence the first of the three committal applications now before me.[79] The sole respondent to that application is Mdm Mageswari. In November 2016, I granted the plaintiff leave to commence the second of the three committal applications now before me.[80] The sole respondent to that application is Mr Tanabalan. In December 2016, I granted the plaintiff leave to commence the third of the three committal applications now before me.[81] The sole respondent to that application is Mdm Mageswari.

45 The respondents have filed a number of affidavits in their own defence in all three of these committal applications. At the plaintiff's request, I ordered both respondents to be cross-examined on all of their affidavits. That cross-examination took place on one hearing day in August 2017.

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76 Affidavit of TLCA dated 13 April 2017 at paragraph 16.

77 Affidavit of TLCA dated 13 April 2017 at paragraph 17.

78 Affidavit of TLCA dated 12 April 2016, page 260.

79 ORC2650/2016 made on SUM1738/2016.

80 ORC8252/2016 made on SUM5488/2016.

81 ORC8251/2016 made on SUM3975/2016.

The contempt applications are protracted

46 These committal applications have been unfortunately protracted. That is largely because the respondents have appeared in person for large parts of the proceedings. They sought adjournments on several occasions, often at the last minute. They gave various reasons for the adjournments: to file further affidavits, to try and find counsel or to try and raise money to pay fees for counsel.

47 I was conscious throughout that committal applications are quasi-criminal in nature and touch on the liberty of the respondents. The plaintiff made very clear that it intended to seek substantial sentences of imprisonment for both respondents if they were found to be in contempt of court. Indeed, the plaintiff consistently took the position that the respondents should be sentenced to six years' imprisonment each[82] before moderating that in its final submission to three years' imprisonment each.[83] Further, I had no reason to doubt the respondents' pleas of impecuniosity. The respondents' submissions to the contrary were bereft of evidence and built on mere supposition.

48 In those circumstances, I considered it incumbent on me to ensure that the respondents understood the nature and gravity of the case against them and had sufficient time and opportunity to respond meaningfully to that case even if that meant that these contempt proceedings took longer to resolve than they would have if the respondents had been able to afford representation throughout. Of course, I also bore in mind at all times that I should not subject the plaintiff

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82 Plaintiff's written submissions dated 29 September 2017, paragraph 134; plaintiff's written submissions dated 15 February 2018, paragraphs 9 and 27; and plaintiff's written submissions dated 9 April 2018 at paragraph 54.

83 Plaintiff's written submissions dated 20 August 2018, paragraph 11, 39 and 48; Notes of Argument dated 21 August 2018, page 9 lines 17 to 19.

to any substantive disadvantage by reason of the respondents being unable to afford representation.

Applicable principles of law

49 The principles of law which I must apply in order to determine whether either respondent is in contempt of court on any of the charges are not in dispute. They can be summarised in the following propositions:

(a) The purpose of a mareva injunction is to restrain a defendant from dissipating his assets so as to render nugatory, wholly or in part, any judgment which a plaintiff might eventually obtain against it in the action: *Customs and Excise Commissioners v Barclays Bank plc* [2007] 1 AC 181 ("*Customs and Excise Commissioners v Barclays Bank plc*") at [10];[84] *Lee Shieh-Peen Clement and another v Ho Chin Nguang and others* [2010] 4 SLR 801 ("*Clement Lee*") at [17].[85]

(b) A party against whom a mareva injunction is issued must obey both the letter and the spirit of the injunction: *Clement Lee* at [17].

(c) A party who breaches an injunction will be punished by committal for contempt if the breach is sufficiently serious and the required standard of knowledge and intention is sufficiently proved: *Customs and Excise Commissioners v Barclays Bank plc* at [11].[86]

(d) As against an alleged contemnor who is a party to the injunction or who is acting for or at the direction of a party to the injunction, the relevant standard of knowledge and intention is simply that: (i) the

84 Plaintiff's bundle of authorities, Tab 3.

85 Plaintiff's bundle of authorities, Tab 5.

86 Plaintiff's bundle of authorities, Tab 3.

alleged contemnor had notice of the injunction; and (ii) he intended to do an act or to omit to act which is in fact a breach of the injunction. It is not necessary to go further and prove that the alleged contemnor intended to disobey the injunction or that he appreciated that he was doing so. So too, his reasons for breaching the injunction are irrelevant on the question of liability for contempt: *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 ("*Pertamina Energy*") at [51]; *Maruti Shipping Pte Ltd v Tay Sien Djim and others* [2014] SGHC 227 ("*Maruti Shipping*") at [17]–[18];[87] *Carey v Laiken* (2015) SCC 17 at [29] and [47].[88]

(e) As against an alleged contemnor who is a third party to the injunction, he may be in contempt of court if he either: (i) assists or permits a breach of the injunction; or (ii) deliberately frustrates the purpose of the court in making the order. In either case, the relevant standard of knowledge or intention is that the third party: (i) had notice of the injunction; (ii) does an act which the injunction restrains the party against whom it is directed from doing; and (iii) intended by doing those acts to impede or prejudice the administration of justice: *Attorney General v Punch Ltd and another* [2003] 1 AC 1046 at [87] per Lord Hope.[89]

(f) Where an injunction is issued against a corporation, a director of the corporation who is aware of the injunction is under an obligation to take reasonable steps to ensure that the injunction is obeyed. This principle applies to every director who has notice of the injunction,

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87 Plaintiff's bundle of authorities, Tab 7.

88 Plaintiff's bundle of authorities, Tab 6.

89 Plaintiff's bundle of authorities, Tab 25.

whether executive or non-executive and whether involved in the day to day management of the corporation or not. If the corporation breaches the injunction, every director who has notice of the injunction and who wilfully failed to take these reasonable steps is in contempt of court: *Maruti Shipping* at [115]–[116].

(g) The standard of proof to which the applicant must make out his case against the alleged contemnor is the criminal standard, *ie* proof beyond reasonable doubt: *STX Corp v Jason Surjana Tanuwidjaja and others* [2014] 2 SLR 1261 at [8].

50 In the case before me, there is no dispute that the defendant and both respondents had notice of the injunction. The defendant and the respondents were served with the injunction. The injunction contained a penal notice addressed to Mdm Mageswari, as the defendant's director. From their ability to respond to the questions posed in cross-examination, I find that both respondents are sufficiently conversant in English to well understand the terms and import of the injunction. Indeed, the defendant and both respondents had the benefit of legal advice from the defendant's trial solicitors on the scope of the injunction and the importance of complying with it.

The O 52 r 2(2) statements

51 Before turning to the substance of the charges, I must first deal with a preliminary point which Mr Simon Tan has raised for the respondents.[90]

52 Not all of the seven charges against Mdm Mageswari arise from the two O 52 r 2(2) statements which the plaintiff presented under in its two committal applications against her. The allegation of contempt in the first O 52 r 2(2)

[90] Respondents' written submissions dated 29 May 2018, paragraph 16.

statement against her is limited to the disposal of the Transvictory and the Singatac assets.[91] The allegations of contempt in the second O 52 r 2(2) statement against her are limited to: (i) the failure to disclose where the money spent on legal advice and representation was to come from; (ii) the failure to account monthly to the plaintiff for money spent in the ordinary and proper course of business; and (iii) the dealing with and disposal of the funds in the SCB SGD account.[92]

53 Of the seven charges which the plaintiff presents against Mdm Mageswari, I consider that only the fifth charge (see [115] below) arises from the first O 52 r 2(2) statement[93] and that only the third and seventh charges (see [100] and [139] below) arise from the second O 52 r 2(2) statement. The remaining four charges against her are outside the scope of both O 52 r 2(2) statements against her.

54 So too, not all of the seven charges against Mr Tanabalan arise from the O 52 r 2(2) statement[94] against him. That statement was limited to the following allegations of contempt: (a) Mr Tanabalan failed "to take due care" of the assets covered by the mareva injunction and adopted "a callous attitude" towards them; (ii) Mr Tanabalan failed to pay rent to Singatac for storage of the Singatac assets; and (iii) Mr Tanabalan stored the Transvictory assets with Transvictory to whom the defendant owed money.[95]

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91 Affidavit of TLCA dated 12 April 2016, pages 9 to 11 at paragraph 8; affidavit of TLCA dated 20 June 2016, paragraph 13.

92 Affidavit of EL dated 16 August 2016, page 17 at paragraph 17.

93 Affidavit of TLCA dated 12 April 2016, pages 9 to 11 at paragraph 8.

94 Affidavit of TLCA dated 11 November 2016 at page 18.

95 Affidavit of TLCA dated 11 November 2016 at page 23, paragraph 21.

55 Of the seven charges which the plaintiff presents against Mr Tanabalan, I consider that only the third, fourth, fifth and sixth charges (see [163], [174] and [187] below) arise from the O 52 r 2(2) statement. The remaining three charges against Mr Tanabalan are outside the scope of the O 52 r 2(2) statement against him.

56 Despite this, I have proceeded to hear and determine all seven charges against each respondent. The respondents have not appealed against my decision to do so. But O 52 r 5(3) prohibits the plaintiff from relying on any ground for committal which is not set out in the O 52 r 2(2) statement. And I accept that it is ordinarily unfair to a respondent to deal with the merits of an allegation of contempt which falls outside the scope of the O 52 r 2(2) statement on which leave was secured to apply for his committal. I therefore consider that I ought to explain why I heard and determined the combined fourteen charges of contempt against both respondents even though seven out of the fourteen charges fell outside the scope of the three O 52 r 2(2) statements against the respondents.

57 As the Court of Appeal held in *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 ("*Mok Kah Hong*"), an O 52 r 2(2) statement is similar in purpose to a criminal charge. It is a procedural safeguard adopted to ensure that a person accused of contempt of court knows the case that the applicant makes against him. The O 52 r 2(2) statement therefore circumscribes the "boundaries of the applicant's case, such as to prevent the applicant from relying on grounds that have been omitted from the statement": *Mok Kah Hong* at [61].

58 For the following three reasons, I have exercised my discretion under O 52 r 5(3) to permit the plaintiff to proceed on all fourteen charges against both

respondents even though half of those fourteen charges do not arise from the three O 52 r 2(2) statements.

59 First, in the circumstances of these committal applications, I consider that none of the charges which fall outside the relevant O 52 r 2(2) statement will take either respondent by surprise to the extent that the plaintiff has set out the case which it advances against each respondent on all seven charges in its written submissions in the committal applications. I have put the respondents on notice that these seven charges are being pursued against them. Each respondent has addressed the seven charges made against him or her and has presented arguments as to why he or she is not liable on any of them.[96] The respondents have also agreed that I may consider on the merits all fourteen charges against them both, even though some of the charges fall outside the scope of the relevant O 52 r 2(2) statements.[97]

60 Second, I do not consider that I am lacking any factual material relevant to either respondent's defence which I ought to consider in order to arrive at a decision on the merits of all fourteen charges. The respondents have been cross-examined on their affidavits. The respondents have had the benefit of having the case against them on all seven charges put to them in cross-examination. Further, because both respondents were litigants in person for much of these proceedings, I have afforded them great latitude in addressing me from the bar table on questions of fact relating to all of the charges, even after their cross-examination concluded.

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96 Respondents' written submissions dated 29 November 2017 and 9 April 2018.

97 Notes of argument dated 9 April 2018, page 5 line 19 to page 7 line 6; and page 15 line 19 to page 16 line 1.

61 Mr Simon Tan submitted that the respondents would suffer real and actual prejudice if I were to hear and determine any of the charges which fall outside the scope of the O 52 r 2(2) statement. However, when he was pressed on this point, he retracted it.[98] He accepted that the only real prejudice to the respondents was they would not have had an opportunity to adduce only one item of evidence, and even then, that it was an item of evidence relevant only to mitigation: the evidence of their trial solicitor to confirm the legal advice which the respondents had received on their obligations under the mareva injunction.

62 The only relevance of this missing evidence is to support the respondents' point that they were at all times acting in good faith in reliance on legal advice.[99] Mr Tan accepted that that evidence could not be relevant on the issue of liability. I therefore addressed that specific prejudice by adjourning these applications after my decision on liability for contempt to allow the respondents an opportunity to secure and place before me their trial solicitor's evidence as mitigation when I came to consider sentencing. In the event, for various reasons, the respondents did not take advantage of that opportunity.

63 Third, Mr Simon Tan accepted that if I were to dismiss any of the seven charges against either respondent on the purely procedural basis that those charges fall outside the scope of the relevant O 52 r 2(2) statement, the plaintiff could immediately apply afresh for leave to commence contempt proceedings on those charges by serving fresh O 52 r 2(2) statements specifying these charges.[100] On the facts of this case, and in light of my first and second reasons, I considered it to be contrary to the respondents' interests to compel the plaintiff to pursue that course. These contempt applications have already been

98 Notes of argument dated 5 July 2018, page 18.

99 Notes of argument dated 5 July 2018, page 2 line 18 to page 18.

100 Notes of argument dated 5 July 2018, page 10 to page 12.

protracted. They have entailed a great deal of time, expense, inconvenience and anxiety for all of the parties. As between the plaintiff and the respondents, the respondents are least able to bear those burdens in connection with these applications and also in connection with any fresh applications for contempt which might be brought.

64 It was therefore, in my view, in the interests of both the applicant and the respondents – and also overall in the interests of justice and the efficient disposal of the entirety of the plaintiff's case in contempt against the respondents – for me to deal once and for all in these proceedings with all fourteen charges of contempt which the plaintiff advances against both respondents, even though half of them fall outside the scope of the relevant O 52 r 2(2) statement. The only qualification is that I accept that I must nevertheless be satisfied that each respondent has been given, through the plaintiff's written submissions in these committal applications, sufficient notice with adequate particulars of those charges.

65 In those very unusual circumstances, I do not consider that any purpose would be served by rejecting any charge against either respondent purely on the basis that it falls outside the scope of the relevant O 52 r 2(2) statement, in the absence of any actual, demonstrable prejudice to either respondent on a specific charge.

66 That is the limit of the indulgence which I am prepared to grant the plaintiff. In particular, to the extent that the plaintiff's three O 52 r 2(2) statements have framed its charges against either respondent in a manner unfavourable to itself, the plaintiff will nevertheless be held to the consequences of those choices. Thus, for example, if the plaintiff has framed a charge against a respondent in a way which takes on the burden of proving an element of

contempt which the law of contempt would not ordinarily require it to prove, the plaintiff will be required to prove that element. The respondents are entitled to take the plaintiff at their word and to have proceeded on the basis that if the plaintiff failed to prove any element of the charge as framed against him or her, the entire charge would fail.

67 I do not consider that the approach I have taken contradicts the very clear strictures of the Court of Appeal in *Mok Kah Hong*. The ultimate goal of those strictures is to ensure procedural fairness for alleged contemnors. I consider that my approach, on the facts of this case, achieves that ultimate goal. In any event, without intending in any way to attenuate those strictures, I was prepared to exercise my power to proceed of my own motion on any charges of contempt against either respondent which fall outside the scope of the relevant O 52 r 2(2) statement. The purpose of doing so, in the unusual circumstances of this case, was to avoid the respondents from being vexed by fresh committal applications to deal with those charges on the merits. Nothing in O 52 is intended to prejudice my power to make an order of committal of my own motion if I am satisfied that it is warranted: see O 52 r 4 and also *Tay Kar Oon v Tahir* [2017] 2 SLR 342 ("*Tay Kar Oon*") at [38].

68 I start by examining Mdm Mageswari's liability on the charges against her before examining Mr Tanabalan's liability on the charges against him.

Liability

Mdm Mageswari

The basis of liability for contempt as against Mdm Mageswari

69 A fundamental point which lies at the root of all seven of the charges against Mdm Mageswari is a factual point about her involvement in the business of the defendant. This factual point is all the more important because of the basis on which the plaintiff has decided to frame its case against Mdm Mageswari.

70 The plaintiff was entitled to frame its case against Mdm Mageswari under O 45 r 5(1)(ii) and hold her directly liable for the defendant's alleged contempts simply by virtue of her status as a director of the defendant. But for some reason, the plaintiff chose to eschew that basis in framing its case against her. In the first of their two O 52 r 2(2) statements, the plaintiff asserts as part of its case against Mdm Mageswari in connection with the disposal of the Transvictory and the Singatac assets that: "the conduct of [Mdm Mageswari] is intended or calculated to impede, obstruct or prejudice the administration of justice in the present matter".[101] And in the second of the two O 52 r 2(2) statements, the plaintiff asserts as part of its case against Mdm Mageswari that she was "personally involved in the acts of the [defendant] which resulted in the … breaches of the [m]areva injunction".[102]

71 It is not necessary for a plaintiff to prove either that a director of a company intended to prejudice the administration of justice or was personally involved in causing the company to breach an injunction when proceeding directly against the director under O 45 r 5(1)(ii) arising from the company's

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101 Affidavit of TLCA dated 12 April 2016, page 11, paragraph 12.

102 Affidavit of EL dated 16 August 2016, page 16 paragraph 18.

breach of the injunction. As I have set out at [49(f)] above, the ordinary rule is that any director of a company who has notice of an injunction is liable to be committed for contempt if the company breaches the injunction and the director has wilfully failed to take reasonable steps to ensure that the injunction is obeyed.

72 Nevertheless, that is how the plaintiff has framed its case against Mdm Mageswari and how Mdm Mageswari has responded to it. I consider that it would be unfair to Mdm Mageswari to hold her in contempt on any charge if the plaintiff fails to prove all of the elements which it has alleged against her – and which the plaintiff has therefore undertaken to prove – on that charge. It is therefore necessary to consider Mdm Mageswari's role in the defendant's business.

73 Mdm Mageswari's evidence,[103] corroborated by Mr Tanabalan,[104] is that it is Mr Tanabalan who oversees and manages the defendant's actual business and operations. Her evidence is that, despite being the defendant's sole director, she has no control or powers of management over the defendant or its business at all.[105] She says that that her role is confined to overseeing and managing those aspects of the defendant's administrative and financial affairs which require the authority of a director.[106] She points out that she accepted the position of director only in order to fulfil the statutory requirement that the defendant have at least one director.[107] She describes herself as a "regular housewife who spends most

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103 Affidavit of SM dated 26 July 2016 at paragraph 7.

104 Affidavit of RT dated 3 June 2016 at paragraph 4.

105 Affidavit of SM dated 26 July 2016 at paragraph 8.

106 Affidavit of SM dated 10 June 2016 at paragraph 5; affidavit of SM dated 26 July 2016 at paragraph 7.

107 Affidavit of SM dated 26 July 2016 at paragraph 6.

of [her] time at home taking care of [her] family and attending to household chores".[108] She has never been paid a salary by the defendant.[109]

74 The plaintiff denies that Mdm Mageswari's role in the defendant is as confined as she makes it out to be. Its case is that Mdm Mageswari is "actively involved in the business transactions of the [defendant]" and the business of the defendant,[110] is "well informed about the operations of the [defendant]" including its "finer details",[111] and is "an active director who is involved in the workings of [the defendant] and its contracts".[112] But that has not always been the plaintiff's position. When complaining to the Official Assignee about Mr Tanabalan's involvement in the defendant's business despite his status as an undischarged bankrupt, the plaintiff took the position that Mdm Mageswari is "not involved in the business [of the defendant] at all".[113]

75 I accept Mdm Mageswari's evidence as to her involvement in the defendant and its business. It is true that she displayed first-hand knowledge of the defendant's administrative and financial affairs both in her affidavits and in her cross-examination. But I accept that Mr Tanabalan was responsible entirely for the business and operations of the defendant. It appears to me that the only reason Mr Tanabalan did not take on formal appointment as a director of the defendant is because, as an undischarged bankrupt since June 1998,[114] s 148 of the Companies Act (Cap 50, 2006 Rev Ed) prohibits him from doing so.

108 Affidavit of SM dated 26 July 2016 at paragraph 8.

109 Affidavit of SM dated 26 July 2016 at paragraph 9.

110 Affidavit of TLCA dated 28 July 2016, at paragraph 5.

111 Affidavit of TLCA dated 28 July 2016, at paragraph 6.

112 Affidavit of TLCA dated 28 July 2016, at paragraph 7.

113 Affidavit of TLCA dated 12 April 2016, page 36, paragraph 6.

114 B606/1998; affidavit of TLCA dated 12 April 2016, page 52; affidavit of TLCA dated 28 July 2016, paragraph 13.

76 The plaintiff made great play of the fact that Mdm Mageswari had certain duties as a director – including a duty of care – which she cannot avoid by minimising her role in the defendant. That is undoubtedly true. But Mdm Mageswari's duties as a director – whether under statute, in equity or at common law – are duties owed to the defendant, not to the plaintiff. And the question whether Mdm Mageswari is in contempt of court in the manner charged by the plaintiff is quite a different question from whether Mdm Mageswari breached any of the duties which she owes to the defendant.

77 I now turn to the specific charges against Mdm Mageswari.

First charge

78 The first charge against Mdm Mageswari is that she intentionally affirmed an affidavit of assets in August 2012 without having any personal knowledge of the facts in that affidavit.

79 The gravamen of this charge cannot be that Mdm Mageswari intentionally affirmed an affidavit of assets. That is not a breach of the injunction: the defendant was obliged to affirm an affidavit of assets by paragraph 2 of the mareva injunction. It is natural that Mdm Mageswari, as the defendant's sole director, should be the deponent of that affidavit. The gravamen of the first charge is not even that the affidavit of assets was false or misleading. That is the gravamen of the second charge against Mdm Mageswari. The gravamen of the first charge is simply that Mdm Mageswari affirmed the affidavit of assets without having personal knowledge of the truth of its contents.

80 I hold that Mdm Mageswari is not in contempt of court on this charge. Consistently with my finding about Mdm Mageswari's involvement in the

business of the defendant (see [75] above), I am prepared to assume in favour of the plaintiff that Mdm Mageswari did in fact affirm the defendant's affidavit of assets without personal knowledge of its contents. But that act alone is not a breach of the mareva injunction and is not, in itself, a contempt of court.

81 First, there is nothing in the mareva injunction which requires the deponent of the affidavit of assets to affirm it from personal knowledge. There is therefore no breach of the injunction, whether by the defendant or by Mdm Mageswari as the defendant's sole director and deponent of that affidavit.

82 Second, a party is permitted by O 41 r 5(2) of the Rules of Court to rely on an affidavit in interlocutory proceedings whose contents are deposed to based on information or belief. A deponent who has no personal knowledge of the contents of an affidavit which she affirms is nevertheless permitted by the rules of civil procedure to affirm that affidavit on the basis of information from sources which the deponent believes to be true so long as the affidavit is for use in interlocutory proceedings. This rule applies equally to a deponent such as Mdm Mageswari who affirms an affidavit of assets filed pursuant to a discovery order in aid of a mareva injunction. That is no less an affidavit for use in interlocutory proceedings than an affidavit filed in support of or in opposition to an interlocutory application.

83 Third, Mdm Mageswari drew the distinction in the affidavit of assets between evidence given upon information and belief and information which she knew to be true from her own personal knowledge. Thus, she acknowledged explicitly in the affidavit of assets that she was attesting to the values of the 70 assets on information and belief, not from personal knowledge. In paragraph 3 of her affidavit, she says:

> With the exception of the trade receivables and cash and bank balances, the values that I have provided for [*sic*] in this affidavit of the other assets belonging to the [defendant] are estimates made to the best of my knowledge and belief. The details of assets provided for [*sic*] in this affidavit are, to the best of my knowledge, true and accurate.

84 Mdm Mageswari was perfectly entitled, under the applicable procedural rules, to affirm the affidavit of assets on information and belief. The only criticism which can be made of her on this score is that she failed to identify the sources of and grounds for her belief. But that is at most a procedural default, not a contempt of court. Complying with a discovery order in aid of a mareva injunction, and doing so in substance in a way which the procedural rules permit, is not a contempt of court in itself.

85 I therefore find that Mdm Mageswari is not in contempt of court on the first charge.

Second charge

86 The second charge is that Mdm Mageswari misled the court and the plaintiff by intentionally providing inaccurate and inflated values for each asset listed in the affidavit of assets, despite being fully aware that the values were incorrect.

87 I hold that Mdm Mageswari is not in contempt of court on this charge.

88 In the affidavit of assets, Mdm Mageswari listed individually 70 assets owned by the defendant. Her list set out a brief description of each asset, the number of units of the asset owned, the unit value of that asset and the total value of that set of assets. The unit values ranged from $3,000 to $550,000. The total value of the 70 assets was stated to be $3.26m.

89 To succeed on the second charge, the plaintiff must satisfy me beyond reasonable doubt on two points. First, that the values which Mdm Mageswari set out in the affidavit of assets are in fact inaccurate or inflated. Second, that Mdm Mageswari *misled* the court and the plaintiff by *intentionally* providing those inaccurate or inflated values.

90 In order for the plaintiff to succeed on the first point – the inaccurate valuations – the plaintiff must establish that the values which Mdm Mageswari gave in the defendant's affidavit of assets were inaccurate *at the time* she affirmed the affidavit. The reason for this is obvious. Mdm Mageswari cannot be in contempt of court if the values she gave were accurate when she affirmed her affidavit but fell subsequently, whether because of a deterioration in the condition of those assets, a deterioration in the value of those assets or a deterioration in the market for those assets.

91 Mdm Mageswari accepted in cross-examination that the valuations which she set out in the affidavit of assets were, in point of fact, inaccurate at that time:[115]

> Q: Yes. Having read this, do you accept that your affidavit filed on … 28th August 2012 in paragraph 6, the estimated value stated therein of the equipment were inaccurate? Do you accept that?
>
> Court: Were inaccurate as at 28th August 2012.

115 Transcript dated 1 August 2017, page 32 line 16 onwards.

…

Q: Do you accept that? Yes or no?

A: Yes, it's---yes, it's different.

Court: What Mr Singh is asking you, … Mdm [Mageswari], is: "On the [28]th of August 2012 when you swore your affidavit, those numbers weren't correct on that date. Do you accept that?

Witness: Yes.

92 In any event, the plaintiff has also adduced circumstantial evidence that the values were inaccurate. The plaintiff's case is that the values in the affidavit of assets must have been inaccurate at the time she affirmed the affidavit because Exaco's valuation of a subset of those assets in 2013, just over a year after Mdm Mageswari swore the affidavit of assets, was as low as 11% of the value which Mdm Mageswari had ascribed to those same assets in the affidavit of assets in August 2012 (see [34] above).[116] The plaintiff also points out that the value realised at auction for what remained of the Soon Lee Street assets in 2017 was a fraction of Exaco's valuation of those assets, which was in turn a fraction of the value which Mdm Mageswari had ascribed to those assets in the affidavit of assets in August 2012 (see [41] and [42] above). Quite apart from Mdm Mageswari's admission in cross-examination that the values were inaccurate in point of fact as at August 2012, I accept that the plaintiff has produced strong circumstantial evidence capable of supporting a finding beyond reasonable doubt that the values ascribed to the 70 assets were inaccurate when Mdm Mageswari affirmed her affidavit in 2012.

93 In order for the plaintiff to succeed on the second point – as to Mdm Mageswari's mental element – the plaintiff must establish that Mdm Mageswari *knew* at the time she swore the affidavit that the values were inaccurate. That is

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116 Plaintiff's written submissions dated 29 September 2017 at paragraph 29.

the mental element which the plaintiff has alleged against Mdm Mageswari: that she presented the inaccurate values in order *intentionally* to *mislead* the plaintiff and the court. That is a more stringent mental element than is ordinarily required for a finding of contempt. Ordinarily, a party or someone acting at the direction of or on behalf of a party is liable to be committed for contempt so long as she does an act which is ultimately a breach of the injunction, even if she did not intend to breach the injunction or to prejudice the administration of justice by that act (see [49(d)] above).

94 The upshot on the second charge is that the plaintiff has chosen to allege a mental element on the second charge which is more stringent than the case law requires. It has thereby taken on the burden of proving that more stringent mental element.

95 I consider it entirely fair to hold the plaintiff to this more stringent element, given that it has selected it for itself by choosing to frame its charge in this way. Further, not to hold the plaintiff to this standard would be quite unfair to Mdm Mageswari. She was perfectly entitled to think that her defence on this charge would succeed if she could prove that she did not seek *intentionally* to *mislead* either the plaintiff or the court by providing inaccurate values for the 70 assets.

96 The evidence before me establishes that Mr Tanabalan is the person who has at all times had personal knowledge of the defendant's assets and their value. I have accepted Mdm Mageswari's evidence that she was not involved in the technical or operations side of the defendant's business and that that fell solely within Mr Tanabalan's purview. Mdm Mageswari obtained the information on these 70 assets and their values from Mr Tanabalan for the purposes of the affidavit of assets. The plaintiff has no evidence – only mere

supposition and speculation – that Mdm Mageswari relayed that information to the plaintiff and to the court either: (i) knowing that the information was false; or (ii) not believing the information to be true.

97 The plaintiff appears to suggest that it will have established the mental element it has alleged on this charge if it establishes that Mdm Mageswari failed to take reasonable steps to ascertain the true condition and value of each asset before filing the affidavit of assets.[117] And the plaintiff suggests that its burden of proof on this element of the charge is simply to show that it is more likely than not true that she failed to do so.[118] That is not correct on both counts. Negligently misstating the value of the assets is not the mental element which the plaintiff has chosen to charge against Mdm Mageswari. And it is not enough for the plaintiff to establish the mental element which it *has* chosen charge against Mdm Mageswari merely on the balance of probabilities.

98 The plaintiff also tries to argue that Mdm Mageswari is in contempt of court on the second charge by reason of her failure, in the defendant's March 2014 letter, to correct the values which she had ascribed to the defendant's assets in the August 2012affidavit of assets. The plaintiff points out that, at the time Mdm Mageswari wrote the March 2014 letter, she was aware that the plaintiff had cast doubt on the values listed in the affidavit of assets and that Exaco had valued a subset of those assets in October 2013 at 11% of the values she had ascribed to that subset.[119] But that failure is not the gravamen of the second charge, or indeed of any charge which the plaintiff has presented against Mdm Mageswari.[120]

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117 Plaintiff's written submissions dated 29 September 2017 at paragraphs 25 and 38.

118 Plaintiff's written submissions dated 29 September 2017 at paragraph 25.

119 Plaintiff's written submissions dated 29 September 2017 at paragraph 31.

120 See Notes of Argument dated 21 August 2018, page 16 line 26 to page 21 line 26.

99 I therefore find that the plaintiff has not satisfied me beyond reasonable doubt that Mdm Mageswari intentionally sought to mislead the plaintiff and the court by providing inaccurate values for the defendant's assets in the affidavit of assets. Mdm Mageswari is not in contempt of court on the second charge.

Third charge[121]

100 The third charge against Mdm Mageswari is that she intentionally dissipated the funds in the SCB SGD account by withdrawing those funds in March 2014 and instructing Standard Chartered Bank to close the account.

101 I hold that Mdm Mageswari is in contempt of court on the third charge.

102 It is not disputed that Mdm Mageswari instructed Standard Chartered Bank in March 2014 to release $6,804.73 from the SCB SGD account to the defendant and then to close the account. It is also not disputed that that sum was received by the defendant and has been spent.[122] Indeed, Mdm Mageswari has admitted this in the examination of judgment debtor proceedings.[123]

103 The injunction prohibits the disposal or dissipation of assets unless the total unencumbered value of the defendant's assets is more than $1.5m. Mdm Mageswari says that, in March 2014, the defendant had set aside assets which were worth $1.5m and which did not include the SCB SGD account. Accordingly, she withdrew this money from the SCB SGD account believing that the mareva injunction allowed her to do so.[124] Mdm Mageswari's evidence

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121 Plaintiff's written submissions dated 29 September 2017 at paragraphs 46 to 58 under the sub-heading (iv).

122 Transcript dated 1 August 2017 at page 53 lines 25 to 29 and page 54 lines 10 to 16.

123 Plaintiff's written submissions dated 29 September 2017, paragraph 55.

124 Defendant's closing submissions dated 29 November 2017 at paragraph 14.

is that she believed that Standard Chartered Bank had lifted the hold on the SCB SGD account because the defendant had already set aside assets valued at $1.5m as required by the mareva injunction.

104 Given that I have found that the values ascribed to the defendant's assets in the affidavit of assets were inaccurate, I am satisfied that at the time Mdm Mageswari withdrew this money, the total value of the defendant's assets in Singapore was less than S$1.5m. I do not accept her explanation that she is not in contempt of court because she believed that the bank had lifted the hold on the SCB SGD account. A letter from Standard Chartered Bank dated 18 November 2016 confirms that the bank lifted the hold only because Mdm Mageswari had instructed the bank to close the account.[125]

105 In any event, as this charge is framed, all that the plaintiff needs to prove in order to establish liability for contempt is the ordinary mental element for contempt: that Mdm Mageswari intended to do an act which the injunction prohibits. The plaintiff does not have to prove that Mdm Mageswari knew that the act was a breach of the injunction or that she intended to breach the injunction.

106 Mdm Mageswari clearly intended to withdraw this money from the SCB SGD account. She did so personally. The fact that she thought she was permitted to withdraw the money by the terms of the mareva injunction – and therefore in that purely subjective sense did not intend to breach the injunction – is irrelevant on the question of liability, although possibly relevant in mitigation.

107 I therefore find Mdm Mageswari is in contempt of court on the third charge.

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125 Plaintiff's Core Bundle of Extracts at Tab 6.

Fourth charge[126]

108 The fourth charge is that Mdm Mageswari intentionally failed to disclose all of the defendant's assets and, in particular, concealed the details of the defendant's trade receivables, and concealed the existence of both a USD account with Standard Chartered Bank ("the SCB USD account")[127] and a Singapore dollar account with United Overseas Bank ("the UOB SGD account").[128]

109 I hold that Mdm Mageswari is in contempt of court on the fourth charge.

110 The plaintiff discovered the existence of SCB USD account and the UOB SGD account only in the course of the examination of judgment debtor proceedings.[129] As the plaintiff was unaware of both of these accounts in August 2012, it did not identify either of them specifically in the mareva injunction, as it did with the SCB SGD account.

111 Mdm Mageswari explains that she failed to disclose these two bank accounts in the defendant's affidavit of assets because she did not know she had to disclose them[130] and because the defendant's lawyers failed to advise her that the defendant had to disclose them.[131] That is no excuse.

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126 Plaintiff's written submissions dated 29 September 2017 at paragraphs 39 to 45 under the sub-heading (iii).

127 See affidavit of SM dated 13 May 2017 (not paginated).

128 Affidavit of SM dated 13 May 2017 (not paginated).

129 Plaintiff's written submissions dated 29 September 2017, paragraph 42.

130 Transcript dated 1 August 2017 at page 60 lines 7 to 14 and page 65 lines 7 to 13.

131 Transcript dated 1 August 2017 at page 65 lines 24 to 29.

112 Paragraph 2 of the mareva injunction plainly states that the defendant must inform the plaintiff "in writing at once of all [its] assets whether in Singapore whether in [its] own name or not and whether solely or jointly owned, giving the value, location and details of all such assets". The defendant was obliged to disclose both of these bank accounts by that paragraph. The defendant was also obliged to give the value and details of its accounts receivables.

113 In answering questions in cross-examination and in making submissions for herself and for Mr Tanabalan, Mdm Mageswari proved herself well able to read, speak and understand English. I do not accept that she needed legal advice to understand the disclosure obligation which paragraph 2 of the mareva injunction clearly spells out in non-legal language. Mdm Mageswari's evidence that she did not comply with paragraph 2 of the mareva injunction fully because the defendant's lawyers failed to advise her to do so does not excuse her of contempt. It goes only towards mitigation, if anything at all.

114 I therefore find that Mdm Mageswari is in contempt of court on the fourth charge.

Fifth charge

115 The fifth charge against Mdm Mageswari is that she intentionally, and in order to impede the administration of justice, disposed of or dealt with the five Transvictory assets and the 20 Singatac assets (see [24] above) by knowingly storing these assets "with the defendant's creditors" and later by failing and refusing to pay the rental charges due to Singatac and by failing and refusing to pay the debt owed to Mr Richard of Transvictory. These 25 assets were valued in the affidavit of assets at $1.275m.

116 I hold that Mdm Mageswari is not in contempt of court on the fifth charge.

117 The subject-matter of the fifth charge against Mdm Mageswari are the five Transvictory assets and the 20 Singatac assets. No other assets are the subject-matter of the fifth charge.

118 The plaintiff attempts to justify its case against Mdm Mageswari on the fifth charge by pointing to the defendant's disposal after March 2014 of the assets which were listed in the affidavit of assets in August 2012 but which were not listed in the defendant's March 2014 letter. The defendant disposed of these unlisted assets because it considered itself free to deal with them under paragraph 1(c) and 4 of the mareva injunction on the basis that the March 2014 letter had identified assets worth $1.5m.[132] Those disposals may well be a breach of the mareva injunction by the defendant for which Mdm Mageswari can be held liable. But those disposals are not the subject-matter of the fifth charge against Mdm Mageswari.

119 So too, the plaintiff attempts to justify its case against Mdm Mageswari on the fifth charge by casting doubt on whether the 36 assets listed in the March 2014 letter were ever in fact moved to and stored at the Transvictory premises, the Singatac premises or the Soon Lee Street premises.[133] That too is not the subject-matter of the fifth charge against Mdm Mageswari.

120 The plaintiff's submissions on the fifth charge appear to be that Mdm Mageswari is in contempt simply because: (a) the defendant is in breach of the mareva injunction; and (b) Mdm Mageswari is a director of the defendant. That

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132 Plaintiff's written submissions dated 29 September 2017, paragraph 60.

133 Plaintiff's written submissions dated 29 September 2017, paragraph 62.

is not the case which the plaintiff advanced against Mdm Mageswari in the relevant O 52 r 2(2) statement. The case against Mdm Mageswari asserted there is that she is in contempt of court because: (a) storing the Transvictory assets with Transvictory and the Singatac assets with Singatac is a breach of the mareva injunction by the defendant; (b) Mdm Mageswari personally caused the defendant to be in breach of the injunction in that way; and (c) Mdm Mageswari therby intended to impede the administration of justice. Given my findings as to Mdm Mageswari's involvement in the business and operations of the defendant, I am satisfied that Mdm Mageswari did not personally cause the defendant to store these 25 assets at the Transvictory and Singatac premises.

121 In any event, I am also not satisfied that the defendant breached the mareva injunction in relation to the subject-matter of the fifth charge. I analyse this in greater detail when considering Mr Tanabalan's liability on the similar charges presented against him (see [174] to [197] below). In brief, I do not consider that the plaintiff has discharged its burden of proving that the sale of these 25 assets by Transvictory and Singatac in the circumstances which the plaintiff posits to be the case for each set of assets amounts to a disposal by the defendant within the meaning of paragraph 1(a) of the mareva injunction.

122 I therefore find that Mdm Mageswari is not in contempt of court on the fifth charge.

Sixth charge[134]

123 The sixth charge against Mdm Mageswari is that she: (i) intentionally removed five of the Soon Lee Street assets from the Soon Lee Street premises; (ii) moved those five assets to a different location without accounting for them

134 Plaintiff's written submissions dated 29 September 2017 at paragraphs 67 to 74.

to the plaintiff; and (iii) deliberately concealed and refused to inform the plaintiff where four out of those five assets are now located.

124 The gravamen of the sixth charge is not that the defendant dealt with or disposed of the Soon Lee Street assets in breach of paragraph 1(a) of the mareva injunction. That is not what the plaintiff alleges in this charge. The gravamen of the sixth charge is that the defendant's act in moving the Soon Lee Street assets and its failure to disclose their new location is *in itself* a dealing with the five assets. As the plaintiff submits:[135]

> The Plaintiffs humbly submit that by deliberately moving these 5 assets to another location, and subsequently refusing to inform the Plaintiffs of the location and/or address of the said assets albeit being directed to do so by the Court on numerous occasions, [Mdm] Mageswari is clearly in contempt of Court for dealing with and/or diminishing the value of the assets, and potentially disposing of the same.

125 This charge therefore has two limbs: deliberately moving the five assets subsequently refusing to inform the plaintiff of their location. It is critical that, on the first limb, the plaintiff does not allege that the defendant has disposed of these five assets: the highest it puts its case is that the defendant has "potentially" disposed of these assets. I do not consider that the defendant is in contempt of court on either limb. Mdm Mageswari's liability for contempt as the sole director of the defendant therefore does not even arise.

126 On the first limb, simply moving the Soon Lee Street assets is not a dealing with the assets. There is nothing in the mareva injunction which forbids the defendant from moving its assets. I do not consider moving assets to be a dealing with the assets. Simply moving assets does not interfere with the defendant's right to and interest in the economic value of the asset, which is

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135 Plaintiff's written submissions dated 29 September 2017 at paragraph 74.

what the mareva is designed to preserve. I also do not accept that the plaintiff has established beyond reasonable doubt that it was Mdm Mageswari herself who "deliberately" moved these assets, as the plaintiff has alleged.

127 On the second limb, the plaintiff must establish a breach by the defendant of the disclosure obligation in the mareva for which Mdm Mageswari can be held responsible in contempt. If all that the plaintiff can show is that Mdm Mageswari is personally in breach of a court order made in the examination of judgment debtor proceedings, that is for the plaintiff to pursue separately. A failure of that sort is not the subject-matter of either of the two committal applications which Mdm Mageswari now faces.

128 The only way for the plaintiff to succeed on the second limb of the sixth charge, therefore, is to show that the defendant's failure to disclose the location of the Soon Lee Street assets is a breach of the defendant's mandatory disclosure obligation under the mareva injunction for which Mdm Mageswari can be held to be in contempt. The only provision of the mareva injunction which is mandatory and which requires the defendant to disclose the location of its assets is paragraph 2. The plaintiff's case appears to be that paragraph 2 of the mareva injunction imposes a continuing obligation on the defendant to update the plaintiff as to the location of its assets from time to time.

129 I reject the plaintiff's case. I consider paragraph 2 to impose a one-off disclosure obligation and not a continuing one. I say that for three reasons.

130 First, paragraph 2 of the mareva injunction is in terms a one-off disclosure obligation. It requires the defendant to disclose its assets at once and to verify that disclosure by affidavit within 21 days of service. It says nothing about further disclosures. Nothing in paragraph 2 – or indeed elsewhere in the

mareva injunction – obliges the defendant to file further affidavits of assets from time to time to bring the facts set out in it up to date as they change. In my view, once the defendant filed its affidavit of assets in August 2012, the defendant's obligation under paragraph 2 of the mareva injunction was discharged and the coercive effect of that paragraph was spent.

131 The second reason I say that paragraph 2 imposes a one-off obligation and not a continuing obligation is that the mareva injunction makes express provision for periodicity when it imposes a continuing obligation. Thus, paragraph 4 of the injunction requires the defendant to "account to the [p]laintiffs monthly" for asset disposals in the ordinary course of business. There is no similar specification of periodicity in paragraph 2.

132 Finally, the plaintiff itself read paragraph 2 of the mareva injunction as imposing a one-off obligation. In two letters from the plaintiff's solicitors to the defendant's trial solicitors in September 2013,[136] the plaintiff's solicitors asked the defendant to give "an accurate and updated account of [its] assets" and asked the defendant to do so voluntarily in order to obviate a further application to the court. The plaintiff's solicitors did not take the position that this update by affidavit was an existing obligation of the defendant under paragraph 2 of the mareva injunction. That is why the plaintiff's solicitors expressly gave notice of an intention to apply for a *further* order to compel the disclosure. If paragraph 2 imposed a continuing obligation on the defendant to disclose its assets, the plaintiff would not have written this letter, or at least not in these terms.

133 A one-off disclosure obligation is consistent both with the purpose of a mareva injunction and also with the purpose of discovery in aid of a mareva injunction. The effect of a mareva injunction is to impose a personal obligation

136 Affidavit of TLCA dated 20 June 2016, paragraph 17 and pages 38 and 39.

on a defendant prohibiting it from dealing with or disposing of its assets up to a certain value until the plaintiff's claim has been determined. The purpose of the prohibition is to avoid any judgment which the plaintiff might obtain being rendered nugatory. It is not the purpose of a mareva injunction to require the defendant to account to the plaintiff for all movements in its assets, where those movements fall short of a prohibited dealing or disposal.

134 Further, the purpose of disclosure in aid of a mareva injunction is to compel the defendant to let the plaintiff to know "at once": (i) what the defendant's assets are and their value; and (ii) where the defendant's assets can be found. With that information in hand, the plaintiff can take an informed decision soon after the injunction is granted whether it needs to take any further steps for additional protection against the defendant dealing with or disposing of its assets contrary to the mareva injunction. These further steps include putting third parties on notice of the terms of the injunction and, most importantly in the present context, further applications to court for additional disclosure or prohibitions. It is for the plaintiff to apply to court and to make out a case for the further orders necessary to put in place the further protection. In short, if a plaintiff wants a defendant to have a continuing obligation to disclose changes in the physical location of assets, it is for the plaintiff to ask the court to order the defendant to provide that disclosure upon showing a justification for it. A mareva injunction in the form granted in this case does not, in itself, contain or imply any such continuing obligation.

135 A defendant may keep a plaintiff updated as to any changes in the physical location of its assets even if those changes do not amount to a prohibited dealing with or disposal of its assets. Indeed, the defendant did so in this case in March 2014. But a defendant who does so volunteers to do so and does not do so pursuant to any obligation under the injunction.

136 I therefore find that there is no breach of the mareva injunction on the sixth charge. The fact is that the defendant moved the Soon Lee Street assets. However, it is not part of the plaintiff's case on this charge that the defendant dealt with or disposed of the assets in a manner prohibited by the mareva injunction. It appears that the defendant had to move these assets as they posed a safety hazard.[137]

137 In its reply submissions, the plaintiff alleges that many of the Soon Lee Street assets were not found in the warehouse in which the defendant said that they were stored. But the plaintiff does not go further to adopt as part of its case an allegation that the defendant has dealt with or disposed of the missing assets.

138 The plaintiff also alleges that the *descriptions* of the Soon Lee Street assets in the August 2012 affidavit of assets are inaccurate. It is not open to the plaintiff to rely on this as an additional ground of contempt. It is raised for the first time only in the reply submissions. The respondents have had no proper chance to respond effectively to this additional ground. In any event, the variance between the descriptions of the assets and the assets found at the warehouse is, in the grand scheme of things, minor.

Seventh charge

139 The seventh charge is that Mdm Mageswari intentionally failed or refused to account to the plaintiff for the money which the defendant spent on "ordinary living expenses", "legal advice and representation", and in the "ordinary and proper course of business" as required by paragraphs 3 and 4 of the injunction. Of course, the term "ordinary living expenses" is wholly

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137 Defendant's closing submissions dated 29 November 2017 at paragraph 16.

inapposite for a corporate defendant. But the plaintiff relies on the fact that Mdm Mageswari failed to disclose the defendants' expenditure on legal fees and in the ordinary course of business. This includes: (i) legal fees paid to Straits Law Practice LLC for the trial and appeal in the sum of $175,000; (ii) legal fees paid to Attorneys Inc LLC amounting to $46,132; (iii) payments to the defendant's suppliers amounting to $2.3m; (iv) monthly rent paid for the defendant's premises at 13 Tuas Avenue 11; and (v) the $300,000 loan which the defendant obtained from Transvictory.

140 I hold that Mdm Mageswari is guilty of contempt on the seventh charge.

141 The injunction clearly says, in plain language and without any qualification, that the defendant is obliged to disclose to the plaintiff or its lawyers: (i) where the money which is to be spent on legal advice is to come from before the money is spent, and (ii) the amount of money spent monthly on expenses paid in the ordinary and proper course of business.[138] I fail to see how Mdm Mageswari could have misunderstood the plain language of the order. Mdm Mageswari was personally responsible for the financial aspects of the defendant's business. This was not an aspect of the defendant's business which fell within Mr Tanabalan's purview.

142 Mr Simon Tan for the respondents accepts that it is not a defence in law for Mdm Mageswari to say that the defendant's lawyers advised her that there was no obligation to make these disclosures.[139] The fact that a contemnor acted on legal advice goes only to mitigation and not to liability: *Summit Holdings Ltd and another v Business Software Alliance* [1999] 2 SLR(R) 592 at [52].

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138 Plaintiff's Core Bundle of Extracts at Tab 1, p 3.

139 Transcript dated 1 August 2017 at page 9, line 26 to 30 to page 10, line 2.

143 It is also the case that the plaintiff was obviously aware contemporaneously that the defendant was failing to comply with these plain and unqualified continuing obligations under the mareva injunction but did nothing to follow up with the defendant on or to enforce any of these obligations for years. But that too goes only to mitigation.

144 I therefore find Mdm Mageswari is in contempt of court on the seventh charge.

Mr Tanabalan

145 I turn now to the seven charges of contempt against Mr Tanabalan.

The basis of liability for contempt as against Mr Tanabalan

146 As in the case of Mdm Mageswari, the plaintiff is entitled to hold Mr Tanabalan directly liable for the defendant's contempts under O 45 r 5(1)(ii). There are two grounds on which the plaintiff can do that.

147 The first ground is on the basis that Mr Tanabalan is a person in accordance with whose directions or instructions Mdm Mageswari – as the only formally-appointed director of the defendant – was and is accustomed to act. This is borne out by Mdm Mageswari's evidence. She testified that she relied entirely on Mr Tanabalan to take care of the commercial aspects of the defendant's business while she handled only the administrative aspects.[140] On that basis, plaintiff could have argued that Mr Tanabalan was a "director" of the company within the extended definition of a "director" in s 4 of the Companies Act even though he was not formally appointed a director (and indeed could not have been, being an undischarged bankrupt). A person within the extended

[140] Affidavit of SM dated 26 July 2016 at paragraphs 7 and 8.

definition of "director" is what is commonly called a "shadow director". That would have sufficed to bring Mr Tanabalan within the meaning of "director" in O 45 r 5(1)(ii).

148 The second ground in which the plaintiff is entitled to hold Mr Tanabalan directly responsible for the defendant's alleged contempt of court is simply by virtue of his status as the general manager of the defendant. Order 45 r 5(1)(ii) allows an order of committal to issue against "a director or other officer" of a body corporate which has breached an injunction. Section 4 of the Companies Act defines an "officer" of a corporation as including "a person employed in an executive capacity by the corporation". Mr Tanabalan, on his own evidence, held an executive position in the defendant.

149 Again, for some reason, the plaintiff has chosen to make its case more difficult for itself than it has to be. In the O 52 r 2(2) statement against Mr Tanabalan, the plaintiff asserts that it is proceeding against Mr Tanabalan as a person who has "knowingly assisted in and/or permitted a breach of the [m]areva [i]njunction".[141] That echoes the words of paragraph 8 of the injunction dealing with the liability of a third party for contempt of court (see [11(h)] above). The plaintiff's classification of Mr Tanabalan as a third party, and not as being directly responsible for the defendant's acts, has important consequences for the mental element which the plaintiff must prove against Mr Tanabalan. I deal with this in more detail at [150] below.

The mental element as against Mr Tanabalan

150 The plaintiff's decision to frame its case against Mr Tanabalan as third-party liability under paragraph 8 of the mareva injunction has important

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141 Affidavit of TLCA dated 11 November 2016 at page 23, paragraph 21.

implications for the mental element which the plaintiff must prove as against Mr Tanabalan. Against a respondent who is directly answerable under O 45 r 5(1)(ii) for a corporation's contempt, a plaintiff ordinarily needs only to show an intent to do an act which is in fact a breach of the injunction.

151 However, in order to succeed in establishing contempt against a respondent who is a third party, such as (on the plaintiff's case) Mr Tanabalan, the plaintiff must show "*a specific intent* on the part of the third party … to impede or prejudice the due administration of justice" (see *Pertamina Energy* at [63]). The plaintiff therefore accepts[142] that, in order to establish that Mr Tanabalan in contempt, it must satisfy me beyond reasonable doubt that Mr Tanabalan had a specific intent to impede or prejudice the due administration of justice.

152 I pause to make an additional point. It is clear from both respondents' evidence that Mr Tanabalan has, throughout the period that the defendant was subject to the mareva injunction, been in breach of both limbs of s 148 of the Companies Act. That provision prohibits an undischarged bankrupt from "act[ing] as director of, or directly or indirectly tak[ing] part in or [being] concerned in the management of, any corporation, except with the leave of the Court or the written permission of the Official Assignee". That said, a breach of s 148 is neither a subject of any of the charges of contempt which are before me nor relevant to Mr Tanabalan's liability for contempt on any of the charges which are before me. I therefore say no more on this point.

153 I turn now to address each of the charges against Mr Tanalaban.

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142 Plaintiff's written submissions dated 9 April 2018, at paragraph 22.

First charge

154 The first charge against Mr Tanabalan is that he deliberately assisted Mdm Mageswari in preparing the affidavit of assets and provided inaccurate and misleading values for the assets listed in the affidavit.

155 I hold that Mr Tanabalan is not in contempt of court on the first charge.

156 It is correct that Mr Tanabalan provided the information to Mdm Mageswari which formed the content of the affidavit of assets which she then affirmed for the defendant. But the first charge against Mr Tanabalan is based on inaccurate information alone and does not involve any alleged dealing with or disposal of the defendant's assets.

157 As in the case of the second charge against Mdm Mageswari, the plaintiff has taken on the burden of proving beyond reasonable doubt that Mr Tanabalan deliberately – *ie* with knowledge that the values of the assets were misleading and inaccurate – gave Mdm Mageswari the misleading and inaccurate values and that he intended to prejudice the due administration of justice by doing so. The plaintiff has not satisfied me beyond reasonable doubt that either was the case in August 2012. The fact that the assets were valued in 2013 at a fraction of the value ascribed to them by Mr Tanabalan and that some of them fetched even lower values when auctioned in 2017 suffices for a finding beyond reasonable doubt that the values were in fact inaccurate. However, that does not suffice for a finding beyond reasonable doubt as to Mr Tanabalan’s mental element in August 2012.

Second charge

158 The second charge against Mr Tanabalan is that he intentionally dissipated the monies in the defendant's bank accounts.

159 I hold that Mr Tanabalan is not in contempt of court on the second charge.

160 The charge against Mr Tanabalan is not fleshed out or particularised anywhere in the plaintiff's closing submissions. In the circumstances, I do not think it appropriate to find Mr Tanabalan liable for contempt on a charge which is so lacking in particulars. The lack of particulars is such as to deprive Mr Tanabalan of a reasonable opportunity to know the case against him and to respond to it effectively.

161 In any event, I have accepted on the facts that it was Mdm Mageswari, and not Mr Tanabalan, who was responsible for the administrative aspects of the defendant. This includes dealing with the defendant's banks and bank accounts.[143] I cannot find beyond reasonable doubt that Mr Tanabalan, as a third party, did anything knowingly to assist Mdm Mageswari or to permit Mdm Mageswari to breach the mareva injunction in the manner alleged in this charge.

Third charge

162 The substance of the third charge against Mr Tanabalan is aligned with the first charge in the plaintiff's O 52 r 2(2) statement: "Failing to take due care of the items under the [m]areva [i]njunction and adopting a callous attitude towards the items".

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143 Defendant's written submissions dated 9 April 2018, paragraph 6(ii).

163 As the plaintiff puts it:[144]

> When questioned what he had done with the assets which were not accounted for in the letter dated 24 March 2014, Tanabalan confirmed at the hearing that the remaining items were either sold or given way. This in itself is contempt of Court as Tanabalan had himself testified that he was aware that he was not permitted to dissipate, dispose or deal with the Defendants' assets. More so given the fact that both Tanabalan and Mageswari were aware that the values provided in the affidavit dated 28 August 2012 were inaccurate.

164 The plaintiff puts the third charge against Mr Tanabalan as follows:[145]

> It is the Plaintiffs' case that the Defendants had deliberately overvalued the assets in their affidavit of assets dated 28 August 2012 in order to allow them to engage in a course of conduct that would allegedly permit them to dispose of assets protected by the Mareva injunction, under the false pretence that the disposal of the same would be "justified" based on the notion that values the remaining assets [*sic*] would not fall below $1,500,000.00.

165 I hold that Mr Tanabalan is liable for contempt on the third charge.

166 The defendant was obliged under paragraph 1(a) of the mareva injunction not to dispose of or deal with or diminish the value of any of its assets up to the value of $1.5m. When the defendant discontinued its operations at 13 Tuas Avenue 11 in March 2014, it identified 36 out of the 70 assets listed in its affidavit of assets which the defendant claimed were worth $1.5m. Those assets were then stored at the Transvictory premises, the Singatac premises and the Soon Lee Street premises. It is not disputed that the defendant disposed of the other 34 assets not moved to any of these premises on the basis that the mareva injunction permitted the disposals because the value of the defendant's remaining assets in Singapore – the 36 assets identified in the March 2014 letter

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144 Plaintiffs' written submissions dated 29 September 2017, paragraph 96.

145 Plaintiff's written submissions dated 9 April 2018, paragraph 35.

– remained no less than $1.5m.[146] Mr Tanabalan was the person in charge of: (i) moving the 36 assets from the defendant's premises to the three premises; (ii) of ascribing values to these 36 assets in the affidavit of assets in 2012, which were then repeated in the March 2014 letter; and (iii) of disposing of the remaining 34 assets.[147]

167 I find that Mr Tanabalan's disposal of the remaining 34 assets was a breach of the mareva injunction in that it assisted or permitted the defendant's breach of the injunction.

168 Where an alleged contemnor argues that he is permitted to deal with assets subject to a mareva injunction because the defendant has sufficient other assets to meet the financial threshold in the mareva injunction, the burden lies on the alleged contemnor to show that that is indeed the case: *Daltel Europe Limited and others v Hassan Ali Makki and others* [2005] EWHC 749 (Ch) ("*Daltel*") at [33]. This is a legal or persuasive burden, not a mere evidential burden: *Daltel* at [35]. Mr Tanabalan therefore bears the legal burden of proving that the 36 assets listed in the March 2014 letter and set aside at these three premises did indeed amount in value to at least $1.5m as he stated, through Mdm Mageswari, in the 2012 affidavit of assets and the March 2014 letter.

169 Mr Tanabalan, however, has no evidence to show that these 36 assets were worth, either in 2012 or in 2014, the values which he ascribed to them. And what evidence there is before me suggests that they were not.

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146 Transcript dated 1 August 2017 at page 104, lines 5 to 14.

147 Transcript dated 1 August 2017 at page 104, lines 12 to 27 and page 106, lines 20 to 24.

170 The biggest difficulty for Mr Tanalaban is the difference between the claimed values of the 36 assets and the values given by Exaco to a subset of those assets in 2013[148] and the values realised at auction for some of those assets in 2017. It is, of course, true that the auction was a forced sale. It is also true that the lapse of time between the date on which these 36 assets were valued at $1.5m and the date on which these assets were force-sold may have resulted either in a deterioration in the condition of the assets or a deterioration in the market for the assets or both. All of this may have resulted in the realised values being much lower than the declared values. But Mr Tanabalan, as the party with the burden on this issue, has produced no evidence of any such deterioration. And the difference between the values is so vast as to suggest strongly that the 36 assets which Mr Tanabalan set aside did not amount in value to $1.5m when he set them aside.[149]

171 Mr Tanabalan's disposal of the remaining 34 assets after March 2014 therefore took place at a time when he cannot prove that the value of the defendant's assets frozen by the injunction and preserved by the defendant exceeded $1.5m. That is a breach of the mareva injunction.

172 As for the mental element, I note that Mr Tanabalan decided to rely on his own valuation of the 36 assets when he set them aside in order purportedly to comply with the injunction. Mr Tanabalan made no effort to obtain an independent valuation of the assets from a third party to support his own self-serving valuation. From that, I draw the inference that Mr Tanabalan knew that the 36 assets which he had chosen to set aside were not worth $1.5m. I find also that he knew that the disposal of the remaining assets would prejudice the

148 Plaintiff's closing submissions dated 29 September 2017 at paragraph 29.

149 Plaintiff's closing submissions dated 29 September 2017 at paragraphs 29 and 34.

administration of justice in that it would render the judgment which the plaintiff ultimately secured either worthless or worth less.

173 I therefore find Mr Tanabalan liable for contempt on the third charge.

Fourth charge

174 The fourth charge against Mr Tanabalan is that he deliberately failed to make payment of the rent due and owing to Singatac.

175 I hold that Mr Tanabalan is not in contempt of court on the fourth charge.

176 Mr Tanabalan's evidence is that he moved 20 out of the 36 assets listed in the March 2014 letter to Singatac's premises in March 2014.[150] His evidence is that Singatac agreed that the defendant could leave those assets there for an unspecified period[151] at a rent of $1,000 per month.[152] Mr Tan's evidence is that the agreement was for the assets to be stored at the Singatac premises for only two months for $2,000.[153] Further, Mr Tanabalan knew that Singatac had written in May 2014 to ask the defendant to remove the assets from the premises.[154] He informed the defendant's former solicitors by email dated 24 June 2014 that Singatac was asking the defendant to remove the Singatac assets.[155]

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150 Affidavit of RT dated 3 June 2016 at paragraph 6.

151 Transcript dated 1 August 2017 at page 121, lines 3 to 8.

152 Transcript dated 1 August 2017 at page 117, lines 20 to 24.

153 Affidavit of TLCA dated 11 November 2016 at p 304.

154 Affidavit of TLCA dated 11 November 2016 at p 310.

155 Affidavit of TLCA dated 21 November 2016 at page 136.

177 The evidence also shows that during this time, the defendant used the UOB SGD account as a trading account. And for the year 2014 at least, there were substantial sums paid into and out of that account which could have been used to pay rent or to procure alternative premises to safeguard these assets instead.[156] Mr Tanabalan, however, did neither. He simply left these assets at Singatac. Singatac ultimately scrapped the assets in December 2014.[157]

178 Despite this, I do not accept that Mr Tanabalan is in contempt of court on the fourth charge. I say that for three reasons.

179 First, the mareva injunction is a personal injunction directed at a defendant prohibiting it from dealing with its own assets up to a certain value until the plaintiff's claim is adjudicated. A mareva injunction circumscribes a defendant's conduct in relation to its own assets only to the extent prohibited by the injunction. A mareva injunction is, of course, susceptible to a purposive interpretation. But a purposive interpretation can only go so far, particularly when committal to prison for contempt is the potential consequence of a breach. Certainly, a purposive interpretation cannot go so far as to change the core prohibitory obligation of a mareva injunction or the fundamental nature of the core obligation.

180 The fourth charge which the plaintiff asserts against Mr Tanabalan posits that a mareva injunction imposes by implication on a *third party* a *mandatory* obligation – on penalty of committal for contempt and possibly being imprisoned – to take positive steps to allocate the third party's own resources to preserve the defendant's assets until the plaintiff secures its judgment. It is going very far indeed to imply a mandatory provision of that sort

156 Affidavit of SM dated 26 September 2016 at pages 102 to 123.

157 Affidavit of TLCA dated 11 November 2016 at page 306.

into what is essentially a prohibitory injunction. It is going even further to make that binding on a third party in the position of Mr Tanabalan.

181 Second, the position argued for by the plaintiff seems to me to amount to the court ordering the defendant to bestow on the plaintiff an added positive "benefit" – over and above the defendant's negative obligation not to deal with or dispose of its assets – so that the defendant keeps itself in a position to meet a possible future judgment in a plaintiff's favour. Where the defendant's most valuable assets are, as here, large and bulky, storage costs for those assets can be substantial. And interpreting a mareva injunction, in itself, as requiring the defendant to bear those costs for the plaintiff's ultimate benefit would go far too far. That is especially so considering that 12 to 18 months can elapse between the grant of a mareva injunction pre-trial and the plaintiff securing a judgment at trial.

182 Third, I accept that the defendant lacked the financial resources to pay the rent for the Singatac assets. Mr Tanabalan has deposed that the defendant was facing severe financial difficulties in 2013.[158] He has deposed further that the mareva injunction crippled his cash flow and that the defendant's operations and business ground to a halt.[159] I accept both aspects of his evidence. There is evidence from the Central Provident Fund Board that from June 2015, the defendant had only two employees left: Mdm Mageswari and Mr Tanabalan.[160]

183 Although, as I have noted earlier, the defendant had substantial sums moving in and out of its UOB SGD account, the withdrawals typically exceeded the deposits, resulting in overdrafts.[161] There is nothing to suggest that these

158 Affidavit of RT dated 3 June 2016 at paragraph 18.

159 Affidavit of RT dated 3 June 2016 at paragraph 25.

160 Affidavit of SM dated 26 September 2016 at page 197.

withdrawals and deposits were incurred otherwise than in the ordinary course of the defendant's business. There is also nothing to suggest any collusion between the defendant and Singatac so as to justify attributing Singatac's disposal of the Singatac assets to the defendant or to Mr Tanabalan, as a third party.

184 Even if it is possible to read into this mareva injunction a mandatory obligation on the respondent to allocate the defendant's resources in order to preserve its assets for the plaintiff's benefit, it cannot be that the defendant – let alone a third party in Mr Tanabalan's position – risks committal and possibly being imprisoned simply because the defendant has insufficient financial means to ensure that its assets are preserved.

185 In the circumstances, it does not appear to me that the plaintiff has proven beyond reasonable doubt that the defendant's failure to pay rent to Singatac, such that Singatac disposed of the Singatac assets, puts the defendant itself in breach of the mareva injunction, let alone that Mr Tanabalan assisted or permitted the defendant to fail to pay rent to Singatac with the intention to prejudice the due administration of justice.

186 I therefore hold that Mr Tanabalan is not in contempt of court on the fourth charge.

Fifth and sixth charges

187 I deal with the fifth and sixth charges against Mr Tanabalan together, as they arise from essentially the same underlying facts. Both charges arise from Mr Tanabalan's decision to store some of the defendant's assets at

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[161] Affidavit of SM dated 26 September 2016 at pages 102 to 123.

Transvictory's premises. The fifth charge is that Mr Tanabalan deliberately failed to repay the defendant's $300,000 debt to Transvictory which led to Transvictory disposing of the Transvictory assets. The sixth charge is that Mr Tanabalan deliberately placed the Transvictory assets with a creditor of the defendant, *ie*, Transvictory.

188 The plaintiff's case is that the defendant owed Transvictory money and failed to repay the debt, which led Transvictory to dispose of the defendant's assets stored at its premises.[162] The gravamen of both of these charges is therefore that Mr Tanabalan exposed the Transvictory assets to seizure and sale by a creditor of the defendant, at a time when the defendant was under an obligation not to deal with or dispose of those assets, with the intention to impede the administration of justice.

189 I hold that Mr Tanabalan is not in contempt on the fifth and sixth charges.

190 I first note that the evidence as to who actually disposed of the assets at Transvictory's premises, and when they did so, is in contention. Mr Tanabalan contends that Transvictory sold the assets in late 2015.[163] Transvictory denies this through solicitors. Transvictory's solicitors have also pointed out that Mr Tanabalan had uninhibited access to the Transvictory assets and suggested that Mr Tanabalan could well have removed the assets himself.[164] Mr Tanabalan denies that allegation, saying that if he had been the one who removed the assets, his actions would have been captured on Transvictory's CCTV system, or he would have been stopped by its security guards.[165]

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162 Affidavit of TLCA dated 11 November 2016 at p 314.

163 Affidavit of RT dated 3 June 2016 at paragraph 12.

164 Affidavit of TLCA dated 11 November 2016 at page 316.

191 The plaintiff's case on the fifth and sixth charges is to assume Mr Tanabalan's evidence to be true and to take that as the factual starting point of its case against him on these charges. That is so even in its closing submissions.[166] It is not part of the plaintiff's case on either the fifth or the sixth charge that it was Mr Tanabalan who disposed of the Transvictory assets.

192 As a result, the gravamen of these two charges is not that Mr Tanabalan disposed of the Transvictory assets directly, thereby assisting or permitting the defendant to breach the mareva injunction. Nor does the plaintiff allege that Mr Tanabalan disposed of the Transvictory assets indirectly by colluding with Transvictory to have the assets seized and sold in satisfaction of the defendant's debt to Transvictory. Instead, the plaintiff's case is that Mr Tanabalan breached the mareva injunction simply by knowingly storing the defendant's assets with a creditor of the defendant such that the creditor eventually seized and sold those assets.

193 I must take the plaintiff's case as it is presented to me.

194 On the case presented to me, Transvictory's disposal of the assets stored on their premises cannot be attributed to Mr Tanabalan. The plaintiff has not proven beyond reasonable doubt that Mr Tanabalan stored the defendant's assets at Transvictory's premises either expressly as security for the defendant's debt to Transvictory or collusively, with an express or implied agreement that Transvictory should have recourse to the assets as *de facto* security.

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165 Transcript dated 1 August 2017 at page 128, line 14 to page 129, line 20.

166 Plaintiff's written submissions dated 29 September 2017, paragraphs 98 to 99.

195 But even if I am wrong on that finding, the plaintiff also has not proven beyond reasonable doubt that Mr Tanabalan intended to prejudice the due administration of justice by storing the assets with Transvictory.

196 Another aspect of these two charges against Mr Tanabalan is that the plaintiff claims that the defendant's failure to commence proceedings to recover from Transvictory the difference between the value of the Transvictory assets and the debt due from the defendant to Transvictory is evidence of collusion.[167] According to Mr Tanabalan, the assets left with Transvictory were worth $630,000, which far exceeded the $300,000 debt which the defendant owed to Transvictory, leaving the defendant with a potential claim against Transvictory for the reaming $330,000 in value. The defendant has not taken any steps to pursue that claim against Transvictory. Mr Tanabalan's explanation for the failure is that the defendant did not know how to go about it.[168] The plaintiff submits that that is an abject failure to take due care of the defendant's assets. I accept that the defendant's failure to commence proceedings to recover damages from Transvictory can be explained on the basis that the defendant did not have the funds necessary to commence further litigation.[169]

197 Mr Tanabalan is not liable for contempt on the fifth and sixth charges.

Seventh charge

198 The seventh charge against Mr Tanabalan is that he deliberately dealt with five of the Soon Lee Street assets by moving them to a new location. This charge parallels the sixth charge against Mdm Mageswari. For the reasons I

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167 Plaintiff's written submissions dated 29 September 2017 at paragraph 99.

168 Transcript dated 1 August 2017 at page 113, lines 3 to 7.

169 Defendant's closing submissions dated 29 November 2017 at paragraph 26.

have set out in that analysis, the gravamen of this charge is therefore Mr Tanabalan's involvement in moving these five Soon Lee Street assets and his failure to keep the plaintiff updated as to the whereabouts of these assets in a timely fashion. The plaintiff does not allege that there has been a disposal or dissipation of these five Soon Lee Street assets.

199 I hold that Mr Tanabalan is not in contempt of court on the seventh charge.

200 The plaintiff has not shown why Mr Tanabalan, a third party who is not subject to any obligation under the mareva injunction and is not said to be the controlling mind and will of the defendant, is under any obligation to disclose the location of the Soon Lee Street assets to the plaintiff, even if he is responsible for moving the assets. Further, even if I assume that Mr Tanabalan should have informed the plaintiff of the new location of the assets, the plaintiff has not shown beyond reasonable doubt how Mr Tanabalan's failure to do so was intended to prejudice the due administration of justice.

201 I therefore find that Mr Tanabalan is not in contempt of court on the seventh charge.

202 Even if the gravamen of the seventh charge is that Mr Tanabalan has assisted or permitted the defendant to deal with the Soon Lee Street assets simply by moving them to a new location, the plaintiff has failed to prove beyond reasonable doubt that he did so intending to prejudice the due administration of justice. I accept his explanation that the assets had to be moved as they posed a safety hazard.[170]

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170 Defendant's closing submissions dated 29 November 2017 at paragraph 16.

Sentence

203 I have found Mdm Mageswari to be guilty of contempt of court on the third, fourth and seventh charges against her. I have found Mr Tanabalan to be guilty of contempt of court on the third charge against him. I now set out my decision on sentence.

The law

204 I first examine the guidance on sentencing for civil contempt given by the Court of Appeal. In *Mok Kah Hong*, the Court of Appeal indicated that the following factors are relevant (at [104]):

(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.

205 The law also recognises that distinctions should be drawn between breaches which are one-off in nature, and breaches which are either continuing or repeated in nature: *Mok Kah Hong* at [103]. Where one-off breaches are

concerned, the overriding sentencing principle is punishment because there is no longer any coercive value to the sentence ordered, given that the contemnor is no longer in a position to remedy the breach. In the case of continuing breaches, however, the court takes into account both punitive and coercive elements: *Tay Kar Oon* at [56].

206 Another important consideration to be taken into account is whether the contemnor's non-compliance with the court order has become a matter of public concern: *Tay Kar Oon* at [57]–[58]. There is a public interest in the upholding of the court's authority as expressed in orders of court.

207 Finally, it is very important to recognise that committal to prison is normally a measure of last resort, to be utilised where the court is faced with a recalcitrant and obstructive litigant in continuous breach: *Toyota Tsusho (Malaysia) Sdn Bhd v Foo Tseh Wan and others* [2017] 4 SLR 1215 ("*Toyota Tsusho*") at [55]. As was the case in *Clement Lee*, where the advantage obtained by the contemnor as a result of the breach is the ability to spend more money, a financial sanction may be sufficient (at [49]).

208 In addition to these general principles, it is also important to recognise three key authorities so far as breaches of mareva injunctions are concerned.

209 The first authority is the case of *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR(R) 60 ("*OCM Opportunities*"), a decision of the High Court. That case involved multiple breaches of a mareva injunction, including failures to disclose assets and failures to attend court for cross-examination pursuant to orders and directions given. The court found that the contemnors had *deliberately* disobeyed the orders with no good excuse, under a single-minded objective of

avoiding disclosure of their assets. There was clear defiance of the authority of the court. In the circumstances, the court ordered an imprisonment term of six months for each contemnor.

210 The second authority is the decision of the High Court in *Maruti Shipping*. In that case, the first defendant was found guilty of contempt of court for (a) preventing the execution of an *anton piller* order at two different premises; (b) withdrawing $380,000 from his bank account in breach of the mareva injunction; (c) failing to comply with disclosure requirements in the anton piller and mareva injunctions; and (d) failing to deliver his passport to the plaintiff in breach of ancillary orders made by the court. The court also made several other observations. The court noted that the defendant was a repeat offender, having breached a mareva injunction in the past. The court noted that the defendant, being a bankrupt, could no longer make good his breach. And the court noted that the defendant appeared to have dragged the proceedings on for more than three years, during which time much time and money had been wasted. In the circumstances, the court sentenced the defendant to six months' imprisonment.

211 Although both of these authorities were decided before the Court of Appeal's decision in *Mok Kah Hong*, they were both cited by the Court of Appeal in that case without any apparent disapproval.

212 Finally, I note the case of *Toyota Tsusho*. That case involved the breach of disclosure obligations under a mareva injunction. The contemnor persistently refused to disclose his assets and instead filed affidavits of assets and means which lacked any credibility. The High Court found that the contemnor had acted in flagrant disregard of the mareva injunction, and sentenced him to three months' imprisonment. I should note that that case was decided after the Court

of Appeal's decision in *Mok Kah Hong*, and the guidance given by the Court of Appeal was taken into account in the sentence imposed.

The plaintiff's submission on sentencing

213 At this point I pause to make a point about the plaintiff's submissions on sentencing. The plaintiff's initial submission, made repeatedly, was that I should sentence Mdm Mageswari and Mr Tanabalan to six years' imprisonment each.[171] In its final submission, tailored specifically to the issue of sentencing and filed after my decision on liability, the plaintiff submits that I should sentence Mdm Mageswari and Mr Tanabalan to three years' imprisonment each.[172]

214 The authorities which I have cited should have made it clear to the plaintiff and those advising it that the sentence which it has sought in its submissions – whether imprisonment for six years or for three years – is completely unsupported by any authority binding on me or even persuasive to me and is excessive on any view of the law. It appears to me that the initial submission repeatedly urging a sentence of six years' imprisonment was put forward not to assist the court – which is the only proper purpose of any submission – but to intimidate and oppress the respondents. The fact that that submission has been moderated to three years' imprisonment in the further submissions is equally oppressive.

215 I now turn to consider the sentences to be imposed on Mdm Mageswari and Mr Tanabalan.

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171 Plaintiff's written submissions dated 29 September 2017 at paragraph 134; Plaintiff's written submissions dated 15 February 2018 at paragraphs 9 and 27; Plaintiff's written submissions dated 9 April 2018 at paragraph 54.

172 Plaintiff's written submissions dated 20 August 2018 at paragraphs 11 and 39.

Mdm Mageswari

216 I have found Mdm Mageswari liable on the third, fourth, and seventh charges against her. The fourth and seventh charges relate to failure to disclose assets. The third charge relates to a disposal of assets.

217 I accept the evidence given by Mdm Mageswari that, in carrying out the acts which form the basis of the charges for which I have found her guilty, she: (a) relied on Mr Tanabalan and that it was reasonable of her to rely on him; and (b) genuinely believed that she was acting on the advice of the defendant's solicitor, or – at the very least – that she was not acting inconsistently with his advice. By this, what I mean is that I accept that Mdm Mageswari subjectively thought that her actions were not in breach of the mareva injunction. That is, of course, no defence to a charge of contempt. But it can be mitigation.

218 I am conscious that Mdm Mageswari has failed to support this aspect of her mitigation by putting the defendant's solicitor's own evidence before me. She failed to do this even though both respondents specifically sought permission to do so and even though I granted them that permission. As a result, I have not heard from the defendant's solicitor on the actual content of the advice which he gave to Mdm Mageswari. I am therefore in no position to judge, objectively speaking, whether the content of his advice was as Mdm Mageswari and Mr Tanabalan have testified. I make no finding on that issue. Nevertheless, having observed Mdm Mageswari giving her evidence and being cross-examined on it, I accept her evidence as to how she *understood* the defendant's solicitor's advice.

219 As the court in *Tay Kar Oon* noted at [53], given the gravity of an order of committal and the fact that such proceedings are quasi-criminal in nature, any

reasonable doubt as to motive, intention or understanding should be resolved in the contemnor's favour. I consider that that principle applies equally when determining the appropriate penalty for contempt as it does in determining liability for contempt in the first place.

220 Mdm Mageswari testified in cross-examination that she believed that she was at all times acting consistently with the advice of the defendant's solicitor. She maintained that position when she was making her submissions to me orally. She maintained that position to the extent that, as her counsel informed me in closing submissions, she was willing to waive privilege and adduce evidence from the defendant's former solicitor at the sentencing stage. In the event, he declined to give evidence and, I was informed, the respondents lacked the means to issue a subpoena to require him to attend. So I did not hear his evidence. But, as I have said, the question before me is not what advice the defendant's solicitor actually gave Mdm Mageswari but how she understood that advice. On that issue, I accept her oral evidence.

221 I therefore find that Mdm Mageswari: (a) relied on Mr Tanabalan to hold the view – and did genuinely hold the view – that the assets which Mr Tanabalan had set aside amounted at least to $1.5m; and (b) did hold a belief that she was acting consistently with the legal advice received, or at the very least, that she was not acting inconsistently with it. I therefore cannot make a finding that she was acting in flagrant or contumelious disregard of the mareva injunction in any of the respects which I have found her to be liable.

222 Further, as regards the third charge against Mdm Mageswari, the amount involved in the withdrawal from the SCB SGD account is *de minimis* in both absolute and relative terms. The impact of this dealing on the underlying purpose of the mareva injunction – to preserve assets and to protect the plaintiff

from a risk that those assets might be dissipated before judgment – is thus not sufficient to warrant imprisonment. As I noted earlier, committal to prison is a measure of last resort.

223 Similarly, the seventh charge against Mdm Mageswari concerns her failure to account to the plaintiff for monies spent on legal advice and in the ordinary and proper course of business. That failure is a failure to disclose sums which the defendant would have been entitled to spend in any event. It also bears noting that the plaintiff did not press for this disclosure contemporaneously, from month to month after the injunction was granted in August 2012, even though it must have been apparent to the plaintiff and its solicitors that the defendant was in persistent breach of this provision. The plaintiff complained of this failure only at the time it sought committal for contempt. That suggests to me that the defendant's failure did not cause the plaintiff, on its own assessment, any substantial prejudice.

224 I find further that the fact that the plaintiff did not press the respondents to make this disclosure on behalf of the defendant contemporaneously further contributed to the defendant's erroneous assumption – which at the very least was not inconsistent with the legal advice received – that this disclosure was not required (see *Clement Lee* at [47]).

Mr Tanabalan

225 I have found him Mr Tanabalan liable on the third charge against him. That concerns his acts in assisting or permitting the defendant's failure to ensure that it did not deal with or dispose of assets up to the value of $1.5m.

226 Although the assets which were disposed of by Mr Tanabalan, and which formed the basis of the third charge against him, were of not insignificant

value, I am doubtful that this caused the plaintiff much prejudice. I bear in mind that it has consistently been the plaintiff's position in these contempt proceedings that the values of the physical assets listed in the affidavit of assets were inflated. I have found that part of the plaintiff's case to be true. It seems to me that, due to the intrinsic nature of the defendant's business, assets and finances, the plaintiff had little prospect of recovering substantial sums against the defendant in any event, quite apart from any breaches of the mareva injunction.

227 I also find that, to the extent that Mr Tanabalan overvalued the defendant's assets, this was due to optimism and incompetence rather than due to dishonesty or a desire to mislead the court or to deprive the plaintiff of assets against which to levy execution. Optimism and incompetence are equally capable of impeding the due administration of justice as dishonesty. But a finding of optimism and incompetence suffices to take this case out of the line of authorities which establishes when a custodial sentence is warranted. This includes *OCM Opportunities*, *Maruti Shipping* and *Toyota Tsusho*. So while Mr Tanabalan is guilty of contempt, I do not consider that his contempt warrants a custodial sentence.

228 As against both respondents, I also bear in mind that Mdm Mageswari and Mr Tanabalan did exhibit on occasion a desire to comply with the mareva injunction and to cooperate with the plaintiff. This can be seen, for example, from their letter dated 25 March 2014, in which they informed the plaintiff's solicitors that 36 assets worth $1.5m had been moved. They notified the plaintiff of the new locations of these assets though they were under no continuing obligation to do so.

229 In these circumstances, I consider that the appropriate penalty for contempt for each respondent is as follows:

(a) I order Mdm Selvarajoo Mageswari to pay a fine of $25,000; if she is unable to pay the fine within one month, she is to serve a term of imprisonment of one month in lieu thereof; and

(b) I order Mr Ramasamy Tanabalan to pay a fine of $50,000; if he is unable to pay the fine within a month, he is to serve a term of imprisonment of two months in lieu thereof.

230 Although Mr Tanabalan has been found guilty of only one charge of contempt and Mdm Mageswari of three, I consider Mr Tanabalan's single breach to be more serious than Mdm Mageswari's three breaches, even when they are taken together. That is because Mr Tanabalan's breach went to the root of the purpose of the mareva injunction, which is to preserve assets from dissipation. That is also because Mr Tanabalan, as I have found, was well aware that that would be the effect of his contempt. As a result, I consider it appropriate that Mr Tanabalan's fine for his single breach is double the fine which I have imposed on Mdm Mageswari for her three breaches.

231 I make a final point. The plaintiff appears to think that the purpose of committal is to make the plaintiff whole for the loss it has suffered by reason of having fewer assets upon which to levy execution in order to satisfy its judgment debt. That is not the purpose of committal. Committal is not execution by other means. The purpose of committal is to vindicate the court's authority by sanctioning and deterring those who act in disregard of that authority as expressed in an order of court.

Costs

232 I have found both respondents guilty of contempt of court. Those breaches necessitated these committal applications. The plaintiff has been put to considerable expense and delay as a result. The plaintiff is *prima facie* entitled to the costs of these applications.

233 However, it is the case that the plaintiff has failed in the bulk of its charges. Mdm Mageswari has been found guilty only on three of the seven charges against her and Mr Tanabalan found guilty only on one of the seven charges against him. It is also the case that I have, as an extraordinary indulgence to the plaintiff, granted the plaintiff leave under O 52 r 5(3) to proceed against the respondents on charges which were not encompassed in the relevant O 52 r 2(2) statements. Those charges could have been rejected out of hand, with the plaintiff ordered to pay the respondents' costs of dealing with them. While I have not taken that course, I consider that I am justified at this stage in depriving the plaintiff of costs on those charges.

234 In these circumstances, I order that the respondents shall be jointly and severally liable to pay to the plaintiff 50% of the plaintiff's reasonable costs and disbursements of and incidental to the committal applications. I have reduced the plaintiff's recovery on costs by 50% to reflect that the plaintiff has succeeded on only four out of the 14 charges of contempt against the respondents and has avoided an adverse costs order on the charges outside the scope of the relevant O 52 r 2(2) statements.

235 The plaintiff has asked that its costs be assessed on the indemnity basis. One of the grounds it relies on is the fact that these proceedings have been protracted by reason of the respondents' conduct. I do not attribute the length of

time that these committal applications have taken to fault on the part of the respondents. It is true that several adjournments were necessitated because they asked for additional time to prepare for hearings, to engage counsel or to look for funding to engage counsel. However, I accept that the respondents are impecunious. Further, I accept that having representation – especially in a matter of such gravity as committal for contempt – is not only of assistance to the alleged contemnors but also to the court in ensuring that justice is achieved.

236 In any event, in light of my findings on Mdm Mageswari's state of mind, I am not prepared to order indemnity costs against her. As against both respondents, I consider that the plaintiff's approach in bringing multiple charges of contempt in three committal applications militates against an order for indemnity costs. If the plaintiff had brought only the three successful charges against Mdm Mageswari and only the one successful charge against Mr Tanabalan and had succeeded on those four charges, I might have considered awarding indemnity costs on the ground that the respondents would *ex hypothesi* have unreasonably resisted committal applications which had been wholly-successful. But as it is, I cannot say that either respondent acted unreasonably in defending the overly-broad committal applications which the plaintiff chose to bring.

237 The costs payable to the plaintiff will therefore be assessed on the standard basis.

Conclusion

238 All three of these committal applications have been motivated by a sense of grievance on the part of the plaintiffs. As the plaintiff says:[173]

> The Plaintiffs take the position that Mdm. Selvarajoo Mageswari and/or the [defendant] ought not to get off scot-free. Mdm. Selvarajoo Mageswari's and Mr. Ramasamy Tanabalan's assurance "to cooperate with the Plaintiffs to find out the whereabouts of the [Transvictory and Singatac assets] and keep them informed of the outcome of [Mr Tanabalan's] efforts to locate the [i]tems at the scrap yards in the country" is certainly not satisfactory to the Plaintiffs. The Plaintiffs have been financially deceived by the [defendant] on numerous occasions, and have been further deprived of their fruits of litigation due to the [defendant's] own failure to make payment of their alleged outstanding rental and/or loan charges which were due. It remains clear that the [defendant] ought to be liable for [its] failure to comply with the Mareva Injunction order and/or make full restitution to the Plaintiffs' claim in Suit 373 of 2012 as well as all the unpaid costs.

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173 Affidavit of TLCA dated 19 July 2016, paragraph 29; affidavit of TLCA dated 20 June 2016, paragraph 33.

239 The plaintiff's sense of grievance is completely understandable but ultimately misconceived. In committal applications – and especially in these committal applications, in which the plaintiff initially sought to commit each respondent to prison for a term of six years – it is incumbent on a plaintiff to come to court with more than a sense of grievance, no matter how justified. It was therefore incumbent on this plaintiff to conceive a case for multiple contempts of court against the respondents which is internally consistent and which is supported by evidence sufficient to discharge its burden of proof beyond reasonable doubt. This it has abjectly failed to do on the bulk of the charges presented. On the remaining charges on which the plaintiff succeeded, I am not satisfied that a sentence of imprisonment is warranted.

Vinodh Coomaraswamy
Judge

Navinder Singh and Jaspreet Kaur Purba (KSCGP Juris LLP) for the plaintiff;
Simon Tan and Grace Seng (Attorneys Inc LLC) for the respondents.
