Maruti Shipping Pte Ltd *v* Tay Sien Djim and others
[2014] SGHC 227

Case Number : Suit No 631 of 2010 (Summons No 4809 of 2010)

Decision Date : 07 November 2014

Tribunal/Court : High Court

Coram : Edmund Leow JC

Counsel Name(s) : Eddee Ng, Keith Tnee and Ooi Huey Hien (Tan Kok Quan Partnership) for the plaintiff; A P Thirumurthy (Murthy & Co) for the first and second defendants; Gan Kam Yuin (Bih Li & Lee) for the non-party.

Parties : Maruti Shipping Pte Ltd — Tay Sien Djim and others

Contempt of Court – Civil contempt

Civil Procedure – Anton Piller orders

Civil Procedure – Mareva injunctions

7 November 2014 Judgment reserved.

Edmund Leow JC:

1 This is an application taken out by the plaintiff against the following persons to stand committed to prison and/or fined for contempt of court: [note: 1]

(a) The first defendant, Tay Sien Djim ("Moses Tay"), who is the managing director of the second defendant, R M Martin Pte Ltd ("RMMPL"), and who holds 80% of RMMPL's shareholding;

(b) RMMPL; and

(c) Moses Tay's son, Tay Jiashen Martin ("Martin Tay"), who holds the remaining 20% shareholding in RMMPL and is allegedly a director of RMMPL at the material time. He is also RMMPL's company secretary.

2 I will refer to Moses Tay, RMMPL and Martin Tay collectively as "the Contemnors".

Procedural background

3 This case has a somewhat complicated procedural history, but which may be summarised as follows. On 19 August 2010, the plaintiff commenced an action against RMMPL for breaches of contracts and breach of trust, and against Moses Tay for inducement of breach of contract and/or knowingly assisting RMMPL to breach the trust.

4 On the same day, the plaintiff also applied for an Anton Piller order ("the Anton Piller Order") against Moses Tay and RMMPL, authorising the plaintiff to enter and search the following premises:

(a) an office at Golden Agri Plaza ("the Golden Agri Premises"); and

(b) a condominium unit at Sentosa Cove ("the Sentosa Cove Premises").

5 At the same time, the plaintiff also applied for a Mareva injunction ("the Mareva Injunction") prohibiting Moses Tay and RMMPL from disposing of their assets worldwide.

6 Both orders were granted the next day on 20 August 2010.

7 On 23 August 2010, the plaintiff sent its representatives to the Golden Agri Premises and the Sentosa Cove Premises to execute the Anton Piller Order. The Anton Piller Order and Mareva Injunction were also allegedly served on Moses Tay on that day. During the period between 23 August 2010 and 1 September 2010, the Contemnors allegedly committed various breaches of court orders. To avoid repetition, I will only set out in detail the relevant facts that relate to the alleged breaches in the portion of the judgment that deals with Moses Tay's liability (beginning at [48] below).

8 Several days later, on 27 August 2010, the plaintiff added Indah Resources Pte Ltd ("IRPL") and PT Waegeo Mineral Mining ("PTWMM") to the main action as the third and fourth defendants respectively. At the same time, the Anton Piller Order and the Mareva Injunction were extended to include IRPL and PTWMM. Orders were also made to restrain Moses Tay from leaving Singapore until further order and to direct Moses Tay to surrender his passports to the person serving the order of court on him ("the Ancillary Orders"). The plaintiff obtained an order for substituted service on Moses Tay for the Ancillary Orders on 1 September 2010. [note: 2]

9 I will refer to the Anton Piller Order, the Mareva Injunction and the Ancillary Orders collectively as the "Orders of Court".

10 After obtaining leave to do so on 5 October 2010, [note: 3] the plaintiff commenced contempt proceedings against the Contemnors on 12 October 2010: [note: 4]

(a) against Moses Tay for failing, neglecting and/or refusing to obey the Orders of Court.

(b) against RMMPL for failing, neglecting and/or refusing to obey the Anton Piller Order and the Mareva Injunction.

(c) against Moses Tay, as a director of RMMPL, for RMMPL's contempt; and

(d) against Martin Tay, as a director of RMMPL, for RMMPL's contempt.

11 I should mention that the plaintiff had initially also sought orders for committal and/or payment of fines against the IRPL and Martin Tay as director of IRPL, but this was withdrawn after the plaintiff entered into a settlement agreement with IRPL. [note: 5]

12 The hearing for the committal proceedings was initially fixed on 13 January 2011, but it was adjourned as Moses Tay had been warded at the Institute of Mental Health ("IMH") as he was said to be mentally unwell. [note: 6]

13 On 28 March 2013, the plaintiff obtained interlocutory judgment against Moses Tay for his breach of an "unless" order requiring him to comply with an order for specific discovery, [note: 7] but could not proceed further as Moses Tay was declared a bankrupt on 29 August 2013. [note: 8]

14 On 7 June 2013, the plaintiff entered into a settlement agreement with IRPL, as mentioned at [11] above. [note: 9]

15 On 5 November 2013, the plaintiff obtained final judgment against RMMPL and PTWMM for the sums of US$3,125,986.72 and US$477,558.75 in damages respectively. [note: 10]

16 All this while, the committal proceedings remained unheard as a result of numerous delays arising from Moses Tay's purported mental condition. Eventually, a hearing was fixed before me on 4 February 2014. Again, Moses Tay did not appear as he had been admitted to IMH on 30 January 2014. Moses Tay's counsel, Mr A P Thirumurthy ("Mr Thirumurthy"), sought an adjournment, but I directed that proceedings continue, for reasons which will be discussed at the appropriate juncture below. It suffices to say for now that Moses Tay has never turned up during the hearing for the committal proceedings.

General legal principles

17 The principles regarding an action for civil contempt are well established. It is aptly summarised in *STX Corp v Jason Surjana Tanuwidjaja and others* [2014] 2 SLR 1261 at [7] to [9] as follows:

> 7 An action for civil contempt is directed at a party who is bound by an order of court but is alleged to have breached the terms of that order. It is directed at securing compliance with the said order and typically falls under one of the following categories:
>
> (a) Disobedience of an order requiring an act to be done;
>
> (b) Disobedience of an order prohibiting the doing of an act; or
>
> (c) Breach of an undertaking given to court.
>
> …
>
> 8 The standard of proof for finding contempt of court is the criminal standard of proof beyond a reasonable doubt. The threshold to establish the guilty intention necessary for a finding of civil contempt is, however, a low one – the alleged contempnor just needs to intend to do acts which are in breach of a coercive court order. His specific intention need not be shown (see *Tan Beow Hiong v Tan Boon Aik* [2010] 4 SLR(R) 870 at [47]).
>
> 9 Further, it has been held that as long as there is a deliberate breach of the order, the reasons for disobedience are irrelevant in establishing liability – they are only relevant at sentencing (see *Global Distressed Alpha Fund I Ltd Partnership v PT Bakrie Investindo* [2013] SGHC 105 at [33]).

18 It must also be shown that the alleged contemnor was aware of what his obligations to the court were, as stated by the Court of Appeal in *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 ("*Pertamina*") at [51]:

> 51 In so far as the party to the court order is concerned, it would appear that it is only necessary to prove that the relevant conduct of the party alleged to be in breach of the court order was intentional and that it knew of all the facts which made such conduct a breach of the order (including, of course, knowledge of the existence of the order and of all of its material terms (see the English High Court decision of *Re L (A Ward)* [1988] 1 FLR 255 at 259)). However,

it is unnecessary to prove that that party appreciated that it was breaching the order. As Sachs LJ put it in the English Court of Appeal decision of *Knight v Clifton* [1971] Ch 700 at 721, "[the] prohibition is absolute and is not to be related to intent unless otherwise stated on the face of the order".

19 While the position is a strict one, the Court of Appeal noted that where the contempt is merely technical, this can be taken into account in *mitigation* of the contempt (*Pertamina* at [61]).

20 I will now examine the liability of each of the Contemnors in turn.

The liability of Moses Tay for his breaches of the Orders of Court

21 Moses Tay is accused of breaching *all* the Orders of Court. His alleged breaches can essentially be classified into four categories:

(a) preventing the execution of the Anton Piller Order at the Golden Agri Premises and the Sentosa Cove Premises;

(b) withdrawing $380,000 from his OCBC account in breach of the Mareva Injunction;

(c) breaching the Ancillary Orders by failing to give up his passport and not leave the jurisdiction; and

(d) failing to comply with the disclosure requirements in the Anton Piller Order and the Mareva Injunction.

22 To be clear, this part of the judgment deals with the breaches of orders that were *personal* to Moses Tay. I will examine his liability as a director for RMMPL's alleged breaches of the Anton Piller Order and the Mareva Injunction later (at [94] below). Before I do so, it is convenient to consider the preliminary question of whether Moses Tay should *not* be found liable for contempt *purely* on the basis that he is mentally unwell.

Preliminary issue: Moses Tay's alleged depressive disorder

23 In this respect, Mr Thirumurthy made two arguments as to why Moses Tay should not be convicted as a result of his alleged depressive disorder:

(a) First, he argued that it would be *unsafe* to convict Moses Tay and send him to prison when he is mentally unwell and did not attend the committal hearing (as he was admitted to IMH). [note: 11] Mr Thirumurthy referred to a number of medical reports which were enclosed in affidavits filed by Mr Thirumurthy himself. [note: 12] In essence, the argument is that it would be highly prejudicial for Moses Tay to be convicted *in absentia.*

(b) Secondly, he submitted that it is *possible* that Moses Tay could have been mentally unwell even before December 2010, when he was first diagnosed in IMH. [note: 13] He said that if Moses Tay was indeed suffering from severe depression before the Orders of Court were served on him, then Moses Tay "cannot be blamed for failing to understand court orders or failing to comply with them". [note: 14] In essence, the argument is that Moses Tay's mental state at the time of the breaches was such that it would negate Moses Tay's *mens rea* for contempt of court.

24 The plaintiff, on the other hand, submitted that Moses Tay's alleged mental condition is simply a sham.

The first argument

25 I begin with Mr Thirumurthy's first argument. Since the application for committal was filed on 12 October 2010, there have been numerous delays caused by Moses Tay's alleged depressive condition. Originally, the hearing of the committal application was fixed on 13 January 2011 (which was to be heard by another judge), [note: 15] but this was adjourned multiple times due to Moses Tay admitting himself to the IMH.

26 Eventually, committal hearing was fixed before me on 4 and 5 February 2014. On 3 February 2014, Mr Thirumurthy tendered a letter enclosing a medical memo from Dr Manu Lal ("Dr Lal") of IMH. It stated that Moses Tay had been admitted to IMH on 30 January 2014 due to his depressive condition, and that he was therefore unable to attend the hearing on the aforementioned dates. [note: 16]

27 At the hearing on 4 February 2014, Mr Thirumurthy asked for the hearing to be vacated on the basis of Moses Tay's alleged medical condition. He also stated that he had been getting instructions from Moses Tay's wife ("Mrs Tay") but she was not present because she was attending to Moses Tay at IMH. [note: 17] I did not find Mr Thirumurthy's explanations to be credible and I directed that the proceedings continue in Moses Tay's absence. [note: 18] Mr Thirumurthy then applied to discharge himself. I disallowed the application, which was raised at the last minute, as this would be prejudicial to the interests of Moses Tay. [note: 19]

28 Moses Tay made a swift recovery after the hearing on 4 and 5 February 2014. Dr Lal stated in a report dated 26 February 2014 that Moses Tay's condition had improved after treatment and he was discharged on 6 February 2014, one day after the hearing concluded. Dr Lal also opined that, at the time of discharge, he was *fit to attend court and be cross-examined*. [note: 20]

29 Yet when the committal application was fixed to be heard again on 10 April 2014, Moses Tay admitted himself to IMH once more on 7 April 2014. [note: 21]

30 Moses Tay's relapses into depression follow a clear pattern. His condition flares up at the most inopportune times, allowing him to avoid turning up in court. He also approached a succession of physicians from February 2014 onwards, which indicated to me that he was shopping for a favourable opinion in order to avoid having to attend court. Even Mr Thirumurthy had to concede that Moses Tay "appears to be in hospital whenever there's a hearing. That is true. It appears to be so". [note: 22]

31 Moses Tay has had numerous opportunities to file affidavits from doctors regarding his condition but none were ever forthcoming. On 24 August 2011, Mrs Tay and Martin Tay applied for a declaration that Moses Tay was mentally incapable of managing his affairs pursuant to ss 19 and 20 of the Mental Capacity Act (Cap 177A, 2010 Rev Ed) in Originating Summons No 375 of 2011 ("OSF 375"). This was one such opportunity for them to establish conclusively Moses Tay's mental state. However, the applicants in OSF 375 were tardy in pursuing their case. District Judge Jocelyn Ong had strong words for them when she dismissed the application at [13] and [14] of her Grounds of Decision dated 14 December 2012:

> This application was filed by the applicants. They claim that P [*ie*, Moses Tay] is unable to make

decision for himself in relation to his personal welfare and property and affairs and for that reason they ask to be appointed as his deputies. Yet, they refuse to take steps to move their own application forward and repeatedly ignored and defied the Court's orders and directions to file the necessary affidavits. Having regard to these facts, *I do not believe the applicants have any genuine desire to pursue these mental capacity proceedings, other than as yet another delay tactic for the High Court suit and I therefore dismissed the application.* There is no prejudice to the applicants or P as there is nothing to stop his family members for making an application for the appointment of deputies under the Mental Capacity Act if it is really necessary.

The proceedings have been *a colossal waste of time* and given the conduct of the applicants I think it is only right to order them to pay costs to the Intervener on an indemnity basis.

[emphasis added]

32 The extract speaks for itself. Nevertheless, I accept that Moses Tay is currently suffering from depression, as Dr Tian Cheong Sing ("Dr Tian"), the psychiatrist engaged by the *plaintiff* to conduct an independent assessment of Moses Tay in OSF 375, also came to that conclusion.

33 However, Dr Tian's report indicated that any difficulty that Moses Tay may have in following court proceedings "may arise out of poor motivation and fear rather than a lack of competence, understanding or ability". There were also indications in the report that, whilst Moses Tay was suffering from depression, he may nevertheless be fit to appear in court for cross-examination. [note: 23] This is consistent with Dr Lal's finding (at [28] above).

34 After careful consideration of the evidence, I find that Moses Tay was in fact fit to attend court despite his depressive condition and his failure to appear in court was a deliberate and conscious decision to delay proceedings for as long as he could.

35 Even if I am wrong about this, it was highlighted by the psychiatrists (including Dr Tian) that one of the stressors causing his depression is the ongoing court case and that his condition is unlikely to improve if his circumstances remain unchanged. [note: 24] Mr Thirumurthy also submitted that it "may not be a coincidence" that Moses Tay is always sick and admitted to IMH whenever the hearing for contempt of court is fixed. [note: 25] In *Forresters Ketley v Brent and another* [2012] EWCA Civ 324, the English Court of Appeal had to deal with an argument from the defendant who was found to be in contempt of court by the trial judge that the hearing should have been adjourned because he was unwell and unable to attend. Lewison LJ stated at [25]:

> 25 … Whether to adjourn a hearing is a matter of discretion for the first-instance judge. This court will only interfere with a judge's exercise of discretion if the judge has taken into account irrelevant matters, ignored relevant matters or made a mistake of principle. Judges are often faced with late applications for adjournment by litigants in person on medical grounds. An adjournment is not simply there for the asking. While the court must recognise that litigants in person are not as used to the stresses of appearing in court as professional advocates, nevertheless something more than stress occasioned by the litigation will be needed to support an application for an adjournment. *In cases where the applicant complains of stress-related illness, an adjournment is unlikely to serve any useful purpose because the stress will simply recur on an adjourned hearing.* [emphasis added]

36 It was therefore pointless to adjourn the hearing if the reason Moses Tay was unable to attend court is because the prospect itself exacerbates his mental illness. [note: 26] There is no indication

that his condition will get better so long as the threat of committal continues to hang over his head like the Sword of Damocles. Any adjournment would only lead to further adjournments, and more wasted costs and time for everyone involved.

37 While the contemnor has a right to be heard (see O 52 r 5(4) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed)), there is no rule that the contemnor *must* be present at the committal hearing before he can be convicted. Of course, it would be best if he was in attendance to meet such a serious charge against him, but it would similarly not serve the interests of justice to allow a person in contempt of court to avoid the consequences of his actions through deliberate delay. Most importantly, Moses Tay did have the opportunity to state his case. He had deposed a detailed affidavit dated 22 November 2011 putting forth his side of the story. He also had a lawyer who could represent his interests in court.

The second argument

38 It was in Moses Tay's closing submissions that Mr Thirumurthy first raised the possibility that Moses Tay was already suffering from depression as of the date the Mareva Injunction and the Anton Piller Order were served on him. This contention was unsupported by any medical report, even though there was sufficient time for Moses Tay or his family to obtain such a report in the years leading up to the hearing. There was still no excuse even if I assume that Mr Thirumurthy had simply not considered this possibility until a late stage.

39 At the end of the hearing on 10 April 2014, I directed that parties file their closing submissions by 22 May 2014. [note: 27] Moses Tay failed to comply. Mr Thirumurthy wrote in one day after the deadline for an extension of time on the ground that Moses Tay was waiting for a further medical report from his doctors. [note: 28] Then on 6 June 2014, another request for an extension of time was filed. [note: 29] I granted a further extension of time. However, when Moses Tay's closing submissions were finally filed on 16 June 2014, it was unaccompanied by any updated medical report. It only said that Mr Thirumurthy had written to IMH for a further medical report in this regard. [note: 30] By then, it had been more than two months since the hearing of 10 April 2014. Indeed, at the hearing itself Mr Thirumurthy had said he was already in the *process* of getting that further report, which meant that the request must have been made *prior* to 10 April 2014. [note: 31]

40 On 8 September 2014 (some *three* months after he filed Moses Tay's closing submissions, and nearly *five* months after the hearing on 10 April 2014), Mr Thirumurthy filed an affidavit containing two medical reports from Dr Wei Ker-Chiah ("Dr Wei") of IMH dated 18 June 2014 and 3 July 2014 respectively. I note that Mr Thirumurthy had earlier stated that he would be obtaining a medical report from a *different* doctor, Dr Seng Kok Han [note: 32] (who Mr Thirumurthy had stated had been Moses Tay's doctor for the last two years [note: 33]). I infer that Dr Seng was not able to provide Moses Tay with a favourable report. It is also odd that Dr Wei's reports were only disclosed more than two months after they were prepared.

41 In any event, Dr Wei's first report dated 18 June 2014 stated that it was documented that Moses Tay's depressive symptoms had started two months before the date of his admission on 28 December 2010*, and not before August 2010*. [note: 34] This *contradicted* Moses Tay's position. Mr Thirumurthy then asked for a *further* medical report, which Dr Wei provided in a letter dated 3 July 2014. Dr Wei stated that it was *possible* that the symptoms could have started even before October 2010. [note: 35] Dr Wei also expressed the opinion that when Moses Tay was depressed in 2010, this *could* have resulted in difficulties regarding his ability to concentrate while reading documents and to

understand them completely. [note: 36] It was also noted by Dr Wei that severe depression could also result in Moses Tay having little motivation to do anything or to respond to others, which could be a contributing factor for his inaction to take the necessary steps to comply with the court orders at the time. [note: 37]

42 Other than Dr Wei's report which, in my view, was somewhat speculative, none of the other medical reports indicated that he was suffering from depression at the time of the alleged breaches in August 2010, or demonstrated any causal link between the alleged breaches and Moses Tay's mental illness.

43 There is, therefore, no evidence that Moses Tay was depressed at the time the Orders of Court were served on him, much less that his failure to abide by the Orders of Court was due to his mental illness. Indeed, the evidence indicated otherwise. On 22 November 2010, Moses Tay filed an affidavit on behalf of the Contemnors. The affidavit is a hefty 137 page document, excluding attachments. It deals with every single allegation made by the plaintiff against the Contemnors. This affidavit is significantly more complex than any of the Orders of Court. Quite plainly, a man with the ability to depose such a document was more than capable of understanding and abiding by the Orders of Court. The affidavit makes no mention of Moses Tay's depression. It indicates to me that, as of 22 November 2010, Moses Tay could not have been suffering from a mental illness that was so serious as to negate the *mens rea* for contempt of court. It should also be noted that it is *not* necessary for a defendant to have a *total* understanding of the court order before he can be held liable for contempt, as stated in *Pertamina* at [57]:

> 57 Indeed, the strictness of law with regard to the issue of *mens rea* in so far as a party to a court order is concerned is underscored by the decision of the English Court of Appeal in *P v P* ([52] *supra*). In that case, the alleged contemnor was a husband who suffered from a medical condition that rendered him deaf and dumb, and with deteriorating eyesight that resulted in little more than tunnel vision; he did, however, possess an average IQ (see at 898). He was held to have been in breach of an injunction forbidding his return to the matrimonial home. Butler-Sloss LJ observed thus (at 902):
>
> > **[A] degree of understanding, which is not total, may in a case be sufficient.** *It is not necessary for members of the public to have a clear understanding of the finer points of procedure of the law in the case in which they are parties. It depends upon the facts. It is however crucial that a litigant against whom an order is to be made understands what he must not do, that the order on a piece of paper tells him he must not do A or B or C and that he understands that if he disobeys the order he will be in trouble and he may go to prison.*
> >
> > In the same case, Judge LJ (as he then was) stated, in a similar vein, thus (at 903):
> >
> > To amount to contempt the disobedience must be wilful or deliberate rather than accidental and unintentional, and so, consistently with that principle, contempt cannot be established, for example, against an individual who, unaware of the existence of the order, acts contrary to its terms. *What, however, is not required is proof that in committing the prohibited act he intended to be contumacious or that he was motivated by a desire to defy the court*.
> >
> > [emphasis in italics in original; emphasis added in bold]

44 In Moses Tay's closing submissions, Mr Thirumurthy made an entirely unexpected argument. He claimed that Moses Tay's affidavit dated 22 November 2010 was actually filed on instructions from

Mrs Tay, one Mr Chua Seng Chai ("Mr Chua"), who was the manager of IRPL, and Martin Tay, because Moses Tay "could not give [them] proper instructions right from the beginning". [note: 38] This is a bare assertion by Mr Thirumurthy, which contradicted his own client's affidavit. To put it mildly, it is quite *improper* for Moses Tay's solicitors to "supplant and undermine the position taken by their clients and affirmed in a factual affidavit", to borrow the words of the plaintiff's solicitors. [note: 39]

45 Indeed, this new assertion is contradicted by Martin Tay, who said that it was Moses Tay who called the shots when preparing the 22 November 2010 affidavit. The relevant portion of the transcript is as follows: [note: 40]

> Q Let me ask you this question instead, Mr Tay. Did you read through this affidavit before it was filed, because it's filed on your behalf?
>
> A I did read through it, yes.
>
> Q So if you have read through it, you must have read in relation to the paragraphs that pertained to you, yes?
>
> A Yes.
>
> Q And for this affidavit to be filed on your behalf, it must mean that you didn't disagree with it, yes?
>
> A **I think whether I agreed or not, it was filed by the 1st defendant [*ie* , Moses Tay], I have no say.**
>
> Q You have no say in relation to the affidavit that's filed on your behalf, Mr Tay, is that what you are telling the Court?
>
> A As you know, my---1st defendant is my father and he---he can be very demanding and whether I have an opinion or not, it's what has been written in this affidavit.
>
> Q **So your father called the shots on this affidavit. Is that so?**
>
> A **That is correct.**
>
> Q And this is on the 22nd of November 2010.
>
> A Yes.
>
> Q Is that correct?
>
> A Yes.
>
> [emphasis added in bold]

46 Accordingly, Mr Thirumurthy's submission that Moses Tay's alleged breaches of the Orders of Court were caused by his depression at the material time is without basis, and must be rejected.

47 I will now proceed to consider whether Moses Tay was in fact in breach of the Orders of Court by examining the factual circumstances behind his alleged breaches.

Events on 23 August 2010

The service of the Anton Piller Order and the Mareva Injunction in the morning of 23 August 2010

48 On 23 August 2010, three days after obtaining the Mareva Injunction and the Anton Piller Order, the plaintiff sent a party to the Golden Agri Premises to serve the said orders on Moses Tay as well as to execute the Anton Piller Order. The party comprised the following persons: [note: 41]

(a) Mr L Kuppanchetti Nadimuthu ("Mr Kuppan"), the supervising solicitor;

(b) Mr Arthur Yap ("Mr Yap"), an advocate & solicitor from Messrs Tan Kok Quan Partnership ("TKQP"), the plaintiff's solicitors; and

(c) Mr Chia Aik Kiat, a representative and computer forensic specialist engaged by the plaintiff.

49 At about 10.40 am, the party arrived at the Golden Agri Premises. Mr Kuppan said he then served the Anton Piller Order by handing it to Moses Tay. [note: 42] Mr Kuppan also stated that Moses Tay appeared to be in control of the premises. [note: 43]

50 Mr Kuppan offered to explain the Anton Piller Order to Moses Tay. Moses Tay initially refused to hear him and said that he wanted to seek legal advice from Mr Thirumurthy. Phone calls were made. At about 11.03 am, Mr Kuppan spoke to Mr Thirumurthy on the phone, and they agreed to give Moses Tay about two hours to take legal advice and, if necessary, for Mr Thirumurthy to be present at the Golden Agri Premises before the search was carried out. [note: 44]

51 Mr Kuppan said he explained the Anton Piller Order to Moses Tay at about 11.05 am, and brought to his attention that failure to comply would be contempt of court. [note: 45] However, after the explanation was done, Moses Tay refused to sign a form that confirmed that Mr Kuppan had read and explained the order of court to him. [note: 46]

52 It is also the plaintiff's case that Mr Yap served, *inter alia*, the Mareva Injunction on Moses Tay at 11.40 am. [note: 47] Mr Yap also went through and explained the terms of the Mareva Injunction to Moses Tay, who took the documents and left them on the conference table in the Golden Agri Premises. Mr Kuppan then asked Moses Tay about the other three persons present at the premises. Moses Tay replied that they were not his employees as they were employed by IRPL, before walking off and leaving the Golden Agri Premises. [note: 48] He returned at around 12.17 pm, and was seen going in and out of the said premises several times. [note: 49] What is crucial to note was that Moses Tay was absent from the Golden Agri Premises between 2.11 pm and 4.05 pm, [note: 50] and the significance of this will be apparent later.

53 Moses Tay gave a different account of the preceding events in his affidavit. He denied that he had been properly served. He said that he refused to listen to the solicitors' attempts to explain the orders. He also claimed that he was never told that he was lawfully bound to accept service of the documents there and then. Nor were the terms and the consequences of breach explained to him. He claimed that both Mr Kuppan and Mr Yap agreed to await the arrival of his lawyers. [note: 51]

54 I prefer Mr Kuppan's account, which I found to be credible and consistent. The agreement to

give Mr Thirumurthy some time to go to the Golden Agri Premises only concerned the execution of the Anton Piller Order, and had nothing at all to do with service.

55 I also agree with the plaintiff that the Anton Piller Order and the Mareva Injunction (which are based on standard forms) are clear and unambiguous as to what they required the Contemnors to do and/or refrain from doing. These had been served and explained to Moses Tay. Accordingly, by 11.45 am on 23 August 2010, Moses Tay already had notice of the terms of the Mareva Injunction and the Anton Piller Order. [note: 52]

56 For completeness, I would still be of the view that the orders had been sufficiently served even if I accept Moses Tay's version of the events (which I do not). As stated long ago in *Thomson v Pheney* (1832) 1 DPC 441 at 443, if the person to be served refuses to accept service of a document, it could nevertheless be proper if the server informed the person to be served of the nature of the document and throws it down in his presence (see Jeffrey Pinsler SC gen ed, *Singapore Court Practice 2009* (LexisNexis, 2009) ("Singapore Court Practice") at para 10/1/7).

57 Counsel for the plaintiff also referred to the case of *Wardle Fabrics Ltd v G Myristis Ltd* [1984] FSR 263, where the contemnor in that case had refused to allow the plaintiff's solicitor to read a search order to him despite being warned by the solicitor that he might be liable for contempt if he does so (at 268–269). The contemnor refused and was found to be liable for contempt.

58 Finally, Moses Tay also averred that he would have listened to Mr Yap's explanation carefully had Mr Yap emphasised the consequences of a failure to comply with the Mareva Injunction. [note: 53] This is unbelievable. I have no reason to believe that Mr Yap failed to do so. In any event, Moses Tay was well aware of what might follow as he had previously been committed to prison for breaching a Mareva injunction. The facts that led to his incarceration are set out in *Precious Wishes Ltd v Sinoble Metalloy International (Pte) Ltd* [2000] SGHC 5 ("*Precious Wishes*").

Attempted execution of the Anton Piller Order at the Golden Agri Premises [note: 54]

59 Notwithstanding that Moses Tay had been properly served and was aware of the Anton Piller Order, he did not permit the plaintiff's search party to commence the search on 23 August 2010 despite the clear words of the order. Entry to the Golden Agri Premises was only effected on 1 September 2010.

60 Moses Tay had initially refused to allow entry and search because he wanted to wait for his lawyer. He was entitled to do so, under para 3 of the Anton Piller Order, but only for a period not exceeding 2 hours, unless extended by agreement. The efficacy of an Anton Piller Order requires that any delay between its service and its execution be kept to a minimum. By about 1.07 pm, Mr Kuppan had made it clear that that Moses Tay has had reasonable time to get legal advice and that the plaintiff was not willing to wait further. [note: 55] Nevertheless, Moses Tay persisted in his refusal.

61 Mr Thirumurthy only arrived at about 3.30 pm. Again, permission to search was denied. At about 4.30 pm, Mr Thirumurthy showed Mr Kuppan a tenancy agreement dated 13 May 2010 indicating that the Golden Agri Premises was actually owned by IRPL, and not by Moses Tay or RMMPL. Mr Thirumurthy also informed the search party that the other person at the premises, Mr Chua, was the manager of IRPL and that Mr Chua, too, did not want the search party to remain at the premises. [note: 56]

62 The issue is whether Moses Tay could have given permission for the search party to enter the

Golden Agri Premises in the first place. First, the said premises were owned by IRPL, which had not yet been joined as a defendant as of 23 August 2010 ([8] above). Second, it was claimed that Moses Tay was not a director of IRPL at the time and therefore had no right to allow or disallow a search of the Golden Agri Premises. [note: 57] In his affidavit, he claimed that he had resigned as a director of IRPL on 25 July 2010 and that he was not in charge of the premises. He said he told Mr Kuppan and Mr Yap to ask an actual director or someone who was in charge instead. [note: 58]

63 In my view, Moses Tay *did* have the authority to permit entry to the Golden Agri Premises. Paragraph 1(d) of the Anton Piller Order required the defendants or their employees or the *persons appearing to be in control of the premises to permit entry*. I find that Moses Tay's supposed resignation on 25 July 2010 was a sham designed to enable him to deny that he was in breach of the Anton Piller Order. Moses Tay had purported to resign as director of a number of other companies on that day as well, for no discernible commercial reason. [note: 59] The Change of Particulars of Company's Directors, Managers, Secretaries and Auditors for Moses Tay in respect of his resignation was only lodged on 24 August 2010 – the *very day after the attempted execution of the Anton Piller Order*. Martin Tay, who made the lodgement, also admitted that this was done on his father's instructions. [note: 60] Martin Tay said that Moses Tay continued to call the shots for IRPL even after his father supposedly ceased to be a director. [note: 61] Moreover, Moses Tay's actions on 25 July 2010 were also inconsistent with someone who no longer had any control over the premises. He had opposed the execution of the search in a manner which indicated that he had the power to grant the right of entry.

64 Accordingly, I find that Moses Tay is in breach of the Anton Piller Order for preventing the execution of the said order at the Golden Agri Premises on 23 August 2010.

Attempted execution of the Anton Piller Order at the Sentosa Cove Premises [note: 62]

65 Meanwhile, the plaintiff despatched another party to the Sentosa Cove Premises, as it was intended for the searches at the Golden Agri Premises and the Sentosa Cove Premises to be conducted simultaneously. The Sentosa Cove Premises was then Moses Tay's residence. [note: 63] The supervising solicitor for the search at the Sentosa Cove Premises was Mr Mohan Das Naidu ("Mr Naidu").

66 On 23 August 2010, Mr Naidu and the search party arrived at the Sentosa Cove Premises at 11.00 am but there was no response from anyone in the flat. The party asked the management staff to help them enter, but to no avail. However, one of the management staff managed to get hold of Mrs Tay on the phone. Mr Eddee Ng of TKQP spoke to her, and Mrs Tay said she was not home and would not be able to go back straightaway. [note: 64] In any event, Mrs Tay did not go to the Sentosa Cove Premises to open the doors for the plaintiff's solicitors.

67 Mr Kuppan was explaining the Anton Piller Order to Moses Tay at the Golden Agri Premises while this was going on. A woman (who would appear to be Mrs Tay [note: 65]) in the premises called out to Moses Tay and said that "they were also at his house". Moses Tay then asked why did they want to "go there", when he was here. Mr Kuppan's reply was that the Sentosa Cove Premises was also covered by the Anton Piller Order. [note: 66]

68 At 1.00 pm, Mr Kuppan asked Moses Tay if he had "facilitated" the other search party's entry to the Sentosa Cove Premises. Moses Tay replied that there was no one at home and since he was

stuck at the Golden Agri Premises, he cannot be at the Sentosa Cove Premises. [note: 67]

69 At around 4.30 pm, Mr Yap asked Mr Thirumurthy if Moses Tay will facilitate the team at Sentosa Cove Premises to make entry and search the next day. According to the plaintiff, Moses Tay agreed to allow the Plaintiff to make entry and carry out the search of the Sentosa Cove Premises on the following morning at 9.00 am. [note: 68]

70 Moses Tay denied that he was in breach of the Anton Piller Order on this ground. He said he did not deny the search party entry to the Sentosa Cove Premises on 23 August 2010. His arguments were as follows: [note: 69]

(a) First, he was at the Golden Agri Premises, which meant that he could not be at the Sentosa Cove Premises to facilitate the search. Mr Kuppan and Mr Yap did not advise Moses Tay to leave the Golden Agri Premises to go to the Sentosa Cove Premises.

(b) Secondly, he denied that Mrs Tay was informed that non-compliance could expose them to contempt of court charges or that she had ever said that she would return after 3.00 pm or allow the search at the Sentosa Cove Premises.

(c) Thirdly, Mr Naidu had never told him that he was at the Sentosa Cove Premises or warned him that they had a right to search there. He was only told by a different batch of solicitors after 3.00 pm at the Golden Agri Premises.

(d) Finally, everyone agreed that Moses Tay would allow a search of the Sentosa Cove Premises on the next day on 24 August 2010. The only disagreement in that respect was the time.

71 In response to these contentions, the plaintiff pointed out that Moses Tay had plenty of time to go to the Sentosa Cove Premises to allow entry and/or make the necessary arrangements. Moreover, since Mrs Tay was present at the Golden Agri Premises [note: 70] (although this was not known to the plaintiff at the time), he could easily have given instructions for her to give access to the Sentosa Cove Premises. [note: 71]

72 While the Anton Piller Order requires the alleged contemnor to allow entry to a certain address, unless and until he is actually asked for such permission to enter he cannot be faulted for not giving it. In a situation where an Anton Piller Order is being executed at several places simultaneously, and for whatever reason some of those addresses are vacant at the time, it should be made clear to the defendant that he is expected to make arrangements to enable the search to commence at each of those places immediately. It goes without saying that it would not be contempt of court if it is not within his power or means to do so. However, if it is indeed within his means, he cannot be excused for not taking the necessary steps to do so.

73 In the present case, I find that Moses Tay would have understood that Mr Kuppan's query as to whether he had facilitated the entry of the search party at the Sentosa Cove Premises to be such a request. He was aware that the plaintiff's solicitors were at the Sentosa Cove Premises by then. Mrs Tay was at the Golden Agri Premises with him. The fact that he told Mr Kuppan that he could not be there indicates that he knew that the plaintiff wanted to enter the Sentosa Cove Premises – he was in effect giving his reason why he could not actually allow them entry. Nevertheless, it was within Moses Tay's power to allow the other search party entry into the Sentosa Cove Premises. I do not give this excuse any credence. He had left the Golden Agri Premises on several occasions, and could

easily have travelled to the Sentosa Cove Premises during one of his absences if he had wanted to. Moses Tay could also have asked Mrs Tay to give the search party access to the Sentosa Cove Premises. Of course, it would not be Moses Tay's fault if he had asked and Mrs Tay had refused.

74 Accordingly, I find that Moses Tay was in breach of the Anton Piller Order by failing to allow the plaintiff to enter the Sentosa Cove Premises on 23 August 2010.

The withdrawal of $380,000 from the OCBC account

75 As noted at [52] above, Moses Tay was absent from the Golden Agri Premises for certain periods of time, crucially between 2.11 pm and 4.05 pm. The plaintiff was able to track Moses Tay's whereabouts as they had hired a security and private investigation company to trail Moses Tay on 23 August 2010. [note: 72] It turned out that he had gone to OCBC Centre during that time to withdraw $380,000 from his OCBC account. This was in clear breach of the Mareva Injunction which prohibits Moses Tay from disposing of, dealing with or diminishing the value of any of his assets, and such assets expressly included his money in bank accounts. [note: 73]

76 Moses Tay did not dispute that the withdrawal was made and also admitted that it was a breach of the Mareva Injunction. However, he urged the court to consider it as merely a "technical" breach. [note: 74] He claimed that he was ignorant and confused about what exactly he was prohibited from doing because he was still waiting for his solicitor to explain to him the meaning of the Mareva Injunction. He claimed he did not know that he was required to obtain the leave of court or the consent of the plaintiff for such withdrawals. Moreover, he thought that his bank account would be "frozen", so he wanted to withdraw money for his family's urgent use. [note: 75] Yet despite this admission, no attempt was ever made by Moses Tay to restore the $380,000 to the OCBC account.

77 Moses Tay also claimed that he was not in breach as the sum withdrawn was a term loan he took from OCBC earlier for purposes of paying his mortgage, income tax and business expenses. However, the evidence showed that the sum of $380,000 had already been paid to Moses Tay's OCBC account on 20 August 2010. [note: 76] I do not see how the fact that the money was originally a loan changed the fact that it was money in his bank account, which would fall under the prohibition set out in the Mareva Injunction.

78 I have no hesitation in finding that Moses Tay had deliberately breached the Mareva Injunction by withdrawing the $380,000 from the OCBC account. The terms of the Mareva Injunction were clear. Moses Tay had been jailed for breaching a Mareva injunction before (see [58] above) and he could not possibly have drawn down such a large sum so soon after being served with the Mareva Injunction in innocence. Moses Tay was well aware of what he was doing.

At the Sentosa Cove Premises on 24 August 2010 *[note: 77]*

79 The next day, Mr Naidu and the plaintiff's solicitors showed up at the Sentosa Cove Premises at 9.00 am. When he rang the bell, Moses Tay answered over an intercom. When Mr Naidu told Moses Tay they were there to search his house, Moses Tay told him that they could not enter until Mr Thirumurthy arrived. [note: 78]

80 Moses Tay said he had informed the plaintiff's solicitors the day before at the Golden Agri Premises that the Plaintiff's solicitors would only be allowed entry at 10.30 am when Moses Tay's solicitor would be able to arrive after court mentions. [note: 79]

81 In any event, the search party was allowed entry at 10.45 am when Mr Thirumurthy arrived. [note: 80]

82 With respect to the events at the Sentosa Cove Premises on 24 August 2010, there were numerous breaches alleged against Moses Tay. This included the fact that the entry to the said premises were delayed, the fact that Moses Tay refused to allow the search party to search personal effects and items such as his mobile phones and blackberry devices, to image a hard disk that was found at the premises and to peruse and photocopy a pocket diary that belonged to Moses Tay. [note: 81] These allegations were not taken up in the plaintiff's written submissions dated 22 May 2014 and I take it that they are no longer being pursued. I will therefore speak no more about it.

Moses Tay's failure to disclose the necessary documents as required under the Anton Piller Order and the Mareva Injunction

83 It is undisputed that Moses Tay did fail to disclose the necessary documents as required by the Anton Piller Order and the Mareva Injunction in time. [note: 82] Moses Tay failed to comply with the following requirements: [note: 83]

(a) Under para 5 of the Anton Piller Order, to immediately inform the plaintiff's solicitors of the location of all the items listed in schedule 2 of the order, and the location of all the residential and/or business addresses occupied by the defendants, and to prepare and swear affidavits confirming this information within 8 days of being served with the order.

(b) Under para 3 of the Mareva Injunction, to immediately in writing inform the plaintiff's solicitors of all their assets whether in or outside Singapore, with the relevant details, which information must be confirmed in an affidavit to be served on the plaintiff's solicitors within 8 days of the service of the order.

(c) Under para 3 of the Mareva Injunction, to give discovery of the documents listed in schedule 2 of the order by filing and serving a list of documents as well as an affidavit verifying the list of documents, within 8 days after the order has been served.

84 In his affidavit of 22 November 2010, Moses Tay stated that these omissions were the result of "oversight". He claimed that it was because the defendants' solicitors at the time were busy with defending the civil suit in the main action, which was why they overlooked the requirement and/or did not have sufficient time to prepare the necessary affidavits and information. He even asked the court to give them some time to prepare and furnish the necessary information and affidavits. Further, he claimed that the documents involved were voluminous and many of them were missing or misplaced because RMMPL had ceased doing business in 2009. [note: 84]

85 In this regard, I agree with the plaintiff that these "excuses ring hollow". [note: 85] Moses Tay failed to comply with these obligations, despite beseeching the court to give him more time in his affidavit. [note: 86] This was so even after the plaintiff subsequently obtained an order for specific discovery against him on 30 October 2012 for the documents which he should have disclosed under the Anton Piller Order and the Mareva Injunction, [note: 87] which he again failed to comply with. The plaintiff subsequently obtained an "unless" order against Moses Tay, which eventually culminated in an interlocutory judgment being entered against him on 28 March 2013. [note: 88] There is no reasonable explanation for why these breaches were never subsequently remedied in a reasonable time – as one might expect if these were mere failures or omissions or misunderstandings, as alleged.

86 Accordingly, I find Moses Tay to be in breach for failing to comply with the disclosure requirements in the Anton Piller Order and the Mareva Injunction.

Ancillary Orders dated 27 August 2010

87 Finally, I turn to Moses Tay's alleged breach of the Ancillary Orders by refusing to surrender his passport as required. Paragraphs (2) and (3) of the said order stated that Moses Tay was to be restrained from leaving Singapore until further order and that he should forthwith deliver up all his passports to the person who shall serve the order upon him.

88 Moses Tay had on several occasions attempted to evade service of the Ancillary Orders obtained on 27 August 2010. After several attempts, the Ancillary Orders were served on Moses Tay on 15 October 2010 at Mr Thirumurthy's office. [note: 89] Even at this point, Moses Tay did not give up his passport to the plaintiff's process server, Mr Chia Chiap Suah, as he was bound to do. Mr Chia gave evidence that when Moses Tay was informed that he was to deliver up all his passports to the person serving the Ancillary Order on him, Moses Tay asserted that he "does not have a passport". [note: 90]

89 Mr Thirumurthy submitted that Moses Tay had never denied that he has a passport, but that he could not find it "at the material time". [note: 91] In any event, the contention is the same, *ie*, Moses Tay had no access to his passport so he could not have complied. This is inherently difficult to believe. In any event, there is evidence that Moses Tay did have access to his passport. On 18 January 2012, IRPL filed the affidavit of Mr Chua in support of its striking out application. Annexed to the said affidavit were minutes of an Extraordinary General Meeting of PTWMM which was held on 7 February 2011 in Bogor, Indonesia. The said minutes were notarised by an Indonesian notary public on 7 March 2011, and it was recorded that Moses Tay was present at the meeting. [note: 92] Quite simply, he could not have travelled to Indonesia without a passport.

90 Moses Tay has also complained that the order for him to surrender his passport to the plaintiff is "puzzling and unnecessary", and that the plaintiff only wanted to "harass" him. [note: 93] This is not a defence for contempt of court, as is clear from the following passage from Mark S W Hoyle, *Freezing and Search Orders* (Informa, 4th Ed, 2006) at para 9.17 (which was cited with approval in *Pertamina* at [82]):

> It is no defence to contempt proceedings to allege that the order should not have been made, or has been discharged. An order of the court must be obeyed while it stands, and a breach is still contempt even if, at a later stage, the order is in fact discharged. The same principle applies if the original order was wrongly made; the defendant's remedy is to apply for its immediate discharge while keeping to its terms.

91 In the first place, I do not consider Moses Tay's characterisation of the Ancillary Orders to be a fair one. Nonetheless, even if Moses Tay had considered the order to be unduly oppressive, it was not for him to choose whether or not it should be obeyed. He should have handed over his passport. If he thought that the order was wrong, he should have asked his lawyer to apply to court to vary or discharge the order. Having failed to do so, he cannot now complain that he is held in contempt of court.

92 I therefore find that Moses Tay is in breach of the Ancillary Orders for failing to deliver his passport to the plaintiff.

Conclusion on Moses Tay's liability

93 In conclusion, I find that Moses Tay is guilty of contempt of court for the following breaches:

(a) preventing the execution of the Anton Piller Order at the Golden Agri Premises (at [64] above);

(b) preventing the execution of the Anton Piller Order at the Sentosa Cove Premises (at [74] above);

(c) withdrawing $380,000 from his OCBC account in breach of the Mareva Injunction (at [78] above);

(d) failing to comply with the disclosure requirements in the Anton Piller Order and the Mareva Injunction (at [86] above); and

(e) failing to deliver his passport to the plaintiff in breach of the Ancillary Orders (at [92] above).

Liability of RMMPL and Moses Tay as a director

94 For RMMPL, its breaches relate generally to its failure to comply timeously with the disclosure requirements prescribed in the Anton Piller Order and the Mareva Injunction.

95 Both Moses Tay and Martin Tay are also potentially liable for those breaches as directors of RMMPL, pursuant to O 45 r 5(1)(a)(ii) of the Rules of Court, which states:

5. — (1) Where —

(*a*) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, Rule 4…

…

then, subject to these Rules, the judgment or order may be enforced by one or more of the following means:

…

(ii) where that person is a body corporate, with the leave of the Court, an order of committal against any director or other officer of the body…

96 In this section, I will consider RMMPL's alleged breaches and Moses Tay's liability as a director for those breaches concurrently, because they essentially overlap. I will consider Martin Tay's liability later.

97 The Plaintiff's case against RMMPL is as follows: [note: 94]

(a) RMMPL breached paras 2 and 3 of the Mareva Injunction by:

(i) failing to inform the Plaintiff in writing at once of all its assets;

(ii) failing to file and serve an affidavit within 8 days after being served with the Mareva Injunction; and

(iii) failing to give discovery of the documents listed in Schedule 2 of the Mareva Injunction, in particular by failing to file and serve a list of documents and an affidavit verifying the same.

(b) RMMPL also breached the Anton Piller Order by: [note: 95]

(i) failing to comply with para 5(a)(i) of the Anton Piller Order, in particular, by refusing to state the names of RMMPL's auditors;

(ii) falsely informing the Plaintiff's solicitors that RMMPL's documents were with its auditors when they were not;

(iii) failing to give discovery of the documents listed in Schedule 2 of the Anton Piller Order, in particular by failing to file and serve a list of documents and an affidavit verifying the same (as required under para 5(b) of the Anton Piller Order); and

(iv) removing and/or destroying material evidence, as evidenced by (A) Moses Tay's refusal to allow the execution of the Anton Piller Order at the Golden Agri Premises and the Sentosa Cove Premises on 23 August 2010, and (B) that on 1 September 2010, several empty arch lever files containing dividers labelled "RMM" were found within the Golden Agri Premises.

98 Service of the Anton Piller Order and the Mareva Injunction was effected on RMMPL by leaving copies of the same at its registered address on 23 August 2010. These documents were also served on Moses Tay on the same day, which would give him notice of his obligations to comply with the aforementioned orders as a director of RMMPL. Again, the reasons given by Moses Tay for the failure by RMMPL to comply with respect to breaches (a)(i) to (iii) and (b)(iii) in the preceding paragraph above were "oversight" and lack of time. [note: 96] These are not acceptable excuses. Accordingly, RMMPL and Moses Tay are in breach on these grounds.

99 As for the breaches alleged in [97(b)(i)] and [97(b)(ii)] above, I will first set out the context of the alleged breaches. According to Mr Naidu's report, Mr Yap asked Moses Tay where RMMPL's documents were during the execution of the Anton Piller Order on 24 August 2010 at the Sentosa Cove Premises. Moses Tay responded by saying that they were "probably" with RMMPL's auditors. However, when Mr Yap asked Moses Tay who the auditors were, he refused to answer. He said that he could disclose this fact later in his affidavit (*ie*, the one to be served and filed within 8 days from the service of the order). It was also recorded that Moses Tay further stated that he was unable to recollect as RMMPL had been dormant for over a year or so. [note: 97] However, it turned out that the documents were not actually with RMMPL's auditors. [note: 98]

100 Moses Tay explained that he had said that the documents were "probably" with the auditors because he was not sure where the documents were at the time. As for why he had refused to say who the auditors were, he claimed that the plaintiff's solicitors could have easily discovered this fact from public records and that in any event he had told them that he was unsure of this as this was handled by other staff of RMMPL at the material time. [note: 99]

101 In this respect, I am prepared to give Moses Tay the benefit of the doubt. In such circumstances, it is not improbable that he was simply unsure as to who the auditors were and where the documents were located. However, an honest answer is not enough. He must take reasonable steps to find out the truth. I agree with the following remarks by Neuberger J (as he then was) in *Bird v Hadkinson* [2000] CP Rep 21:

> If the inaccurate answer is given in good faith, and if the inaccurate answer is given after investigating the matter in a way which is reasonable in all the circumstances, then either the contempt would be of a most technical nature, or if everything reasonable was indeed done, there may be no contempt. It may very well be that, although the order strictly requires an accurate answer, the court would regard a person who takes all reasonable steps to obtain the information and gives an honest, but inaccurate, answer, as having complied with his obligation: he has done all that could reasonably be expected of him. *But if the respondent has not taken reasonable steps to investigate the truth or otherwise of the answer he gives, then I consider that there is a contempt if the answer is not accurate.* [emphasis added]

102 This, however, was not a case where "everything reasonable was indeed done". Moses Tay had not taken reasonable steps to provide the required answers to the plaintiff in a timeous fashion. He displayed a cavalier attitude towards compliance. Accordingly, RMMPL and Moses Tay are guilty of the breaches stated at [97(b)(i)] and [97(b)(ii)] above.

103 Finally, as regards the alleged breach stated at [97(b)(iv)] above, I am again willing to give Moses Tay and RMMPL the benefit of the doubt. In the first place, *RMMPL* could hardly have *refused* to allow the execution of the Anton Piller Order at the Golden Agri Premises and the Sentosa Cove Premises since RMMPL had no control over those premises and could hardly have permitted entry. While I have found that Moses Tay *did* refuse, I do not think that he did so in his position as a director of RMMPL. More importantly, I do not think the plaintiff has proved beyond a reasonable doubt that RMMPL had destroyed documents. The plaintiff's main basis for this was that when the Anton Piller Order was executed at the Golden Agri Premises on 1 September 2010, the plaintiff found several empty arch-lever files labelled "RMM", which the Plaintiff believed to be the abbreviation of RMMPL. [note: 100] Moses Tay argued that "RMM" referred to "RM Martin Supplies and Services", which was a sole proprietorship of Mrs Tay, and not owned by RMMPL. The spine labels of these files were blanked out using correction tape because they were recycled files. [note: 101] It emerged during the cross examination of Martin Tay that RM Martin Supplies and Services was actually the precursor to RMMPL. [note: 102] While this raised suspicions, I am not persuaded that this means that RMMPL must have deliberately destroyed evidence.

104 Finally, counsel for Martin Tay argued that RMMPL had not *refused* or *neglected* to comply with paras 2 and 3 of the Mareva Injunction and para 5 of the Anton Piller Order. It had only failed or omitted to do so, in which case O 45 r 5(1)(a) would not apply. Counsel cited *P J Holdings Inc v Ariel Singapore Pte Ltd* [2009] 3 SLR(R) 582 ("*Ariel Singapore*") at [7] in support of her contention. It is worth citing the paragraph in full:

> 7 **What happens then to an impecunious judgment debtor, as the defendant in the present case depicts itself as?** In my view, under such circumstances, committal proceedings should still not issue. My reasons are as follows. Order 45 r 5(1)(*a*) applies only when "a person required by a judgment or order to do an act within a time specified in the judgment or order *refuses or neglects* to do it". The key words here are "refuse" and "neglect". In *Re Quintin Dick* [1926] Ch 992, Romer J held that the term "refuse or neglect" was not equivalent to "fail or omit", and that the former implied a conscious act of volition whereas the latter did not. In *Ng Tai Tuan*

v Chng Gim Huat Pte Ltd [1990] 2 SLR(R) 231, Chao Hick Tin JC (as he then was) expressed the view that **the word "neglect" necessarily implies some element of fault**. He cited the case of In *re London and Paris Banking Corporation* (1874) LR 19 Eq 444 where Sir G Jessel MR said, at 446:

... the word 'neglected' is not necessarily equivalent to the word 'omitted'. Negligence is a term which is well known in law. **Negligence in paying a debt on demand, as I understand, is omitting to pay without reasonable excuse.** Mere omission by itself does not amount to negligence. ...

The word "refuse" has also been similarly defined. In *DP Vijandran v Majlis Peguam* [1995] 2 MLJ 391, the court noted that "[t]he ordinary meaning of the word refuse is to decline to give", and that "failure is not synonymous with refusal". Similar sentiments were also expressed by the tribunal in *Lowson v Percy Main & District Social Club & Institute Ltd* [1979] ICR 568. I agree with the foregoing cases. **In the premises, this means that an impecunious debtor would be outside of the scope of O 45 r 5 as such a person cannot be said to have "refused or neglected" to obey an order directing them to make payment.** The combined effect of the fact that an impecunious debtor is outside the scope of committal proceedings and the principle that such proceedings are remedies of the last resort would mean that in the vast majority of cases, committal proceedings would not apply to an order or judgment for the payment of monies. In most instances, a person would ordinarily be regarded as impecunious if he is unable to satisfy the judgment debt upon the conclusion of the various execution proceedings. The logical ending point in such cases should be a winding-up order or a bankruptcy order, as the case may be. In the present case, the burden was on the plaintiff to prove beyond a reasonable doubt that Ariel Singapore had neglected to make payment. Having examined the documentary evidence, it was clear that Ariel Singapore, which is now in liquidation, was in no position to make payment during the material period.

[emphasis added in bold]

105 From the passage above, the difference between a person neglecting to do a thing, and omitting to do a thing, is whether that person had a "reasonable excuse". It is also clear that a person is not at fault for failing to do the impossible. *Ariel Singapore* therefore stands for the clear proposition that an impecunious defendant, who is in no position to satisfy an order to pay, cannot be said to have "refused" or "neglected" to obey the order. RMMPL and Moses Tay have not been tasked to do the impossible, nor did they have any reasonable excuse for their failures to comply. Indeed, Moses Tay in his affidavit had plainly admitted that the Defendants were "unfortunately lax and delayed in dealing with the Mareva Injunction and the Anton Piller Order" and in particular the provisions of disclosure therein. [note: 103]

106 For the aforesaid reasons, RMMPL and Moses Tay are liable for the breaches stated in [97] above, except for the alleged breach listed at [97(b)(iv)].

Liability of Martin Tay as a director of RMMPL

107 The Plaintiff's case against Martin Tay is that, as a director of RMMPL, he was aware of the terms of the Mareva Injunction and the Anton Piller Order, but did nothing to get RMMPL to comply with the said orders.

108 In his defence, Martin Tay raised the following points:

(a) first, he had resigned as a director on 25 July 2010, which is before the date the Anton Piller Order and the Mareva Injunction were procured; [note: 104]

(b) secondly, even if he was still a director, he was not personally served with the orders; [note: 105]

(c) thirdly, even if the court should retrospectively dispense with personal service of the orders on Martin Tay, the orders were not brought to his attention and he was not fully aware of the requirements of the orders; [note: 106]

(d) fourthly, even if he was aware of the requirements, Martin Tay reasonably believed that Moses Tay was carrying out the necessary steps for compliance with both orders and entrusted the matter to Moses Tay and RMMPL's solicitors; [note: 107] and

(e) fifthly, Martin Tay and RMMPL's breaches were the result of failures or omissions rather than refusal or neglect. [note: 108]

109 On the first point, I note that the circumstances of Martin Tay's purported resignation were suspicious. The director's resolution accepting Martin Tay's resignation was only purportedly signed by Moses Tay on 18 August 2010, more than three weeks after the date of the resignation letter and one day before the main suit was commenced. [note: 109] The Change of Particulars was lodged on 25 August 2010 at 6.54 pm, [note: 110] two days after the service of the Mareva Injunction and the Anton Piller Order. Martin Tay's date of resignation, 25 July 2010, was also the date that Moses Tay purportedly resigned as director of IRPL (which I have already found was a sham at [63] above) and various other companies. [note: 111] These supposed resignations appear to have been timed to allow father and son to evade at least some of the consequences of the Mareva Injunction and the Anton Piller Order.

110 As for why Martin Tay decided to quit RMMPL, he said that he wanted to go "do his own thing". [note: 112] Yet he remained as RMMPL's company secretary as well as a signatory to RMMPL's Singapore dollar bank account even after his purported resignation (until the said bank account was closed on 10 August 2010). [note: 113] More importantly, he *only* purported to resign as a director of RMMPL (a dormant company) while choosing to continue in a number of other companies set up by Moses Tay which were *also* dormant. [note: 114] Martin Tay had also said he was not interested in the family business, other than IRPL. [note: 115] I could not see any reason why he would only resign from RMMPL and not from the other companies if his stated reason for his resignation was true. Martin Tay himself could not come up with any good answer when this question was put to him. [note: 116]

111 I do not find Martin Tay's explanations credible. Taken together, these circumstances indicated to me that Martin Tay's resignation was a sham. Accordingly, I find that Martin Tay was a director of RMMPL at the material time.

112 On the second and third points, it is undisputed that the Anton Piller Order and the Mareva Injunction were never served on Martin Tay personally. [note: 117] Under O 45 r 7(3) of the Rules of Court, before an order against a body corporate may be enforced by way of committal against a director of the body corporate, a copy of the order must be served personally on the aforesaid director and in the case of an order requiring the body corporate to do an act, the copy has been so

served before the expiration of the time within which the body was required to do the act. However, the court has the discretion to retrospectively dispense with the service of the orders pursuant to O 45 r 7(7) of the Rules of Court (see *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR(R) 60 ("*OCM*") at [20] to [23]).

113 In my view, the crucial question is whether the procedural irregularity has caused Martin Tay to suffer substantial prejudice or injustice. After considering the matter, I find that this is an appropriate case for me to exercise my discretion to dispense with the service of the orders as Martin Tay was aware of the terms of the orders and alive to the consequences of non-compliance (see *OCM* at [25]). Martin Tay had admitted during cross-examination that he did read the terms of the orders and the penal notices, which referred to him by name. [note: 118] He said he had read them a week or two weeks after 1 September 2010. [note: 119] However, I agree with the plaintiff that the evidence indicates that Martin Tay must have been aware of the terms of the orders *before* 8 September 2010 as he was already involved in the preparation of the defence for IRPL by then. [note: 120]

114 As for the fourth point, it went to the question of whether Martin Tay had the requisite *mens rea* such that he should be liable to be subject to an order of committal. In the present case, Martin Tay's stated reason for doing nothing was that Moses Tay "said he would handle the matters and so I left it to him". [note: 121] I am prepared to accept that Martin Tay generally left the management and day-to-day operations of RMMPL to his father. The question is whether he should therefore be excused in these circumstances.

115 Counsel for Martin Tay cited the case of *Templeton Insurance Ltd v Motorcare Warranties Ltd and others* [2012] EWHC 795 (Comm) ("*Templeton Insurance*") for the proposition that a director has not wilfully disobeyed a court order if he can reasonably believe that some other director or officer is taking the required steps. [note: 122] The relevant passages are at [23] and [24] of that judgment, which states:

> … In my view the current position is as discussed and summarised in Aldridge, Eady & Smith on Contempt, 4th Edition paras 12-112 to 12-116 in particular at para 12-115. As there noted, the Court of Appeal expressly disagreed with the views of Anthony Lincoln J in *Director General of Fair Trading v Buckland* in *A-G of Tuvalu v Philatelic Distribution Corp Ltd* [1990] 1 WLR 926 and held:
>
> > "In our view where a company is ordered not to do certain acts or gives an undertaking to like effect and a director of that company is aware of the order or undertaking he is under a duty to take reasonable steps to ensure that the order or undertaking is obeyed, and if he wilfully fails to take those steps and the order or undertaking is breached he can be punished for contempt. We use the word 'wilful' to distinguish the situation where the director can reasonably believe some other director or officer is taking those steps. "
>
> As stated in para 12-115: "By virtue of these provisions a director can be liable for civil contempt without necessarily being in contempt under the general law". I agree.

116 The plaintiff also referred me to the summary of the law as set out in *Singapore Court Practice* at para 45/5/4:

> The rule extends to any director, even if he has taken, or takes, no part in the management of the corporation. The key issue is whether he has had notice of the court order and could, by exercising due diligence, have prevented its breach. … This standard of care may even extend to

> taking the appropriate steps to put a stop to any action which has already been taken in breaching the court order... In *William Jacks & Co (M) v Chemquip (M)* [1994] 3 MLJ 40, the High Court found that as the 'sleeping directors' of the defendant company knew about the scheme and could, with due diligence, have prevented the activities of the defendants, they were in contempt. The fact that they were not involved in the day-to-day management of the company did not exonerate them…

117 In the circumstances, it would not have been reasonable for Martin Tay to assume that Moses Tay would be taking the necessary steps to get RMMPL to comply. He was aware of the orders, and knew that the penal notices referred to him specifically by name. He had been clearly warned that the failure of RMMPL to obey the Mareva Injunction and the Anton Piller Order could land him in prison. Any reasonable director in such circumstances would have been concerned about the consequences of non-compliance, and would have exercised an adequate level of supervision, if only for his own sake. It was stated in *Attorney General of Tuvalu v Philatelic Distribution Corp Ltd* [1990] 1 WLR 926 ("*Philatelic*") at 938 that "[i]f there has been a failure to supervise or investigate or wilful blindness on the part of a director of a company his conduct can be regarded as being wilful and Ord. 45, r. 5 can apply".

118 The plaintiff also cited the Malaysian High Court case of *IJM Corporation Bhd v Harta Kumpulan Sdn Bhd (Part 2)* [2007] MLJU 822. In that case, Datuk Syed Ahmad Helmy B Syed Ahmad J stated:

> The Defendant herein has two directors, namely Yai Yen Hon @ Chuan Yen Hon and Wong Quai Yin. The former has filed an affidavit admitting that he wrote the infringing letters on the Defendant's behalf. The latter has not filed any affidavit. In his affidavit, Yai Yen Hon has also sought to absolve his fellow director for the defendant's contempt. To my mind the former cannot absolve the latter. Each director, whether actively managing the day-to-day affairs of the company or not, is under an obligation to ensure that the company in which he or she is a director complies with any court order affecting the company. …

119 After considering authorities in Hong Kong, England and Malaysia, the learned judge concluded that:

> Having considered all the authorities on this point it is my judgment that Wong Quai Yin has an obligation to take adequate steps to ensure the injunction is obeyed and in this regard I associate myself with the judgment of Woolf LJ in [*Philatelic*]. There is nothing in the affidavit filed on her behalf to demonstrate that she took such steps. *If she delegated that responsibility to her fellow director, she regardless remains liable as she failed to ensure the Defendant obeyed the injunction. Though Wong Quai Yin was not the author of the infringing letters and may not have had knowledge of her fellow director's action done in breach of the injunction, Wong Quai Yin is nevertheless also guilty of contempt of court….*
>
> [emphasis added]

120 This was not a case where Martin Tay was unaware that the disclosure requirements were not being complied with. By the latest time he had notice of the court orders on 8 September 2010, RMMPL was in continuing breach. A responsible director would not have assumed that the orders were being complied with. He would have asked, and found out that RMMPL was already in breach. He would have viewed the assurances of a director who was already in default with a healthy dose of scepticism. In any event, Martin Tay had sight of Moses Tay's 22 November 2010 affidavit as it was being prepared. [note: 123] By this time he *must* have known that the orders were *not* being complied with. Still he did nothing. Moreover, this position is inconsistent with his and his mother's application

in OSF 375 on 24 August 2011. Martin Tay could not at the same time have honestly believed that Moses Tay was mentally incapable of managing his affairs and still place reasonable reliance on Moses Tay to ensure RMMPL's compliance. Nevertheless, he continued to sit on his hands.

121 As for the fifth point, *ie*, whether Martin Tay and RMMPL's breaches were the result of failures or omissions rather than refusal or neglect, to the extent the issue does not overlap with the fourth point, I have already addressed it at [104] and [105] above.

122 Accordingly, I find that Martin Tay is guilty of contempt of court. That said, I do not think that Martin Tay is liable for all of RMMPL's breaches as stated in [106] above. Martin Tay bears no blame for Moses Tay's false statement that RMMPL's documents were with its auditors or his refusal to say who the auditors were, as there was no conceivable way that Martin Tay could have prevented this breach. I do, however, hold Martin Tay responsible for his failure to rectify RMMPL's continuing breaches relating to the disclosure requirements under the Anton Piller Order and the Mareva Injunction, as he could have done something about them.

Sentence

123 Having found that the Contemnors are guilty of contempt of court, I now consider the appropriate sentence.

124 The sentencing principles for contempt of court proceedings were instructively set out in *Sembcorp Marine Ltd v Aurol Anthony Sabastian* [2013] 1 SLR 245 ("*Sembcorp Marine*"). To begin, it is trite that a custodial sentence is not the starting point for contempt of court proceedings, but normally a measure of last resort. However, the determination of an appropriate sentence is a multifaceted and fact-centric task. This much is apparent from the following list of non-exhaustive factors that a court should take into account (as summarised from *Sembcorp Marine* at [68]):

(a) the attitude behind the contemptuous behaviour;

(b) the motive for committing the contemptuous act;

(c) whether a fine would have been an adequate deterrent;

(d) the reversibility of the breach;

(e) the standard of care expected of the individual;

(f) the nature of the contemptuous act;

(g) whether the contemnor was remorseful; and

(h) whether the contemnor had procured others to commit the contemptuous act.

Moses Tay

125 Of Moses Tay's numerous breaches, the most audacious is his withdrawal of $380,000 on 23 August 2010 in blatant disregard for the Mareva Injunction. Any breach of a Mareva injunction is a serious matter, and he had done so *deliberately* and *cynically.* He made no attempt to make restitution of the sum, and now as a bankrupt, he can no longer make good his breach. This breach alone merits a substantial custodial sentence.

126 His breaches of the Ancillary Orders are also egregious. Not only did he refuse to hand over his passport in clear and continuing breach of the Ancillary Orders, he actually *left Singapore* in open defiance of the restrictions placed upon him. He had also breached the disclosure requirements in the Mareva Injunction and the Anton Piller Order, which are serious breaches in themselves, and had refused to allow entry to the Golden Agri Premises and Sentosa Cove Premises in breach of the Anton Piller Order on 23 August 2010.

127 Moses Tay is also a *repeat* offender. He had previously breached a Mareva injunction by withdrawing monies from the bank account of a company in which he was a director and also failed to comply with a disclosure order. For his contempt, Judith Prakash J sentenced him to three months imprisonment and stated (see *Precious Wishes* at [34]):

> As regards sentence, I took the view that the nature of the contempt was serious. Mr Tay [*ie*, Moses Tay] had deliberately disregarded the court's order for his own personal benefit and by doing so had put himself and the company in contempt. He had put his own interests above those of the company and its creditors. He showed no respect whatsoever for any party other than himself. He was not able to recover any of the money that he had disposed of despite having known of the contempt proceedings from at least May 1999 and having been given a further month to raise money after conviction. By his actions, both the defendant company and its creditors have suffered. Court orders must be respected and there was no excuse for his conduct. In the circumstances, I considered that three months was a fair sentence.

128 Finally, there is no reason why these proceedings should have been delayed for more than three years. Much time and money has also been wasted as a result of Moses Tay's deliberate and conscious decision to drag the proceedings on for as long as possible. This is particularly objectionable as Moses Tay is a bankrupt and RMMPL appears to have no assets, which means that he is essentially forcing the plaintiff to incur additional costs for which it may not be able to recover. This is certainly a serious aggravating factor.

129 As for mitigation, Mr Thirumurthy relied primarily on Moses Tay's mental condition. [note: 124] I only had to consider whether Moses Tay's present psychiatric condition is a mitigating factor. In *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor and another appeal* [2014] 1 SLR 756 ("*Idya Nurhazlyn*"), the accused had relied on her psychiatric condition as a mitigating factor in respect of her conviction for cheating. Sundaresh Menon CJ found that her condition had no causal connection with her cheating offences and therefore could not be considered a mitigating factor. His remarks at [41] are apposite:

> 41 At the outset, it may be noted, as is apparent from these reports, that Idya's psychiatric condition had no causal connection with the cheating offences. *She was first seen some months after the offences and it is clear from the reports that her psychiatric condition stemmed from her inability or unwillingness to face the consequences of her crimes. I therefore do not accept that her condition can be considered a mitigating factor.* As I pointed out to Mr Kang, the prospect of facing a term of imprisonment is almost uniformly a depressing one but that cannot be a sufficient basis to warrant not imposing a sentence of imprisonment if that is otherwise called for.

130 Further, it was also noted in *Idya Nurhazlyn* at [42] that "the psychological impact of incarceration on a particular offender is generally not a relevant sentencing consideration". *Idya Nurhazlyn* at [43] also approved the holding in *R v Hans de Vroome* (1989) 38 A Crim R 146 that:

> … The courts can make some adjustment to sentences to take account of the additional hardship

caused to an offender by his condition, but they are necessarily limited in the extent of such adjustment by the necessity of maintaining proper standard of punishment.

131 In the present case, I have found that there is no causal link between Moses Tay's depression and his breaches. Here too there is evidence that Moses Tay's depressive disorder is a consequence of Moses Tay's inability or refusal to face the consequences of his own breaches of the Orders of Court. There is no doubt that prison life is harsh, but in the end the court is constrained by the need to ensure that the punishment is appropriate.

132 Mr Thirumurthy has also asked me to consider other sentencing options for Moses Tay, in light of Moses Tay's mental condition. In his written submissions for sentencing (which were again filed late), it was argued that Moses Tay ought to be given a community sentence, in particular, a Mandatory Treatment Order, pursuant to Part XVII of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), or probation. [note: 125]

133 The first question is whether I even had the power to make such an order. This is a case of civil contempt. Section 7(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) empowers the High Court to punish for contempt of court. The procedure is governed by the Rules of Court. O 52 r 1(1) of the Rules of Court provides that the High Court may make an order for the defendant to stand committed to prison for a time. O 52 r 8 of the Rules of Court also states that the court has the power to make an order to pay a fine or to give security for his good behaviour. They say nothing about the other sentencing options provided for under the Criminal Procedure Code.

134 I see the virtue in extending the sentencing options of the court for civil contempt. Even so, it is not clear to me that I have the power under the Criminal Procedure Code to impose a community sentence, Mandatory Treatment Order or probation. Mr Thirumurthy has not cited any authority to that effect. Despite its quasi-criminal nature, a civil contempt does *not* amount to a criminal offence: *Tan Beow Hiong v Tan Boon Aik* [2010] 4 SLR 870 at [24] and [25]. Nonetheless, under O 52 r 6 of the Rules of Court, a court may make a suspended order of committal "on such terms or conditions as it may specify". It may be that in an appropriate case, a court may order that committal be suspended on the condition that the contemnor undergoes psychiatric treatment for a period of time, after which the suspended committal order would be automatically discharged.

135 In any event, even if I have the power, I am not prepared to make a Mandatory Treatment Order. Under s 339(2) of the Criminal Procedure Code, a court can only make a Mandatory Treatment Order after calling for a report to be submitted by an appointed psychiatrist. Furthermore, under ss 339(3) and (4), the Mandatory Treatment Order can only be granted if the report submitted by the appointed psychiatrist states, *inter alia*, that the psychiatric condition of the offender is one of the *contributing factors* for his committing the offence. I have already found that there is no causal link between Moses Tay's depression and his breaches of the Orders of Court. If Moses Tay was unable to find a psychiatrist who was willing to support his claim after such a long period of time, I doubt my calling for a psychiatric report will result in one that is more favourable than one that Moses Tay was able to obtain for himself.

136 After taking into account all the facts and circumstances of this case, including Moses Tay's psychiatric condition, I sentence Moses Tay to 6 months' imprisonment for his contempt of court.

Martin Tay

137 As for Martin Tay, it is readily apparent that his culpability is far lower than that of Moses Tay. Nevertheless, the plaintiff submitted that the appropriate sentence for him in the circumstances is

imprisonment. I think this would be unduly harsh. To begin, Martin Tay is not liable for *all* the breaches of RMMPL as a director (see [122] above). Insofar as RMMPL's breaches of the disclosure requirements of the Anton Piller Order and the Mareva Injunction are concerned, there was at least *partial* compliance as some of the required information was disclosed in Moses Tay's affidavit of 22 November 2010. [note: 126]

138 While Martin Tay bears some fault for the continuing breaches of RMMPL and his reliance on his father to fully comply with the disclosure requirements was misplaced, I took into account the fact that he would have felt obliged to do what Moses Tay told him to do, even if it was against his own best judgment. I also note that Martin Tay appointed a new solicitor to represent him on 17 February 2014, [note: 127] shortly after the hearing on 4 and 5 February 2014. This indicated to me that he was distancing himself from Moses Tay's position. Moreover, on 5 February 2014, he also agreed to produce a number of documents and information at the request of the plaintiff, and did so in a reasonable period of time. He also stated in court that he had nothing but high respect for the court and the full consciousness and diligence to carry out what is required of him by the court. [note: 128] It would have been a significant mitigating factor if he had adopted this attitude and exercised the necessary diligence right from the beginning. Nevertheless, this indicated to me that he is not a person who wants to flout the authority of the court, and I would give him some credit for this.

139 For the foregoing reasons, a fine of $10,000 (in default, 5 days' imprisonment) would be an appropriate sentence for Martin Tay.

RMMPL

140 Finally, the plaintiff submitted that a fine should also be imposed on RMMPL itself. Considering that RMMPL is a dormant company and there is no indication that it has any assets, it appears likely that any fine imposed on RMMPL would, at best, be of symbolic value. Nevertheless, RMMPL ought to be sanctioned for its breaches. I therefore impose a fine of $10,000 on RMMPL.

Conclusion

141 In summary, I find the Contemnors to be guilty of contempt of court and I sentence them as follows:

(a) Moses Tay: 6 months' imprisonment;

(b) Martin Tay: $10,000 fine (in default 5 days' imprisonment); and

(c) RMMPL: $10,000 fine.

142 These proceedings have dragged on for an inordinately long period of time, and the plaintiff has been put to unnecessary inconvenience and delay. The blame falls squarely on the Contemnors. It is just and proper that I award the costs in the present application (Summons No 4809 of 2010) and the plaintiff's application for leave for committal in Summons No 4451 of 2010 to the plaintiff on an indemnity basis, to be taxed if not agreed. This order is made against the Contemnors jointly and severally, with the caveat that Martin Tay's liability is to be capped at 20% of the total costs. I have capped Martin Tay's liability because Moses Tay is bankrupt and RMMPL appears to have no assets, which means that a costs order against the Contemnors without the caveat would likely result in Martin Tay bearing all of the costs. I do not think this would be appropriate given that most of the plaintiff's costs were likely to be incurred against Moses Tay.

[note: 1] Plaintiff's Opening Statement, para 2.

[note: 2] SUM 4133/2010.

[note: 3] SUM 4451/2010.

[note: 4] SUM 4809/2010.

[note: 5] Plaintiff's Opening Statement, paras 45.

[note: 6] Quentin Loh J's Minute Sheet dated 13 Jan 2011.

[note: 7] Plaintiff's Additional Bundle of Cause Papers ("PABCP") (Vol 1), Tab 11.

[note: 8] PABCP (Vol 2), Tab 20.

[note: 9] See Plaintiff's Opening Statement, para 5.

[note: 10] PABCP (Vol 2), Tab 15.

[note: 11] Moses Tay's Closing Submissions, para 17.

[note: 12] Moses Tay's Closing Submissions, paras 1929.

[note: 13] Moses Tay's Closing Submissions, para 30.

[note: 14] Moses Tay's Closing Submissions, para 32.

[note: 15] See Quentin Loh J's Minute Sheet dated 13 Jan 2011 and Tay Yong Kwang J's Minute Sheet dated 17 Jan 2011.

[note: 16] Plaintiff's Bundle for Closing Submissions ("PBCS"), Tab 13.

[note: 17] NE, 4 Feb 2014, p 6 line 12 to p 7 line 6.

[note: 18] NE, 4 Feb 2014, p 22, lines 3032; see also p 25 lines 2627.

[note: 19] NE, 4 Feb 2014, p 35 line 30 to p 36 line 2.

[note: 20] Mr Thirumurthy's Affidavit dated 26 March 2013, pp 2123.

[note: 21] Plaintiff's Bundle for Closing Submissions ("PBCS"), Tab 14.

[note: 22] NE, 10 Apr 2014, p 5, lines 2730.

[note: 23] PABCP, Tab 5.

[note: 24] See, *eg*, Mr Thirumurthy's Affidavit dated 13 Jan 2014 at p 7 para 8 and p 9 para 21 (attaching Dr Seng Kok Han's Report dated 5 Nov 2013); see also PABCP (Vol 1), Tab 5, p 81 paras 29 and 30.

[note: 25] Moses Tay's Written Submissions for Sentencing, paras 89.

[note: 26] See, *eg*, Mr Thirumurthy's Affidavit dated 13 Jan 2014 at p 25 (attaching Dr Tommy Tan's Report dated 14 Jan 2011)

[note: 27] NE, 10 April 2014, p 52, lines 46.

[note: 28] PSCS, Tab 1.

[note: 29] PBCS, Tab 2.

[note: 30] Moses Tay's Closing Submissions, para 33.

[note: 31] NE, 10 April 2014, p 47, lines 418.

[note: 32] NE, 10 Apr 2014, p 46, lines 2226.

[note: 33] NE, 10 Apr 2014, p 6, lines 9–11.

[note: 34] Mr Thirumurthy's Affidavit dated 8 Sep 2014, p 7.

[note: 35] Mr Thirumurthy's Affidavit dated 8 Sep 2014, p 9.

[note: 36] Mr Thirumurthy's Affidavit dated 8 Sep 2014, p 9.

[note: 37] Mr Thirumurthy's Affidavit dated 8 Sep 2014, pp 910.

[note: 38] Moses Tay's Closing Submissions, para 44.

[note: 39] Plaintiff's Supplementary Closing Submissions ("PSCS"), para 23.

[note: 40] NE, 5 Feb 2014, p 17, lines 1031.

[note: 41] Plaintiff's Bundle of Cause Papers ("PBCP") (Vol 2), p 111.

[note: 42] PBCP (Vol 2), pp 111112.

[note: 43] PBCP (Vol 2), p 113.

[note: 44] PBCP (Vol 2), p 114.

[note: 45] PBCP (Vol 2), p 115.

[note: 46] PBCP (Vol 2), p 116.

[note: 47] PBCP (Vol 2), pp 116117.

[note: 48] PBCP (Vol 2), p 117.

[note: 49] PBCP (Vol 2), p 117.

[note: 50] PBCP (Vol 2), pp 121125.

[note: 51] PBCP (Vol 3), Tab 11, paras 74 to 78, 80, 83 to 84, 87 and 96.

[note: 52] PBCP (Vol 2), p 117.

[note: 53] Moses Tay's affidavit dated 22 November 2010 ("Moses Tay's Affidavit"), para 77.

[note: 54] See Moses Tay's Affidavit, paras 139161.

[note: 55] PBCP (Vol 2), p 119.

[note: 56] PBCP (Vol 2), p 127.

[note: 57] Moses Tay's Closing Submissions, para 79.

[note: 58] PBCP (Vol 3), pp 3946.

[note: 59] Plaintiff's Closing Submissions ("PCS"), para 89.

[note: 60] NE, 5 Feb 2014, p 50, lines 17.

[note: 61] PBCS, tab 10, p 4445.

[note: 62] See Moses Tay's Affidavit, paras 155163.

[note: 63] PBCS (Vol 2), p 134.

[note: 64] PBCS (Vol 2), p 135.

[note: 65] PCS, para 59; PBCP (Vol 3), Tab 11, para 150(c).

[note: 66] PBCP (Vol 2), pp 115116.

[note: 67] Mr Kuppan's Affidavit, p 55 at para 21.

[note: 68] PBCP (Vol 2), p 127.

[note: 69] PBCP (Vol 3), pp 7175.

[note: 70] PCS, para 59; PBCP (Vol 3), Tab 11, para 150(c).

[note: 71] PCS, paras 5859.

[note: 72] Mr Abdul Hadi's Affidavit dated 21 Sep 2010, paras 1 and 2.

[note: 73] See Mareva Injunction, paras 1(a) and (b).

[note: 74] PBCP (Vol 3), Tab 11, para 138(f).

[note: 75] PBCP (Vol 3), Tab 11, paras 240249.

[note: 76] NE, 10 Apr 2014, p 28 line 8 to p 29 line 13.

[note: 77] See Moses Tay's affidavit dated 22 November 2010, paras 164166, 25664.

[note: 78] Mr Naidu's Affidavit, p 41, para 17.

[note: 79] Moses Tay's Affidavit, para 165(a).

[note: 80] Mr Naidu's Affidavit, para 18.

[note: 81] See Plaintiff's Opening Statement, paras 31(f)(k)

[note: 82] Moses Tay's Affidavit, paras 3940; see also PCS, paras 6263.

[note: 83] Moses Tay's Affidavit, paras 3438.

[note: 84] Moses Tay's Affidavit, paras 3941.

[note: 85] PCS, para 64.

[note: 86] Moses Tay's Affidavit, para 40.

[note: 87] PABCP, Tab 9.

[note: 88] PABCP, Tab 11.

[note: 89] PCS, paras 7779.

[note: 90] PBCP (Vol 3), Tab 10, para 7.

[note: 91] Moses Tay's Closing Submissions, para 90.

[note: 92] PABCP, Tab 12, pp 297300.

[note: 93] Moses Tay's Closing Submissions, para 91.

[note: 94] Plaintiff's Opening Statement, paras 3435; see also PCS, para 82.

[note: 95] Plaintiff's Opening Statement, paras 3435; see also PCS, para 83.

[note: 96] Moses Tay's Affidavit, paras 3440.

[note: 97] Mr Naidu's Affidavit, p 44, para 25.

[note: 98] See Plaintiff's Opening Statement, Annex A, pp 1618.

[note: 99] Moses Tay's Affidavit, paras 280282.

[note: 100] PCS, para 72; see also PBCP (Vol 3), para 24(d).

[note: 101] Moses Tay's Affidavit, para 219.

[note: 102] NE, 10 Apr 2014, p 35, lines 713.

[note: 103] Moses Tay's Affidavit, para 82(e).

[note: 104] Written Submissions For Tay Jiashen Martin ("Martin Tay's Submissions"), para 2.

[note: 105] Martin Tay's submissions, paras 1618.

[note: 106] Martin Tay's submissions, para 30.

[note: 107] Martin Tay's submissions, para 31.

[note: 108] Martin Tay's submissions, paras 36 and 48.

[note: 109] PABCP (Vol 2), Tab 20, p 559.

[note: 110] PABCP (Vol 2), Tab 20, p 563.

[note: 111] Plaintiff's Supplementary Bundle of Documents, pp 2341; Plaintiff's Bundle of Documents, p 183.

[note: 112] NE, 5 Feb 2014, p 21, lines 2027.

[note: 113] Martin Tay's affidavit dated 5 Mar 2014, paras 1314.

[note: 114] NE, 5 Feb 2014, p 27 lines 20 to p 28 line 16.

[note: 115] NE, 5 Feb 2014, p 23, lines 2931.

[note: 116] NE, 5 Feb 2014, p 39, lines 2026.

[note: 117] PSCS, para 48.

[note: 118] NE, 5 Feb 2014, p 13 line 20 to p 15 line 8.

[note: 119] NE, 5 Feb 2014, p 13, lines 319.

[note: 120] See PCS, para 61; see also NE, 5 Feb 2014, p 32 line 7 to p 34 line 11.

[note: 121] NE, 5 Feb 2014, p 31, lines 13.

[note: 122] Martin Tay's Submissions, para 32.

[note: 123] NE, 5 Feb 2014, p 17, lines 12 to 14.

[note: 124] Moses Tay's Closing Submissions, paras 114115.

[note: 125] Moses Tay's Written Submissions for Sentencing, para 14.

[note: 126] See Martin Tay's Submissions, paras 61 to 65.

[note: 127] Notice of Appointment of Solicitor dated 17 Feb 2014.

[note: 128] See Martin Tay's Closing Submissions, paras 60 to 62, and 72.