**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2016] SGHC 60**

HC/Suit No 922 of 2015
(HC/Summons No 6252 of 2015)

Between

Tahir

… *Plaintiff*

And

Tay Kar Oon

… *Defendant*

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# JUDGMENT

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

# Tahir
# v
# Tay Kar Oon

**[2016] SGHC 60**

High Court — Suit No 922 of 2015 (Summons No 6252 of 2015)
Edmund Leow JC
15 January, 11 February, 26 February; 1 March 2016

12 April 2016 Judgment reserved.

**Edmund Leow JC:**

## Introduction

1 The Plaintiff, Tahir, applied for an order of committal against the Defendant, Tay Kar Oon. This application arose from the Defendant's breaches of court orders for examination of judgment debtor, which were obtained as part of the process of enforcement of a judgment sum owed by the Defendant to the Plaintiff. Further breaches of a Mareva injunction, hitherto unknown to the Plaintiff, were disclosed in the course of proceedings before me.

2 I granted the order of committal and sentenced the Defendant to eight weeks' imprisonment, and now give the reasons for my decision.

## Factual and procedural background

### *Settlement agreement*

3 In 2014, the Plaintiff paid the Defendant, an art dealer who was the sole proprietor of Jasmine Fine Art, a total of USD $1,638,100.00 to purchase a sculpture known as "Couple Dancing" by the sculptor Fernando Botero ("**the Sculpture**"). The deal did not materialise as the Defendant failed to procure the Sculpture, and the Plaintiff commenced an action against the Defendant for the recovery of the sums paid. Parties then entered into a settlement agreement in July 2015 ("**Settlement Agreement**") where the Defendant agreed to pay the sums due under the Settlement Agreement.

4 However, the Defendant subsequently failed to pay the sums due in breach of the Settlement Agreement. The Plaintiff then commenced another action in Suit No 922 of 2015 for the breach, but the Defendant failed to enter an appearance and so the Plaintiff obtained judgment against the Defendant in default. The High Court ordered that the Defendant pay the Plaintiff a judgment sum. Enforcement of the judgment sum proved to be difficult as the Defendant failed to pay up.

### *Breaches leading up to the commencement of committal proceedings*

5 On 9 October 2015, the Plaintiff obtained an order from the High Court for the examination of judgment debtor under Summons No 4946 of 2015 ("**the EJD Order**"). The Defendant was ordered to attend before the Registrar on 23 October 2015 to be orally examined as to questions listed in a questionnaire ("**the EJD Questionnaire**"), as well as to produce relevant books or documents.

6 In what I will term the first breach, the Defendant failed to attend court on 23 October 2015 pursuant to the EJD Order and also failed to provide answers to the EJD Questionnaire. Though she was legally represented, her lawyers were also absent.

7 The Assistant Registrar hearing the case on 23 October 2015 directed that the Defendant was to comply with the EJD Order and provide answers to the EJD Questionnaire by 6 November 2015 as well as to attend court on 13 November 2015 ("**23 October 2015 Directions**").

8 On 27 October 2015, the Plaintiff obtained an order from the High Court, under Summons No 4591 of 2015. There, the court ordered a freezing injunction on the Defendant's assets in Singapore up to the total value of the judgment sum ("**the Mareva Injunction**"), and directed the Defendant to file an affidavit by 5 November 2015 disclosing all her assets in Singapore whether jointly or solely owned ("**the Disclosure Order**").

9 In a second breach, the Defendant failed to file the affidavit by 5 November 2015 as directed by the Disclosure Order.

10 In a third breach, the Defendant failed to provide answers to the EJD Questionnaire by 6 November 2015 as directed by the Assistant Registrar on 23 October 2015.

11 In a fourth breach, the Defendant failed to turn up for the adjourned hearing on 13 November 2015. Her lawyers were again absent.

12 I note that all the Defendant's court absences were unaccounted for; the Defendant failed to instruct her lawyers to seek adjournments. There was

no dispute that the Defendant was made aware of all the court orders and directions issued in this regard by her lawyers.

13 On 13 November 2015, in a drastic turn of events, the Plaintiff discovered that the Defendant had been adjudicated a bankrupt on 11 November 2015. It was evident that apart from the Plaintiff, other creditors had also been pursuing the Defendant.

***The application for leave to commence committal proceedings***

14 This development prompted the Plaintiff to apply for leave to commence committal proceedings against the Defendant in Summons No 5872 of 2015 ("**SUM 5872/2015**") on 3 December 2015. A supporting affidavit by the Plaintiff and a statement pursuant to O 52 r 2(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("**ROC**") were also filed at the same time. The Official Assignee was informed and did not object to the Plaintiff's application.

15 The parties appeared before Chua Lee Ming JC on 17 December 2015. At the conclusion of the hearing, having noted the circumstances of the case, he allowed the Plaintiff's application for leave to commence committal proceedings against the Defendant by way of SUM 5872/2015, for the breaches of the following Orders of Court and Court Directions:

(a) Order of Court dated 9 October 2015 under Summons 4946/2015;

(b) Court Directions under Summons 4946/2015 given on 23 October 2015; and

(c) Order of Court dated 27 October 2015 under Summons 4591/2015.

16 Chua JC also ordered the Plaintiff to amend certain paragraphs of the statement tendered pursuant to O 52 r 2(2) of the ROC.

***First hearing – the order of committal***

17 Upon the court granting leave to the Plaintiff to commence committal proceedings, the Plaintiff filed Summons No 6252 of 2015 ("**SUM 6252/2015**"), for the Defendant to be sanctioned with a fine and/or committed to prison for contempt of court.

18 The parties appeared before me on 15 January 2016 for the hearing of SUM 6252/2015. The Defendant finally turned up in court, and admitted liability for her acts of contempt on the stand during cross-examination by the Plaintiff's Counsel.

19 The principles regarding an action for civil contempt are well established. The standard of proof is the criminal standard of proof beyond a reasonable doubt, but the threshold for establishing the guilty intention necessary for a finding of civil contempt is a low one – it only has to be shown that the contemnor intended the acts that were in breach of the court order. The reasons for the disobedience are irrelevant in establishing liability.

20 I was satisfied beyond a reasonable doubt that she was guilty of contempt on all the breaches of orders and court directions for which leave was granted. The Defendant was clearly aware of the orders and directions, and had intentionally breached them by not turning up for court hearings and

not filing the affidavits required of her within the time specified. She could only feebly answer that she had overlooked it or was not in the mood to read anything. I thus found her guilty of contempt of court.

21 The Defendant's Counsel sought an adjournment so that the Defendant could file the asset disclosure affidavit and completed EJD Questionnaire, and attempt to purge her contempt as mitigation. The Defendant's Counsel also claimed that the Defendant had mental issues and needed medical attention. The Defendant's description of her situation also left me with the impression that she had mental issues and needed to seek medical help. Given that the Defendant may not have fully understood the implications of the case against her, I granted an adjournment of two weeks for the Defendant to comply with the orders and purge her contempt, as well as for both parties to make sentencing submissions.

22 I also noted that while there was a money dispute in the background and the Defendant was an impecunious debtor in the sense that she was a bankrupt, this was not a case where the committal proceedings were taken out for a default in the payment of a monetary judgment.

***Second hearing – failure to purge the contempt***

23 By the second hearing before me on 11 February 2016, the Defendant had sent the Plaintiff the asset disclosure affidavit and the completed EJD Questionnaire. However, several parts of the questionnaire were incomplete. The Defendant gave no plausible explanation for not completing the questionnaire, and on cross-examination by the Plaintiff's Counsel it appeared that she was not truthful even in the answers that she had provided. Her flimsy

responses gave me the impression that she had only seen the Questionnaire for the first time at the hearing.

24 It was ludicrous that she answered no in court to the question of whether she had any creditors, when she was a bankrupt. The Defendant's responses were nonsensical in relation to what she had done with the sums that the Plaintiff was trying to recover from her. The Defendant effectively cherry-picked the questions that she wished to answer. In relation to her absence at the EJD hearings, the Defendant was unable to proffer any satisfactory explanation. It was clear that her lawyers had informed her of these hearings, but she appeared to wilfully turn a blind eye to them with the feeble excuse that she was not in the mood to respond. I noted that she did not seek medical attention for whatever mental issues that she claimed to be having at the last hearing. She claimed that she did not want to take medication and described her condition merely as not feeling like talking, and freely admitted in court that she made an appointment to see a doctor but did not go. I inferred that the claim at the last hearing, that she had mental issues, was plainly frivolous and not backed up by any evidence. It was an excuse contrived to delay the matter.

25 The Defendant also produced the statements from two OCBC bank accounts of Jasmine Fine Art, her sole proprietorship, generally spanning the period between January 2014 and December 2015. Curiously, she left out several statements of OCBC Account No 508-712-783-001 for the months of May 2015 to November 2015, for reasons that would become apparent only later in the proceedings. The Defendant also produced the UOB bank account statements of Jasmine Fine Art but in a piecemeal fashion covering select months from March 2015 to October 2015. Given this piecemeal and incomplete disclosure, she had still not purged her contempt in relation to the

Disclosure Order. I also noted that the missing OCBC bank account statements traversed the period of October 2015 when the Mareva Injunction was issued.

26 Another damning revelation was that she had a personal UOB account, contrary to her counsel's letter to the Plaintiff's Counsel on 10 February 2016 stating that she had no personal bank accounts, and contrary to her asset disclosure affidavit filed on 22 January 2016. She had failed to disclose her assets fully even in the disclosure affidavit filed for the purpose of purging the contempt. I was displeased with the Defendant dragging her feet on disclosure when this was purportedly to purge her contempt in mitigation. However, I granted a final chance for the Defendant to purge her contempt as this was a serious matter that could potentially lead to a custodial sentence.

***Third hearing - disclosure of further breaches***

27 At the third hearing on 26 February 2016, the Defendant finally disclosed her missing statements from OCBC Account No 508-712-783-001 for the months of May 2015 to November 2015, and this disclosed breaches of the Mareva Injunction that were not included in the O 52 r 2(2) statement. This confirmed the Plaintiff's suspicions that the Defendant was trying to suppress documents that show breaches of the Mareva Injunction. The injunction was issued on 27 October 2015, yet on 28 October 2015, with full notice of the Mareva Injunction, the Defendant in three withdrawals took $3000.00 from the account. This effectively emptied the entire account, leaving a balance of $153.00 at the end of the month.

28 At this juncture of the proceedings, I formed the view that the reason why she had been flouting the court orders for disclosure and dragging her feet in relation to purging the contempt was at least motivated in part by her desire

to hide breaches of the Mareva Injunction hitherto unknown to the Plaintiff. By the time the withdrawals happened, the Defendant was clearly on the verge of bankruptcy as she was made bankrupt around two weeks after those withdrawals.

29 The Defendant's Counsel sought a final adjournment, as the Defendant's personal UOB bank account statements would not be available until the start of the following work week. It appeared that the Defendant was trying to put the blame on the bank. On further inquiry, it was admitted that the Defendant had written to UOB requesting for the statements only two days before the hearing, on 24 February 2016. This was unacceptable given that she had plenty of time since the last hearing on 11 February 2016 to request for these documents. I was extremely dissatisfied with the Defendant's poor attempt, but in the light of the fact that further breaches of the Mareva Injunction could potentially be disclosed from her personal UOB bank statements, I granted a final adjournment.

***Fourth hearing - application by the Plaintiff to withdraw committal proceedings***

30 The Defendant's personal UOB bank statements from January 2014 to November 2015 were finally produced to the Plaintiff, which disclosed no further breaches from October 2015 onwards. The Defendant also produced to the Plaintiff emails and Whatsapp messages relating to the handling of the Sculpture. The Plaintiff's Counsel also indicated that parties had come to an agreement for the Defendant to provide further assistance in tracing the sums that had been paid by the Plaintiff. It appeared that the parties had reached some kind of compromise outside of court.

31 In a twist of events, the Plaintiff's Counsel then applied for leave to withdraw SUM 6252 with no order as to costs, on the grounds that the Defendant had substantially purged her contempt. In the alternative, the Plaintiff's Counsel indicated that they would no longer be pursuing a custodial sentence as they had previously submitted in their submissions. The Defendant also took the stand to apologise to the court.

32 I was not satisfied that the Defendant had substantially purged her contempt, if at all. The breaches of the Mareva Injunction disclosed in the Defendant's attempt to purge her contempt were serious and hitherto unknown. The process of the Defendant purging her contempt had given rise to aggravating factors in relation to the issue of contempt. Given the quasi-criminal nature of contempt proceedings, and the severity of the Defendant's actions especially when she was on the verge of bankruptcy, there was clearly a public interest element to the case that was greater than just the parties' interests. I declined to grant leave for the Plaintiff to withdraw the application.

**Whether the court may make its finding of guilt on breaches not included in the O 52 r 2(2) statement**

33 The preliminary issue that arose from the unique development of the case was whether the court could exercise its summary powers to find the Defendant guilty of contempt on grounds not included in the O 52 r 2(2) statement at the stage of granting leave to proceed with committal proceedings. In this case, this related to the Defendant's breaches of the Mareva Injunction on 28 October 2015 that were only discovered during court proceedings before me.

34 The case was special in its circumstances as the Plaintiff made it clear that he wished to withdraw the committal proceedings; had the Plaintiff been intent on proceeding, I have no doubt that he would have applied for leave to amend the O 52 r 2(2) statement to include the additional Mareva Injunction breaches. Had the Plaintiff done so, I would have granted leave readily. Nevertheless, I was of the view that the court could grant the order of committal in relation to the Mareva Injunction breaches on the court's own volition.

35 Civil contempt must be proven beyond reasonable doubt as the court's powers to punish any person for civil contempt are quasi-criminal in nature. Flowing from this, the O 52 r 2(2) statement serves the role of particularising the elements of the offence alleged. It was observed by the Court of Appeal in the recent case of *Mok Kah Hong v Zheng Zhuan Yao* [2016] SGCA 8 ("*Mok Kah Hong*") (at [61]) that:

> … the O 52 r 2(2) statement serves a crucial role in enabling the respondent to know the case that has been put forth against him. It also functions as the boundaries of the applicant's case, such as to prevent the applicant from relying on grounds that have been omitted from the statement. This safeguards the interests of the respondent, whose liberty is at stake. …

The Court of Appeal also cited with approval the comments of Yong Pung How CJ at [17] of the High Court decision of *Summit Holdings Ltd and another v Business Software Alliance* [1999] 2 SLR(R) 592 ("*Summit Holdings*") that:

> … the rationale behind the O 52 r 2(2) statement was similar to that of a criminal charge, which is required to be sufficiently particularised such that the accused knows the case he has to meet and has the opportunity to refute the allegations that have been put forth against him. …

36 In *Summit Holdings*, a similar preliminary issue as the present one was raised for the court's determination. There, the court was of the view that it was not an appropriate case to grant leave for applicants to rely on grounds not included in the O 52 r 2(2) statement. The reasons were that the respondents would be seriously prejudiced, it was not necessary and imperative for the court to act immediately and summarily, and that the grounds which were not included in the statement arose prior to the obtaining of leave to apply for an order of committal. The court in *Summit Holdings* noted (at [21]) that the applicants had in their possession all the evidence of the alleged contempt and had no reason "why they could not have raised all of them in the *ex parte* summons for leave to issue an order of committal".

37 I was of the view that the present case could be distinguished; the Defendant suffered no prejudice by the Mareva Injunction breaches not being included in the O 52 r 2(2) statement, as she clearly knew the case that *would* have been put forth against her had she not concealed these breaches. The only reason why these breaches could not have been included in the O 52 r 2(2) statement was because the Defendant had been concealing the damning bank statements. She only disclosed them at the eleventh hour when the absence of these statements was made glaring and obvious during cross-examination. The Plaintiff could not prove his suspicion at the time of commencement of the committal proceedings, given the lack of disclosure by the Defendant. The Defendant's Counsel had no explanation for the Mareva Injunction breaches when I called upon him to respond. The silence was deafening; this was tacit admission of the Defendant's breaches of the Mareva Injunction.

38 In *Borrie & Lowe: The Law of Contempt* (Professor Ian Cram gen ed) (LexisNexis, 4th Ed, 2010) ("*Borrie & Lowe*"), the authors (at page 244)

observed that civil contempts are "'offences' of a private nature since they deprive a party of the benefit for which the order was made", and so the court's jurisdiction in respect of civil contempts, in principle, is primarily remedial, "the basic object being to coerce the offender into obeying the court judgment or order". However, it cannot be gainsaid that there is also a punitive objective to the order of committal - to punish a party's disobedience of the court's judgment or order. As Yong Pung How CJ stated in *Summit Holdings* (at [25]), the underlying concerns of the law of contempt, whether civil or criminal, were the protection of the administration of justice and maintenance of the court's authority. In *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518, the Court of Appeal (at [22]) stated that:

> … the doctrine of contempt of court is not intended, in any manner or fashion whatsoever, to protect the dignity of the judges as such; *its purpose is more objective and is (more importantly) rooted in the public interest.* …
>
> [emphasis added]

39 I was of the view that the public interest in the protection of the administration of justice and maintenance of the court's authority was unaffected by the Plaintiff's withdrawal of the application at the final hearing. In C.J. Miller, *Contempt of Court* (Oxford University Press, 3rd Ed, 2000), the learned author (at para 2.18) cited with approval the English Court of Appeal's decision of *Heatons Transport (St Helens) Ltd v Transport and General Workers Union; Craddock Brothers v Transport and General Workers Union; Panalpina Services Ltd and another v Transport and General Workers Union and others* [1972] ICR 285, where Sir John Donaldson P stated (at 298):

> … once proceedings for contempt of court have been set in motion it is not open to the parties to settle the matter of the contempt. They can certainly settle the dispute which they

> may have with each other … But as far as the contempt of court is concerned, that is a different matter and one with which we are deeply concerned. …

The author was of the view that there are circumstances in which the interest of the public transcends that of the parties immediately concerned.

40 I also took into account Yong Pung How CJ's comments in *Summit Holdings* on the court's summary power to punish for contempt (at [19]):

> … The summary power to punish for contempt should only be exercised sparingly and the decision to deal with matters summarily should not be [lightly] taken. *The power to punish for contempt summarily was intended to enable the courts to deal with conduct which would adversely affect the administration of justice. It was necessary to maintain the dignity and authority of the judge and to ensure a fair trial.* …
>
> [emphasis added]

41 I was of the view that the court certainly had the power to grant the order of committal in relation to breaches of court orders deliberately concealed such that they could not be included in the O 52 r 2(2) statement at the application for leave stage. It would be absurd if a court could not sanction a party for breaches that only came to light during committal proceedings, as they had the same effect of adversely affecting the administration of justice as breaches disclosed in the O 52 r 2(2) statement. It would also undermine the due administration of justice if a party could effectively get away with concealing breaches of court orders up to the eleventh hour. In this case, the concealed Mareva Injunction breaches turned out to be the most aggravating acts of contempt. The Defendant could effectively get away scot-free for breaching the Mareva Injunction, unless the Plaintiff commenced fresh proceedings which was unlikely to happen in the light of the compromise between parties. To borrow the words of Edmund Davies LJ (as he then was)

in *Jennison v Baker* [1972] 2 QB 52 at 66: "if indeed it be the case that she has to go unpunished for her contumacy, justice vanishes over the horizon and the law is brought into disrepute."

## Sentencing

### *Legal principles*

42 The law on sentencing in relation to contempt of court in Singapore is entirely judge-made as there is no statutory guidance. It is oft said that the court's jurisdiction to punish for contempt is draconian in nature and must be exercised sparingly. The starting point for sentencing in relation to contempt of court cases is not a custodial one. In *Lee Shieh-Peen Clement and another v Ho Chin Nguang and others* [2010] 4 SLR 801, the court at [45] endorsed the statement in *Singapore Court Practice 2009* (Jeffrey Pinsler gen ed) (LexisNexis, 2009) that "[c]ommittal to prison is normally a measure of last resort".

43 In *Mok Kah Hong*, the Court of Appeal drew a distinction between contempt cases involving contempt by interference, such as scandalising the judiciary, and contempt by disobedience, such as the failure to comply with court orders. The court examined the factors that are typically relevant to sentencing in cases of contempt by disobedience. While *Mok Kah Hong* involved contempt arising out of divorce proceedings, the comments by the Court of Appeal regarding sentencing factors are of general application. They cited with approval the following factors identified by Lawrence Collins J in the English High Court decision of *Crystalmews Ltd v Metterick and others* [2006] EWHC 3087 (Ch):

> The matters which I may take into account include these. First, whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy. Second, the extent to which the contemnor has acted under pressure. Third, whether the breach of the order was deliberate or unintentional. Fourth, the degree of culpability. Fifth, whether the contemnor has been placed in breach of the order by reason of the conduct of others. Sixth, whether the contemnor appreciates the seriousness of the deliberate breach. Seventh, whether the contemnor has co-operated.

The Court of Appeal was of the view that these non-exhaustive factors provide a useful framework to analyse the relevant facts in order to arrive at an appropriate sentence.

44 The Court of Appeal also noted in particular (at [107]) that a relevant factor often taken into consideration in deciding the appropriate sentence is the impact of the contemptuous conduct on the other party, and whether the conduct is irreversible. The Court of Appeal observed that where a significant portion of the assets has been disposed of with no prospect of recovery, foreign jurisdictions have generally adopted a relatively harsh stance in sentencing. In this regard, they cited the English case of *Lightfoot v Lightfoot* [1989] 1 FLR 414, where the sentence of eighteen months' imprisonment was upheld on appeal as the husband's breach had a significant impact on the wife — it effectively denied her any prospect of recovering the monies she would otherwise have been entitled to.

45 The Court of Appeal in *Mok Kah Hong* also acknowledged that genuine attempts by the contemnor to comply with the judgment or order were relevant. I find the following comments at [110] of particular relevance to the current case:

> Typically, a lower (or suspended) sentence will be imposed in cases where the alleged contemnor had demonstrated

> substantive attempts to effect compliance. The corollary to that would be the imposition of a higher sentence in cases where the *alleged contemnor acts in contumelious disregard of the judgment or order and makes no attempt whatsoever to effect compliance, or worse still, takes positive steps to frustrate the effect of the order of court.*
>
> [original emphasis omitted; emphasis added in italics]

46 Quentin Loh J in *Sembcorp Marine Ltd v Aurol Anthony Sabastian* [2013] 1 SLR 245 (at [68]) had also set out other relevant factors, which were cited with approval by Lai Siu Chiu J in *Global Distressed Alpha Fund I Ltd Partnership v PT Bakrie Investindo* [2013] SGHC 105 ("*Global Distressed Alpha Fund*"), such as whether a fine would be an adequate specific and general deterrent and whether the contemnor was remorseful.

***Effect of the Plaintiff's application for leave to withdraw on sentencing***

47 An interesting issue that arose at sentencing was what weight in mitigation, if any, should be given to the Plaintiff's attempted withdrawal of SUM 6252/2015.

48 I was dealing with the case purely as a matter of public interest by the conclusion of the proceedings, since the Plaintiff wished to withdraw SUM 6252/2015 but I declined to grant leave. As stated earlier, the underlying concerns of the law of contempt were the protection of the administration of justice and maintenance of the court's authority. Viewed in that light, the Plaintiff's withdrawal was given limited weight in arriving at my sentencing decision. It may be that the Plaintiff was eventually satisfied with the Defendant's degree of compliance, and took the position that the contempt of court had been substantively purged; however, given the public interest element in contempt cases, the court's perspective of the purging of contempt

was more relevant. As I had also stated earlier, the claim that the Defendant had taken substantive steps to purge the contempt was an exaggeration. In the present case, it must also be noted that the Plaintiff's withdrawal was not in fact a complete one. The Plaintiff's Counsel explicitly reserved his position in relation to the existing breaches of the Mareva Injunction. This withdrawal appeared to be premised on the Defendant's promise to cooperate with the Plaintiff in tracing the judgment sum after the conclusion of the committal proceedings. In my opinion, this promise of future cooperation did not directly mitigate her past breaches of the various court orders and directions.

***Parties' positions***

49 The parties' positions on sentencing were initially diametrically opposed. The Plaintiff's Counsel, in his original submissions on sentence dated 14 January 2016, sought a heavy custodial sentence of four to seven months or, in the alternative, a heavy fine of $30,000. This was their position prior to the disclosure of the Mareva Injunction breaches in February 2016. The Defendant's Counsel, in submissions dated 1 March 2016, made after the disclosure of the Mareva Injunction breaches, argued that a small fine was appropriate instead.

50 In the submissions, the Defendant's Counsel stated that the Defendant was unable to apply her mind to the various court matters as she was in personal difficulties; the Defendant did not disobey court orders deliberately and had no intention of non-compliance. The Defendant's Counsel also mitigated on the basis that all the breaches by the Defendant occurred in the span of less than a month, when she was facing severe pressure to keep her business afloat; she was not in the position to comply. The Defendant's

Counsel also submitted that his client had taken substantive steps to purge the contempt and that no prejudice had been caused to the Plaintiff.

51 I could not agree with the substance of the mitigation by the Defendant's Counsel, for reasons which I will explain below. It was unhelpful primarily because the factual assertions were misleading.

***Application to the facts***

52 Having set out the legal principles and factors, I now consider the application of the relevant considerations to the facts of this case.

53 In the present case, it was clear that the Plaintiff had suffered real prejudice by virtue of the Defendant's contempt, and such prejudice is irreversible and incapable of remedy. I could not agree with the Defendant's submissions that the Plaintiff's rights were not prejudiced by virtue of the Defendant's bankruptcy. When the EJD Order, Mareva Injunction and Disclosure Order were made in October 2015, the Defendant was, in retrospect, on the verge of bankruptcy but not yet a bankrupt. Had she complied with the orders, turned up in court and answered the Plaintiff's questions or disclosed her assets, it may have assisted in the Plaintiff's partial recovery of the judgment sum, however insubstantial in quantum. Instead of complying with the orders, she went so far as to withdraw monies in direct breach of the Mareva Injunction, thus dissipating the remaining sums in her bank account. When she was adjudicated bankrupt on 11 November 2015, the Plaintiff effectively lost any possibility of recovering the judgment sum as the Defendant's estate became vested in the Official Assignee, and the Plaintiff was merely an unsecured creditor without priority. It is undisputed that the Defendant had many other creditors. In my opinion, there is clearly prejudice

to the Plaintiff's position as a result of the Defendant's contempt – her actions denied the Plaintiff any prospect of recovering the monies that he would otherwise have been entitled to.

54 On the issue of whether the Defendant had made genuine attempts to cooperate and comply with court orders, I reluctantly came to the conclusion that she had not. I appreciated the fact that by the end of the four hearings before me, she had made disclosures of all her bank account statements, answered the EJD Questionnaire and undergone examination by the Plaintiff's Counsel as part of the EJD Order. However, the process through which the contempt was purged gave rise to the irresistible inference that the Defendant was merely paying *lip service* to the idea of purging her contempt. Most of the required disclosures were made only after the lack of which was made glaringly obvious during cross-examination. As mentioned earlier at [23]–[26], the EJD Questionnaire was only partially filled up, and some of her answers turned out to be patently false upon further questioning. This was even when the threat of court sanction was real and imminent. I had to grant not one, but three adjournments for her *because* she had failed to purge the contempt substantively at each hearing. Ironically, each of the adjournments I had given her out of leniency gave rise to more aggravating factors. Her piecemeal disclosure of bank account statements, for one, was aggravating. Even more aggravating was the fact that the disclosure of the bank account statements at the third hearing, which were deliberately withheld previously, revealed the Defendant's breaches of the Mareva Injunction. In my opinion, this concealment of hitherto unknown breaches was the most aggravating fact of all. In this respect, the comments in *Mok Kah Hong* of imposing a higher sentence where the contemnor acts in contumelious disregard of the court order or takes positive steps to frustrate the effect of the order of court are

applicable. The mitigation by the Defendant's Counsel on the basis that the Defendant had taken substantive steps to purge the contempt was an extreme exaggeration.

55 The partially completed EJD Questionnaire as well as the concealment of the Mareva Injunction breaches till the very end also led me to infer that the Defendant was not genuinely remorseful. Given that she was already a bankrupt and all her remaining assets were vested in the Official Assignee, by the time of the proceedings before me, the questionnaire and disclosure affidavit were no longer useful in the enforcement of the unsecured debt. However, the purging of the contempt by filing them nevertheless was relevant to remorse. In this respect, I reluctantly found that the Defendant had shown little remorse. Her demeanour in court throughout the proceedings failed to convince me that she was genuinely remorseful, and her apologies in open court at the final hearing did little to reverse that impression.

56 I considered the fact that the Defendant must have been under pressure to keep her business afloat during the material period of October to November 2015. Nevertheless, I am of the view that she should still have appeared at court hearings, as she was clearly capable of doing so. It was incomprehensible why she could not turn up in court and explain her situation.

57 It is important at this juncture to state unequivocally that being on the verge of bankruptcy does not give debtors an excuse to disregard court orders. I emphasise that bankruptcy does not mean that one can get away scot-free for contempt of court. This case can also be distinguished from that of *P J Holdings Inc v Ariel Singapore Pte Ltd* [2009] 3 SLR(R) 582, where the contempt proceedings were found to have been commenced, wrongly, on the

basis of a debtor's inability to repay a judgment sum. Here, the contempt proceedings were commenced not on the basis of the Defendant's non-payment of the judgment sum, but for her failures to attend the EJD hearings, file the EJD Questionnaire and asset disclosure affidavit, and follow court directions.

58 As to whether the Defendant's breaches were deliberate or unintentional, I was of the opinion that these were done intentionally. It was not as if the Defendant did not have notice of the court orders made against her. The Defendant was aware of the existence of these orders and directions via her lawyers, but intentionally and wilfully turned a blind eye, in the hope of evading the inevitable. As stated earlier, she could provide no excuse at all for her breaches on cross-examination, except to say that she had overlooked it or was not in the mood to read anything. Furthermore, from the additional breaches disclosed at the third hearing before me, I also inferred that the Defendant must have intended to avoid attending the EJD hearings and filing relevant disclosure documents, as she knew she had already breached the Mareva Injunction by withdrawing sums from her bank account. These breaches could have been inadvertently revealed if she had attended the EJD hearings. As for the Defendant's purported "personal difficulties", insofar as mental issues were concerned, it turned out to be a ruse used to delay the court proceedings before me. She did not even see a doctor for her purported issues.

59 Having taken into account the parties' submissions and the Plaintiff's change in position, I was of the view that the custodial threshold in this case had nevertheless been crossed. A fine in the present case would be inadequate. On the other hand, the factual matrix of this case clearly did not justify the

sentence range of four to seven months' imprisonment that the Plaintiff was previously pressing for.

60 From a survey of the case law put before me, breaches only by omission, such as non-attendance in court or failure to file disclosure affidavits and/or questionnaires were generally sanctioned with a fine. *STX Corp v Jason Surjana Tanuwidjaja and others* [2014] 2 SLR 1261, primarily relied upon by the Defendant's Counsel to support the submission for a fine, was a case of mere omission, where the three defendants each breached the injunction by delaying the filing of their asset disclosure affidavits, but eventually complied after a number of weeks. They were each fined for their contempt. It bore little factual resemblance to the present case. In *Arubugam Suppiah v Curt Evert Borgensten* [2001] SGHC 199 ("*Arubugam Suppiah*") cited by the Plaintiff's Counsel for distinction, the defendant failed to attend five EJD hearings and also failed to file an asset disclosure affidavit. However, as he eventually paid up the final judgment sum that was owed and filed the asset disclosure affidavit, he was sanctioned with an overall fine of $30,000. In my opinion, the facts of *Arubugam Suppiah* were less aggravating than the present case. The eventual repayment of the judgment sum was a significant mitigating factor, unlike the present case where the Defendant went into bankruptcy, leaving the judgment sum unpaid with effectively no prospect of recovery. Furthermore, there was also no positive step of dissipating assets in breach of any Mareva injunction, unlike in the present case.

61 *Global Distressed Alpha Fund* was the exception where the defendant was sanctioned with a term of imprisonment for breaches by omission. There the defendant had failed to attend eight EJD hearings without excuse, filed answers to a questionnaire only belatedly, and was sentenced to seven days'

imprisonment. Lai Siu Chiu J formed the view that the defendant's persistent absence without excuse showed that he was thumbing his nose at the court, and that the defendant's conduct caused real prejudice to the plaintiff's ability to realise the fruits of its foreign judgment. Lai J imposed an imprisonment term on the basis that financial advantage played little part in the defendant's intentions to breach the court orders, so a fine would not be an adequate deterrent. I am of the view that the following comments by Lai J are equally applicable in the present case:

> 56 I also considered that Kurniawan was *an educated businessman, was legally represented at all material times, and was advised on the possible consequences of his breaches.* …
>
> 57 It was also clear that Kurniawan had no intention of mitigating his breaches. … Kurniawan also had at least three opportunities to purge his contempt since the Plaintiff filed the Leave Application on 18 January 2013 by attending any of the 7th, 8th or 9th EJD Hearings. *Yet, he chose to remain uncooperative even when faced with potential committal liability.* …
>
> [emphasis added]

62 The fact that the Defendant in the present case always had the benefit of legal representation and advice but was stubbornly uncooperative till the last two hearings, even when faced with potential committal liability, served to highlight the Defendant's culpability.

63 On the other hand, breaches of Mareva injunctions by way of actively dissipating assets, or omissions with intent to conceal assets or the dissipation of such were punished more harshly. The cases of *Maruti Shipping Pte Ltd v Tay Sien Djim and others* [2014] SGHC 227 *("Maruti Shipping*"), *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR(R) 60 ("*OCM Opportunities Fund*") and

*Precious Wishes Limited v Sinoble Metalloy International (Pte) Ltd* [2000] SGHC 5 ("*Precious Wishes*") exemplify that approach, as the defendants in those cases were sentenced to six months', six months' and three months' imprisonment respectively. In *Maruti Shipping*, the first defendant was sentenced to six months' imprisonment as he had breached the Mareva injunction by withdrawing $380,000 from his account and failed to file the asset disclosure affidavit. He also breached an Anton Piller Order by preventing a search of his premises. It must also be noted that he was sentenced as a repeat offender, since he was the same defendant in *Precious Wishes* previously, for which he had been sentenced to three months for failure to make proper disclosure and for breach of a Mareva injunction by withdrawing $150,000 from his company's account. In *OCM Opportunities Fund*, there were repeated failures to attend court by the various defendants, sustained breaches of the conditions attached to the Mareva injunction, and sustained breaches of a permanent injunction. There the defendants were found to have filed "holding" asset disclosure affidavits, where the material contained in them did not satisfy the requirements of the disclosure order, were wholly inadequate and were lacking in particulars, with intent to avoid disclosing the true value of their assets. The defendants also failed to purge their contempt up to the time of hearing. The court concluded that they had been uncooperative, deliberate and contumacious in breaching the terms of the orders, and acted in clear defiance of the authority of the court, and so sentenced them to six months' imprisonment each.

64 I was of the view that the facts in the present case were not as aggravated as those in *OCM Opportunities Fund* or *Maruti Shipping*. Nevertheless, the custodial threshold had clearly been crossed especially with the revelation of the Mareva Injunction breaches. The facts of *Arubugam*

*Suppiah* indicate that even a high fine would not be adequate for the present case. *Global Distressed Alpha Fund*, where an imprisonment term was imposed, was also not an appropriate comparison as it did not involve the more serious breaches by dissipation of assets.

65 In my view, *Precious Wishes* where the defendant was sentenced to three months' imprisonment was the case with the most similar facts. The difference was that the defendant in *Precious Wishes* was not in breach of an EJD order like the Defendant in the present case, and the total sum withdrawn there was $150,000, much larger in quantum than the $3,000 in the present case. I am of the view that the following comments by Judith Prakash J in *Precious Wishes* are directly applicable to the Defendant in the present case:

> 33 … I was also satisfied that *he had deliberately omitted mention in his affidavit detailing the defendants' assets of the amounts in the Rabobank accounts and the amounts of his indebtedness to the defendant company to try and conceal the fact that he had disposed of money belonging to the defendants after having had notice of the [M]areva injunction. …*
>
> 34 As regards sentence, I took the view that the nature of the contempt was serious. *Mr 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. …*
>
> [emphasis added]

66 In the present case, the Defendant had omitted disclosure of her personal bank account in the asset disclosure affidavit, given false answers in

the EJD Questionnaire, and produced bank statements in a piecemeal fashion in order to conceal the fact that she had disposed of money from her sole proprietorship's bank account. As I had noted earlier, her concealment of additional breaches was persistent even when great leeway had been given to allow her to purge the contempt. The Defendant demonstrated flagrant disregard of the court's orders and put her own interest above that of her creditors. The severity of the Defendant's contempt is clearly on the same scale as that in *Precious Wishes*, even if the sum dissipated was smaller. I gave some but limited weight in mitigation to the lesser quantum of the Defendant's withdrawals compared to the defendant in *Precious Wishes*. While the quantum was smaller, she had effectively emptied the entire bank account with her withdrawals; it was merely fortuitous that the sum available for her withdrawal was smaller. It must also be noted that the Defendant in the present case had committed more breaches of court orders than the defendant in *Precious Wishes*, by virtue of her breaches of the EJD Order.

**Conclusion**

67 Taking into account the case law, the various aggravating factors, as well as the mitigating factors such as the Plaintiff's willingness to withdraw the committal application, I was of the view that an appropriate sentence as a deterrent and to protect the administration of justice and maintain the court's authority would be eight weeks' imprisonment.

68 As parties did not ask for any cost orders, I did not make any.

69 After I delivered judgment, the Defendant informed me that she intends to appeal. She therefore applied for a stay of the sentence pending appeal. I granted a stay based on a bond for $10,000 furnished through an

undertaking from her solicitor. The sentence will therefore be stayed until determination of the appeal.

Edmund Leow
Judicial Commissioner

Daniel Chia, Loh Jien Li and Kenneth Kong (Morgan Lewis Stamford LLC) for the Plaintiff;
Letchamanan Devadason, Mahtani Bhagwandas and Hariz Lee (Legal Standard LLP) for the Defendant.