

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

[2023] SGHC 198

Originating Claim No 225 of 2023

Between

- (1) Interactive Digital Finance Ltd
- (2) Tiah Thee Kian

... Claimants

And

- (1) Credit Suisse AG
- (2) Luckin Coffee Inc

... Defendants

GROUND OF DECISION

[Civil Procedure — Production of documents — Notice to produce]

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**Interactive Digital Finance Ltd and another
v
Credit Suisse AG and another**

[2023] SGHC 198

General Division of the High Court — Originating Claim No 225 of 2023
(Registrar's Appeal No 95 of 2023)
Chua Lee Ming J
6 July 2023

24 July 2023

Chua Lee Ming J:

Introduction

1 Under the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“2014 Rules”), any party could serve a notice to produce documents referred to in pleadings or affidavits for inspection and to take copies thereof (“NTP”). If the party served with such a notice failed to produce the documents, the court could order that party to do so. This procedure is not expressly provided for under the Rules of Court 2021 (“2021 Rules”).

2 This appeal concerned the court's powers to order production of documents referred to in pleadings under the 2021 Rules, and the requirement under the 2021 Rules that an appellate court should intervene in matters of procedure only if substantial injustice will be caused otherwise.

3 In these grounds, references to orders and rules refer to those in the 2021 Rules, unless otherwise stated.

Facts

4 On 13 April 2023, the claimants, Interactive Digital Finance Limited and Mr Tiah Thee Kian, filed their claim against the defendants, Credit Suisse AG and Luckin Coffee Inc. The claim was for losses arising out of investments in and/or based on securities issued by the 2nd defendant which were transacted through the claimants’ accounts held with the 1st defendant as a result of representations made by the defendants.

5 On 21 April 2023, the 1st defendant filed and served an NTP on the claimants. The NTP was in the form prescribed under the 2014 Rules and set out 76 requests for documents purportedly referred to in the claimants’ statement of claim (“SOC”). By way of a letter dated the same day, the 1st defendant sought the claimants’ agreement for an extension of 14 days for it to file its defence, on the assumption that the documents requested in the NTP would be produced by the close of business on 26 April 2023.

6 The claimants responded on 26 April 2023 stating that they would not be providing the documents by 26 April 2023 and that they did not agree to the extension of time for the 1st defendant to file its defence.

7 Later that day, the 1st defendant’s lawyers wrote to the court requesting the court to issue directions for the production of the documents in the NTP and an extension of time for the filing of its defence. On 27 April 2023, the claimants’ lawyers wrote to the court, taking the position that the 1st defendant’s request was without legal basis and/or good reason.

8 The Assistant Registrar (“AR”) conducted a case conference on 2 May 2023. She directed the claimants to (a) provide their further response to the NTP (in addition to their response in their letter dated 27 April 2023) by 2 May 2023, and (b) produce to the 1st defendant by 9 May 2023 any document that was referred to in the statement of claim and that was subject to the claim against the 1st defendant. The AR also extended the time for the 1st defendant to file its defence to 19 May 2023.

9 As directed by the court, the claimants provided their further response to the NTP on 2 May 2023. The claimants identified the documents requested in the NTP that they said the 1st defendant was not entitled to. The claimants’ position was that these documents were not documents that were referred to in the SOC.

10 On 9 May 2023, the claimants:

- (a) produced to the 1st defendant the documents in 23 of the requests in the NTP;
- (b) informed the 1st defendant that the documents in five of the requests in the NTP were not within their possession or control and that they had relied on publicly available materials; and
- (c) took the position that the 1st defendant was not entitled to the documents in 47 of the requests in the NTP because the statement of claim did not make any reference and/or direct allusion to the documents, and/or the documents did not relate to their claim against the 1st defendant.

The claimants omitted to deal with one of the requests (request #45).

11 In its response dated 12 May 2023, the 1st defendant noted the claimants' omission regarding request #45. The 1st defendant also alleged that by failing to produce several of the documents requested in the NTP, the claimants had breached the court's directions. The 1st defendant then asked for production of the documents in requests #20, #28 and #58, and reserved their rights with respect to the other documents that had not been produced.

12 The claimants replied on 15 May 2023 and explained that the 1st defendant was not entitled to the document in request #45 because the document did not relate to their claim against the 1st defendant. The claimants also took the position that they had no obligation to produce the documents in requests #20, #28 and #58.

13 On the same day (15 May 2023), the 1st defendant's lawyers wrote to the court requesting the court to direct (among other things) the production of the documents in requests #20, #28 and #58 forthwith and the remaining documents on a rolling basis no later than 19 May 2023. The 1st defendant again sought an extension of time to file its defence.

14 On 16 May 2023, the claimants' lawyers informed the court that the claimants had instructed them to file an appeal and requested the AR not to make any directions pending the determination of the appeal. On the same day, the claimants filed the present appeal against the AR's decision given at the case conference on 2 May 2023.

15 At a subsequent case conference on 23 May 2023, the 1st defendant informed the AR that it needed at least the documents in requests #20, #28 and #58 to enable it to file its defence, and that it would be arguing during the appeal that these documents were documents that were referred to in the SOC.

Consequently, the AR extended the time for the filing of the 1st defendant's defence until after the appeal was dealt with.

Parties' submissions before me

16 The appeal before me was against the AR's order made on 2 May 2023 for the production of documents that were referred to in the SOC and that were subject to the claim against the 1st defendant (see [8] above). However, as stated in [15] above, at the case conference on 23 May 2023, the 1st defendant informed the AR that it would be arguing during this appeal that the documents in requests #20, #28 and #58 were documents that were referred to in the SOC. Before me, both the claimants and the 1st defendant agreed that I should deal with this question. I proceeded to do so as it made practical sense.

17 In summary, the claimants' submissions before me were as follows:

- (a) The AR's order was wrong because the NTP procedure under the 2014 Rules was no longer applicable under the 2021 Rules.
- (b) An application for production of documents has to be made as part of the single application pending trial ("SAPT") and may be made outside of the SAPT only at the court's direction or with the court's approval.
- (c) The AR's order was inconsistent with the principles and the Ideals in the 2021 Rules.
- (d) The documents in requests #20, #28 and #58 were not documents that were referred to in the SOC.

18 In summary, the 1st defendant's submissions before me were as follows:

- (a) The AR had the power to make the production order under O 11 rr 2(1), 3 and/or 4.
- (b) The court has the power to hold a case conference at any stage of the proceedings (O 9 r 1). This gives the court the flexibility to direct production of documents outside the SAPT regime.
- (c) Appellate intervention was not warranted because no substantial injustice would be caused otherwise (O 18 r 10).
- (d) The documents in requests #20, #28 and #58 were documents that were referred to in the SOC.

The issues before me

19 The issues before me were as follows:

- (a) Whether the AR had the power to order production of the documents that were referred to in the SOC?
- (b) Whether the threshold for appellate intervention under O 18 r 10 had been crossed?
- (c) Whether the documents in requests #20, #28 and #58 were documents that were referred to in the SOC?

Whether the AR had power to order production of documents referred to in the SOC

20 The 2021 Rules apply to the present case as the claim was commenced on 13 April 2023 (O 1 r 2(3)(a)).

21 Under O 24 rr 10 and 11 of the 2014 Rules:

- (a) if a party’s pleadings or affidavits referred to any documents, any other party could serve a notice to produce requiring the production of such documents; and
- (b) if the party served with the notice fails to produce the documents requested, the requesting party could apply to court for the production of the documents in question.

The 2014 Rules have been revoked and the NTP procedure no longer exists under the 2021 Rules.

22 The claimants submitted that the AR erroneously drew from the NTP procedure under the 2014 Rules in making her order. I disagreed. The AR did not base her order on the NTP procedure. Instead, she had approached the matter based on the principles undergirding the 2021 Rules. She found it “odd” that documents which were referred to in the SOC were not being given to the 1st defendant and expressed that view that this was not in line with the Ideals in the 2021 Rules.

23 I approached the issue before me on the basis of the 2021 Rules and the principle behind ordering production of documents that were referred to in pleadings.

Order 11 of the 2021 Rules

24 Order 11 deals with the production of documents. The relevant provisions of O 11 state as follows:

Order for production (O. 11, r. 2)

2.—(1) The Court may, at a case conference, order that the parties in an action must within 14 days after the date of the case conference, exchange a list of and a copy of all documents

in their possession or control, which fall within one or more of the following categories:

- (a) all documents that the party in question will be relying on;
- (b) all known adverse documents;
- (c) where applicable, documents that fall within a broader scope of discovery —
 - (i) as may be agreed between the parties or any set of parties; or
 - (ii) as ordered by the Court.

...

Production of requested documents (O. 11, r. 3)

3.—(1) The Court may order any party to produce the original or a copy of a specific document or class of documents (called the requested documents) in the party's possession or control, if the requesting party —

- (a) properly identifies the requested documents; and
- (b) shows that the requested documents are material to the issues in the case.

...

Court's power to order production of documents (O. 11, r. 4)

4. Subject to Rules 5, 8 and 9, the Court may, of its own accord and at any time, order any party or non-party to produce a copy of any document that is in the person's possession or control.

25 Order 11 rr 5, 8 and 9 are not material for present purposes. Rule 5 deals with documents that merely lead a party on a train of inquiry, documents that are part of private or internal correspondence, and documents that are subject to privilege or where production would be contrary to public interest. Rule 8 deals with privileged documents. Rule 9 deals with confidential documents.

26 An order for the production of documents generally under O 11 r 2 may be made at a case conference without requiring an application for the same. This

is consistent with the purpose of case conferences, which is to allow the court to take control of and set the timelines and to give direction for the proceedings: O 9 r 2. The production of documents under O 11 r 2 may also assist the parties with respect to some of the matters that may need to be dealt with in the SAPT.

27 However, O 11 r 3 (which deals with the production of specific documents or classes of documents) naturally contemplates an application being made by the requesting party. As a general rule, any such application ought to be made as part of the SAPT: O 9 rr 9(3) and (4)(k); see also O 2 rr 9(1) and (5). No other application may be taken out except as directed at a case conference or with the court's approval, unless it is an application for certain specified matters (which are not relevant for present purposes): O 9 r 9(7); see also O 2 r 9(8).

28 The 1st defendant argued that the basis for the AR's order could lie in O 11 r 2(1)(a) because the documents that were referred to in the SOC were documents that the claimants would be relying on. I disagreed with the 1st defendant. Order 11 r 2 is not intended to apply to requests for the production of specific documents. As explained in the Civil Justice Commission Report, parties are to first produce the documents upon which they rely for their respective cases under O 11 r 2, and the parties may seek production of specific documents under O 11 r 3 if they can properly identify these documents and show that such documents will be material to the issues in the case (see *Civil Justice Commission Report* (29 December 2017) at Chapter 8, para 3 (Chairman: Justice Tay Yong Kwang)).

29 The 1st defendant next sought to rely on O 11 r 3. However, the 1st defendant had neither made any application for a production order pursuant to O 11 r 3 nor obtained the court's direction or approval to make such an

application separately from the SAPT. Although O 9 r 1(2) gave the court power to hold a case conference at any time, that did not mean that the 1st defendant could ignore O 9 rr 9(3) and (4) (production of documents to be dealt under a SAPT) or O 9 r 9(7) (applications may be made separately from the SAPT only as directed at a case conference or with the court’s approval).

30 However, although there was no application for production of the specific documents requested, I agreed with the 1st defendant that the AR had power to make the order that she made pursuant to O 11 r 4.

31 The claimants submitted that O 11 r 4 did not authorize parties to seek the production of documents before the SAPT. I disagreed with the claimants, at least in so far as the production of documents that were referred to in pleadings was concerned. In my view, such documents warranted a different treatment.

32 The principle underlying the NTP procedure was that the requesting party should be conferred the same advantage as if the documents referred to had been fully set out in the pleadings: *SK Shipping Co Ltd v IOF Pte Ltd* [2012] SGHCR 14 (“*SK Shipping*”) at [16].

33 In my view, the principle was sound and remained relevant under the 2021 Rules. The reference in pleadings to documents, in and of itself, was a form of “disclosure” of the documents: *SK Shipping* at [17]. Such documents therefore formed part of the pleaded case. It was logical and in the interests of justice that if requested by the other party, such documents should be produced. The other party was entitled to know the pleaded case against him. In my view, generally speaking, it followed that a party was entitled to the production of documents that were referred to in the statement of claim or defence, before it

filed its defence or reply. As similarly observed by Professor Jeffrey Pinsler SC in *Singapore Court Practice* (LexisNexis Singapore, 2020) at para 24/10/1, it “may be necessary for the defendant to consider the documents referred to in the statement of claim before he can plead the defence with sufficient particularity”.

34 In *SK Shipping* (at [17]), the court also noted that the party referring the document in its pleadings must show good cause to oppose the production of the document. It was not necessary for me to decide whether and when a party could justify not producing documents referred to in its pleadings, but it seemed to me that such instances (if any) would be rare and exceptional.

Order 3 r 2(2) of the 2021 Rules

35 In my view, the AR also had the power to make the order for the production of documents that were referred to in the SOC, under O 3 r 2(2) which provides as follows:

(2) Where there is no express provision in these Rules or any other written law on any matter, the Court may do whatever the Court considers necessary on the facts of the case before it to ensure that justice is done or to prevent an abuse of the process of the Court, so long as it is not prohibited by law and is consistent with the Ideals.

36 Order 3 r 1(2) sets out the Ideals:

(2) These Rules seek to achieve the following Ideals in civil procedure:

- (a) fair access to justice;
- (b) expeditious proceedings;
- (c) cost-effective work proportionate to —
 - (i) the nature and importance of the action;

- (ii) the complexity of the claim as well as the difficulty or novelty of the issues and questions it raises; and
- (iii) the amount or value of the claim;
- (d) efficient use of court resources; (e) fair and practical results suited to the needs of the parties.

37 In the present case, there was no express provision in the 2021 Rules specifically dealing with the production of documents that were referred to in the pleadings. However, as discussed earlier, as a matter of principle, parties should be entitled to such documents. In my view, O 3 r 2(2) gave the AR the power to make the order that she did, at a case conference. It was necessary to ensure that justice was done, and it was consistent with the Ideals, in particular those relating to expeditious proceedings (O 3 r 1(2)(b)) and fair and practical results suited to the needs of the parties (O 3 r 1(2)(e)). Bearing in mind the principle involved, I did not think that it was necessary to require the 1st defendant to file an application or to seek the court's direction or approval to make the application before the SAPT.

38 Again, bearing in mind the principle involved, in my view, a party that requires production of documents referred to in pleadings needs only to make a written request. The party requested should produce such documents unless it is disputed that the documents requested are documents that are referred to in the relevant pleadings.

Conclusion

39 In my view, the AR's decision to order the claimants to produce the documents referred to in the SOC was justified under the 2021 Rules. The approach taken by the AR was consistent with the Ideals and the flexibility

given to the court to do whatever was necessary (where there is no express provision in the 2021 Rules) to ensure justice was done.

40 My decision in this appeal is limited to requests for the production of documents that are referred to in the pleadings. I have upheld the AR's decision to make the order without requiring an application to be made and before the SAPT stage because of the principle involved. This decision does not mean that parties can try to bypass the SAPT procedure by simply writing to the court to seek directions or orders. The SAPT procedure can be expected to apply in its full rigour to the matters referred to in O 9 r 9(4) in most cases.

Whether the threshold for appellate intervention under O 18 r 10 of the 2021 Rules had been crossed?

41 Order 18 r 10 of the 2021 Rules provides as follows:

Appellate intervention only if substantial injustice (O. 18, r. 10)

10. In procedural matters, the appellate Court is to allow the lower Court maximum autonomy and intervene only if substantial injustice will be caused otherwise.

42 I agreed with the 1st defendants that in any event, there was no reason for me to intervene because the claimants had not shown that substantial injustice would otherwise be caused by the AR's order.

Whether the documents in requests #20, #28 and #58 were documents that were referred to in the SOC?

43 A document would be considered to have been referred to if it has been explicitly referred to or directly alluded to, but not if it was merely referred to by inference: *SK Shipping* at [18]–[20]. A document would be directly alluded to if reference is made to the contents of the documents (as opposed to merely

the effect of the document) or if the words used, on their fair meaning, convey the act of making the document itself (as opposed to a mere reference to a transaction): *SK Shipping* at [22].

44 In request #20, the 1st defendant sought the “record(s) of the communication by which the ‘*1st Defendant provided the 15 Jan CS Report to the Claimants*’, referenced at paragraph 23(c) of the SOC.”

45 Para 22 of the SOC pleaded that the 1st defendant made certain representations to the claimants. Para 23 of the SOC pleaded as follows:

23. The 1st Defendant’s representation were made as follows:

Particulars

- (a) Credit Suisse HK authored a bullish analyst report dated 15 January 2020 (“**15 Jan CS Report**”).
- (b) The 15 Jan CS Report stated, among other things, that:

...
- (c) The 1st Defendant provided the 15 Jan CS Report to the Claimants.

46 In request #28, the 1st defendant sought the “record(s) of the communication by which the ‘*1st Defendant provided the 4 Feb CS Report to the Claimants*’, referenced at paragraph 29(b) of the SOC.”

47 Para 28 of the SOC pleaded that the 1st defendant made a certain representation to the claimants on or around 4 February 2020. Para 29 of the SOC pleaded as follows:

29. The representations on or around 4 February 2020 was made as follows:

- (a) Credit Suisse HK authored an analyst report dated 4 February 2020 (“**4 Feb CS Report**”). The 4 Feb CS Report stated, among other things, that:

...

- (b) The 1st Defendant provided the 4 Feb CS Report to the Claimants.

48 In request #58, the 1st defendant sought the “record(s) of the communication on 4 February 2020 by which the ‘1st Defendant forwarded to the Claimant’s the 4 Feb CS Report’, referenced at paragraph 63(f) of the SOC.”

49 Para 63(f) of the SOC provided as follows:

63. The [representations] were made pursuant to a common design between the 1st Defendant and the 2nd Defendant to procure investments in and/or based on securities (i.e. shares) issued by the 2nd Defendant by making or repeating positive statements regarding the 2nd Defendant’s financial results and/or outlook for the 2nd Defendant’s business. The 1st Defendant and the 2nd Defendant share liability as joint tortfeasors for one or more of the [representations]. ...

Particulars

...

- (f) ... on 4 February 2020 ... the 1st Defendant forwarded to the Claimants the 4 Feb CS Report (which defended the 2nd Defendant); ...

50 Clearly, paras 23(c), 29(b) and 63(f) of the SOC did not make explicit reference to the documents sought in requests #20, #28 and #58 respectively. In my view, neither was there any direct allusion to the documents. There were merely references to transactions; such references did not amount to direct allusions (see [43] above). It was clear that the documents sought were referred to only by inference. That was not sufficient for the purposes of the principle relating to production of documents that were referred to in the pleadings.

51 For completeness, my decision that the 1st defendant is not entitled to production of the requested documents at this stage of the proceedings does not

preclude the 1st defendant from subsequently seeking discovery pursuant to other rules of discovery: *SK Shipping* at [21].

Conclusion

52 For the reasons stated above, I dismissed the appeal. I also decided that the documents sought under requests #20, #28 and #58 were not documents that were referred to in the SOC. Accordingly, the 1st defendant was not entitled to the production of those documents.

53 The claimants failed in its appeal against the AR's order. However, the 1st defendant did not succeed in all its arguments. Further, the 1st defendant failed in its arguments relating to the documents in requests #20, #28 and #58. In the circumstances, I concluded that the appropriate order as to costs was for the claimants and the 1st defendants to bear their own respective costs, and I ordered accordingly.

Chua Lee Ming
Judge of the High Court

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