IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 92

Registrar's Appeal from the State Courts No 3 of 2018

Between

Werner Samuel Vuillemin

… *Appellant*

And

Overseas-Chinese Banking Corporation Limited

… *Respondent*

High Court Summons No 1502 of 2018

Between

Werner Samuel Vuillemin

… *Plaintiff*

And

Overseas-Chinese Banking Corporation Limited

… *Defendant*

GROUNDS OF DECISION

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Woo Bih Li J
22 February; 8 March; 2 April 2018

20 April 2018

Woo Bih Li J:

Introduction

1 High Court Summons No 1502 of 2018 ("the Recusal Summons") was the application of Werner Samuel Vuillemin ("V") that I be recused from hearing any application or matter arising out of or in connection with his substantive action in District Court Suit No 3051 of 2013 ("DC 3051") including HC/RAS 3/2018 ("RAS 3/2018"). RAS 3/2018 was V's appeal against the order of court dated 18 January 2018 by District Judge Chiah Kok Khun ("DJ Chiah") in DC/SUM 3920/2017.

2 DC 3051 is an action initiated by V in the State Courts of the Republic of Singapore against Overseas-Chinese Banking Corporation Limited ("the Bank") in which V claims an order for delivery by the Bank to him of contents

kept in V's safe deposit box ("the Box") that was located in a branch of the Bank at Specialist Shopping Centre which was to be re-developed. The Bank had opened and kept the contents of the Box in a sealed bag when the branch relocated from Specialist Shopping Centre.

3 I had heard two previous applications of V before. As regards the first application, the Bank had applied for and obtained an order from the State Courts that V was to provide $7,000 as security for the Bank's costs in the substantive action up till the exchange of affidavits of evidence-in-chief. V then appealed against that order and his appeal was dismissed by a district judge ("the Appeal Dismissal Order"). He then sought to appeal to the High Court against the Appeal Dismissal Order but he was out of time. Therefore he applied for an extension of time to file that appeal out of time. After hearing arguments, I dismissed his application for an extension of time.

4 V then filed another application for leave to appeal to the Court of Appeal against that decision of mine. I dismissed that application as well.

5 I delivered my grounds of decision for both applications on 30 November 2016. It is reported in *Werner Samuel Vuillemin v Oversea-Chinese Banking Corp Ltd* [2017] 3 SLR 501 ("my previous GD").

6 Prior to hearing the Recusal Summons and RAS 3/2018, I had also heard an appeal by V against the outcome of another application of his (District Court Summons No 131 of 2017) in which he had applied for leave to commence committal proceedings against one Ms Lee, an officer of the Bank, on the basis that she had lied in her affidavit. His application was dismissed by the State

Courts. He then filed an appeal ("RAS 9/2017") which was heard by me. I dismissed his appeal.

7 In DC/SUM 3920/2017 filed on 17 November 2017, V applied for an Anton Piller ("AP") order for V and his representatives to enter, search and inspect the Bank's premises, and to deliver into the safekeeping of V or a supervising solicitor:

(a) a sealed bag containing the contents which were removed from the Box by the Bank;

(b) a recording of the occasion (however made) when the Box was opened and the contents removed on 28 June 2007 and/or any other day.

I will refer to that application as "the Summons for an AP Order".

8 The Summons for an AP Order was dismissed on 18 January 2018 by DJ Chiah. V then filed RAS 3/2018 on 25 January 2018 to appeal to the High Court against that decision. That appeal was fixed for hearing before me.

9 However, before the appeal was finally heard by me, V filed the Recusal Summons on 29 March 2018.

10 Both the Recusal Summons and V's appeal in RAS 3/2018 were fixed for hearing before me on 2 April 2018. After hearing arguments, I dismissed the Recusal Summons. I also dismissed V's appeal. Consequential costs orders were then made. I set out my reasons below.

Background

11 The appeal in RAS 3/2018 was initially fixed for hearing before me on 22 February 2018. However, as V was not present, I adjourned the hearing to 8 March 2018. I directed the Bank's solicitors to write to V to inform him of the next date of hearing.

12 On 6 March 2018, V wrote to the Registrar of the State Courts to seek an adjournment of the hearing fixed for 8 March 2018 to 2 April 2018.

13 On 7 March 2018, the Registrar of the Supreme Court replied to inform him:

(a) that the hearing on 8 March 2018 would remain;

(b) that he was to copy his correspondence with the court to the other party; and

(c) that since he had mentioned a delay in his receipt of correspondence (which was sent to his correspondence address which was in turn the address of a company), he might wish to provide the court with an email address at which correspondence might be sent to him.

14 On 8 March 2018, V and the Bank's solicitors appeared before the court. V said that he was not aware of the hearing on 22 February 2018. He asked for an adjournment as he needed more time to prepare his submissions and maybe an application for recusal.

15 It transpired that V had written on 5 February 2018 to the Bank's solicitors to say that he would be overseas from 6 February 2018 and would return on or about 23 February 2018, and that the Bank's solicitors omitted to inform the court of this when they attended before the court on 22 February 2018.

16 As for V's application for an adjournment, the Bank's solicitors pointed out that V himself had already argued the Summons for an AP Order before DJ Chiah. He had had enough time to prepare for the hearing of his appeal.

17 Although the Bank wished to proceed with the hearing of the appeal on 8 March 2018, I adjourned the hearing to 2 April 2018 with the direction that V was to file and serve any application for recusal with the supporting papers by 22 March 2018 and that that application was to be heard on or before the date of 2 April 2018.

18 I also urged V to give the court and the Bank's solicitors an email address in addition to the postal correspondence address he had given so that urgent communication might reach him in time. If the email address was that of a friend, it was for him to make the necessary arrangement as to how his friend was to update him.

19 The Recusal Summons was filed on 29 March 2018 after the deadline of 22 March 2018 I had stipulated.

20 On 2 April 2018, V and the Bank's solicitors attended before me. The Bank's solicitors were prepared to carry on with the hearing of the Recusal Summons although the papers were served after the 22 March 2018 deadline.

21 After hearing arguments, I dismissed the Recusal Summons and directed V to proceed with his appeal in RAS 3/2018.

22 V then said he was told that there should be another hearing for RAS 3/2018 (on a different day) after my decision on the Recusal Summons. He should have time to properly prepare for the appeal. The Bank's solicitors objected to any further adjournment.

23 I again directed V to proceed with his appeal. Thereupon he produced a 9-page document which he called a "draft" of his submissions, proceeded to sign it and tendered it to the court with a copy for the Bank's solicitors.

24 After hearing arguments, I dismissed his appeal as well. After hearing arguments on costs, I made consequential orders on costs of the appeal and of the Recusal Summons.

The court's reasons

The Recusal Summons

25 In respect of the Recusal Summons, V had proceeded to attack my previous GD to argue that I had been prejudiced against him. I do not propose to respond to all his arguments as that will entail repeating many of the reasons in my previous GD again.

26 However, I will mention a few points that V had raised partly to give an idea of his allegations and partly to address some allegations which were based on matters arising after my previous GD was delivered.

27 Before I do so, I would mention that V said that he is a litigant in person and is unfamiliar with litigation procedure although he had gathered some basic understanding of the rule of law as he had been conducting the litigation on his own for several years. He emphasised that at no time was he ever represented in court by a solicitor.

28 Yet, it seemed to this court that it was likely that he did have access to legal advice, whether or not a solicitor was formally on record as representing him in court. I alluded to this at [18] of my previous GD.

29 The language and substance of V's supporting affidavit for the Recusal Summons ("the Supporting Affidavit for RS") suggested that it was likely that he did have the benefit of a solicitor or someone with legal expertise to assist him. While V was entitled to obtain assistance from whatever source he saw fit, he was not entitled to portray himself as someone who was as severely handicapped as he was suggesting. If V had prepared the Supporting Affidavit for RS all on his own, this would suggest that he is more capable and resourceful than he had suggested. I now elaborate on some of V's allegations about prejudice on my part.

30 First, at para 31 of the Supporting Affidavit for RS, he referred to [28] of my previous GD where I referred to Mr Kirpal Singh ("Mr Singh") as his "then-solicitor". In [28] of my previous GD, I referred to a meeting which V and Mr Singh had had with the Bank. V had alleged that although he had signed some forms as required by the Bank, he was not allowed to collect the contents of the Box because he had reserved all his rights against the Bank. V's argument for the Recusal Summons was that he had never engaged Mr Singh to advise or represent him in DC 3051 or otherwise and I was therefore incorrect to refer to

Mr Singh as his "then-solicitor". Yet, in the same para 31 of the Supporting Affidavit for RS, he also said two other things. First, Mr Singh was a solicitor who had accompanied him to the Bank's office. Secondly, "Mr Kirpal Singh was the one [he] approached for advice and help on Singapore law on an ad hoc basis when it became necessary".

31 Therefore, even though V had not engaged Mr Singh to represent him in court, that did not mean that he had not engaged Mr Singh at all. Mr Singh was not accompanying V merely as a friend. In V's own words in the Supporting Affidavit for RS at para 31, Mr Singh "was a solicitor whom [he] found and over some time had agreed to accompany [him] out of Court to OCBC's office to let OCBC to deliver their job and duty properly". Also, no one had said that Mr Singh had declared that he was at the Bank's premises merely as a friend of V or in some other informal capacity.

32 Further, as mentioned above, V said at para 31 of the Supporting Affidavit for RS that Mr Singh was the one he approached "for advice and help on Singapore law on an ad hoc basis when it became necessary". Whether or not Mr Singh was the same person with legal expertise who subsequently rendered assistance to V in respect of the Recusal Summons is a separate matter which I need not elaborate on at present.

33 The point is that V alleged that I had erred in referring to Mr Singh as his "then-solicitor" when there was no error.

34 Secondly, in paras 15 and 22 of the Supporting Affidavit for RS, V said that I had, in my previous GD at [19], said that he should have "modern means of communication and modern means of access to information" and therefore

he should have been able to find out very quickly whether and when he had to file an appeal against the Appeal Dismissal Order. He said that I was labouring under the assumption that he must necessarily have such modern means of communication in the carriage of his case. He said that this was not a requirement under the law and I should respect his situation as it was part of the circumstances.

35 However, the point was that V was out of time to file his appeal to the High Court against the Appeal Dismissal Order. Therefore, he had to justify why he should be granted an extension of time to do so. To justify his delay, he sought to explain that he was out of Singapore and did not have time to think or seek advice on the Appeal Dismissal Order. However, I noted that, firstly, he knew enough to file two other applications as mentioned at [7] of my previous GD. Secondly, as for his being away from Singapore, I observed that with modern means of communication and modern means of access to information, he could have used the time, while he was away, to find out very quickly whether and when he had to file an appeal against the Appeal Dismissal Order. I did not say that he had to personally own or carry a smartphone or a laptop. The point was that if he had really wanted to, he could have gained access to such means to obtain whatever information he needed. He did not say that he was unaware of the use of modern means of communication or of modern means of access to information. He did not say that he did not know how to contact Mr Singh or someone else to get the advice he needed, if he had really wanted to.

36 While V said that the court should respect his situation as it was part of the circumstances, he did not dispute that he must respect and abide by the rules of court. As a litigant in person he may be granted some indulgence but that is

not his entitlement. In any event, the burden was on him to persuade the court of the genuineness of his reasons for delay.

37 Thirdly, in paras 51 to 54 of the Supporting Affidavit for RS, V alleged that I had pre-judged his case without having heard all the evidence. He suggested that I had said in my previous GD, at [35], that I had not heard all the evidence and yet I had concluded that there was little merit in his substantive action.

38 It is important to note that V was more than two months late in filing the appeal to the High Court against the Appeal Dismissal Order. Therefore he needed an extension of time to do so and he applied for that extension. In order to persuade the court to grant him an extension, he sought to persuade the court that he had a good case on the merits of his substantive action. Since he was making that argument, the court was entitled to come to a tentative view of the merits of his substantive action based on the evidence at that point even though the court did not have all the evidence yet. It was inconsistent of V to try and persuade the court to reach a tentative conclusion that he had a good case so as to grant him an extension of time to appeal, and yet, on the other hand, to argue that the court was not in a position to reach a tentative conclusion when the court reached a conclusion unfavourable to him.

39 By saying that my view was tentative since I had not heard all the evidence, I was trying to be fair to both sides and to give the trial court hearing the substantive action leeway to reach a different conclusion. Indeed, I specifically added in my previous GD at [40] that nothing I had said was to bind the court which eventually hears the substantive action.

40 Therefore, there is a difference between a tentative conclusion for the purpose of an interlocutory application which is based on available evidence at that point and a final conclusion after a trial based on all evidence adduced by then. A court may reach a tentative conclusion first before a final conclusion which may or may not be the same as the tentative conclusion. Yet V sought to conflate the two to suggest that I had contradicted myself.

41 Fourthly, V submitted, at paras 58 to 64 of the Supporting Affidavit for RS, that I had applied differing standards of proof for him and for the Bank. Here again, V relied on the fact that I had, in my previous GD, reached a tentative conclusion against him regarding the merits of his substantive action.

42 V then referred to my dismissal of his appeal in RAS 9/2017. As mentioned at [6], this appeal was filed against a decision by the State Courts to refuse him leave to commence committal proceedings against Ms Lee. I had, in dismissing his appeal, expressed my view that the application and the appeal to seek leave to commence committal proceedings against Ms Lee for allegedly lying in her affidavit were premature since Ms Lee's position had not yet been tested in the trial.

43 To V, I had applied different standards. I was able to reach a tentative conclusion unfavourable to V on the merits of his substantive action in his earlier application for an extension of time and yet I did not reach any conclusion against Ms Lee in respect of his application for leave to commence committal proceedings against her. Again, V had conflated two different things. The two different applications required different approaches. In the former, the court was entitled to reach a tentative conclusion, if it could, on the merits of his substantive action to assist it to decide whether to grant an extension of time

to appeal a security for costs decision. In the latter, it was the opposite. The court should be slow to grant leave to commence committal proceedings when the alleged lie had not yet been tested in the trial.

44 Leave to commence committal proceedings is not to be granted each time when it is alleged that someone has said something incorrect on oath. First, what may appear to be incorrect may turn out not to be incorrect on subsequent elaboration. Even if something incorrect was said, the circumstances which led to or caused the error and the significance of the error should be considered before leave is granted. Although the decision to grant leave would be an interlocutory one, there must be sufficient basis to grant the leave, *ie*, more than just the allegation of a lie. Since there was supposed to be a trial in which more information would be given, V was jumping the gun when he applied prematurely for leave to commence committal proceedings.

45 Fifthly, V argued, at paras 65 to 68 of the Supporting Affidavit for RS, that the Bank itself was aware of this court's partiality towards it because in respect of V's appeal to the High Court against the State Court's decision to dismiss his application for leave to commence committal proceedings, the Bank's solicitors had requested for the hearing of his appeal to be fixed before me. This was yet another example of the scandalous allegations that V was prepared to make.

46 It is quite common for one party or both parties to ask for the same judge to hear the next application or appeal arising from the same substantive action. The reason is obvious. The parties do not have to repeat the same background in the same detail as they would have had to if the matter was heard by a different judge. Also, the same judge will be aware of the previous application

and outcome and this will reduce the risk of inconsistent decisions or approaches. Furthermore, a system of docketing, which is increasingly adopted by our courts, generally entails that the same judge will hear various interlocutory matters pertaining to the same substantive action. Ironically, V himself had cited *TOW v TOV* [2017] 3 SLR 725 ("*TOW*") to support the Recusal Summons but the High Court there also alluded, at [63], to the docketing system which generally entails that the same judge determines various interlocutory applications in the same substantive action.

47 Therefore, whatever the merits of the docketing system may be, as V was relying on *TOW*, he should know that the mere fact that one party is asking that the same judge hears the next application or appeal is not evidence that that party is acknowledging the partiality of that judge in its favour.

48 Even without the case of *TOW*, it would not have been difficult for V to find out, whether from Mr Singh or some other solicitor, that one does not allege partiality by a judge just because the other party had asked for the same judge to hear another application or appeal in the same substantive action.

49 I add that, not being content to allege that I was prejudiced against him, V also alleged that DJ Chiah was prejudiced against him as DJ Chiah had adopted the findings in my previous GD that were unfavourable to V but failed to adopt the part of my previous GD which V had agreed with.

50 On this point, V cited [36] of my previous GD where I said,

> The question of whether the Bank is to be responsible for any missing contents should be dealt with after he collects the contents of the Box. It is only thereafter that he can then fairly assert what is missing. If there is nothing missing, then it is

> unclear what damages V is claiming for in respect of the way in which the Bank handled the matter. If he is claiming for damages for being kept out of possession of the contents, he has to prove the damages and bear in mind that he himself refused to accept the Bank's suggestion in 2010 and 2011. In any event, whether or not there is any item missing, it is for V to collect the contents of the Box anyway.

51 V said that he agreed with me that it was only logical that he must first retrieve the contents from the Box. V alleged that it was pursuant to that suggestion in my previous GD that he proceeded to apply for the AP order.

52 However, I did not say in my previous GD that he should apply for a court order in order to collect the contents of the Box. Indeed it must have been obvious to him from my previous GD that I was saying the opposite. There was no need for any court action or court order to collect the contents since the Bank had made an alternative proposal whereby he could do so without signing the Bank's "prescribed release forms" and therefore without waiving his rights against the Bank for any of the Bank's previous conduct. I was urging him to act on that proposal as he had unreasonably refused to do so. Yet he twisted the meaning of my words to say that I had suggested that he should apply for the AP order and then to blame DJ Chiah for being prejudiced by ignoring the meaning of my words.

53 I would add that V also referred to [33] of my previous GD. There, I had said that if the Bank did not stick to the alternative proposal that it had itself suggested, V could easily apply for a court order to obtain the contents of the Box. At para 56 of the Supporting Affidavit for RS, he alleged that I had made it sound like obtaining an order of court for him to get repossession of the contents was a simple matter "but in actual fact this was contradicted as evident from the dismissal" of the Summons for an AP order. Again, he had twisted the

meaning of my words. My reference to the option of applying for a court order would apply only if the Bank did not honour the alternative proposal which the Bank itself had proposed. In the present instance, V did not accept the alternative proposal but yet chose to apply to court for an AP order.

54 Sixthly, in para 9 of the Supporting Affidavit for RS, V complained about my non-response in respect of the conduct of the Bank's solicitor at the hearings on 22 February 2018 and 8 March 2018 for RAS 3/2018.

55 It will be re-called that on 22 February 2018, V was not present at the hearing. The Bank's solicitor omitted to inform the court that V had written to them on 5 February 2018 to say, at para 2 of the letter, that he would be away from 6 February 2018 for the usual reason" and was expected to be back in Singapore on or about 23 February 2018.

56 At the hearing on 8 March 2018, V brought the court's attention to his letter of 5 February 2018 to the Bank's solicitor. The Bank's solicitor said that he did not notice para 2 of V's letter although he saw the letter. At the time when he read the letter, the date of the hearing of the appeal had not yet been fixed. When the hearing date was fixed for 22 February 2018, the solicitor overlooked the period when V said he would be absent.

57 According to V, the explanation that the solicitor did not notice para 2 of V's letter was a lie because the Bank's solicitors had in their reply on 6 February 2018 referred specifically to para 2 of V's letter and stated that it was unclear what the "usual reason" mentioned in para 2 referred to. Yet I did not see fit to criticise the Bank's solicitor but in fact rewarded him with no consequence and simply proceeded to adjourn the hearing to 2 April 2018.

58 However, V omitted to mention that at the hearing on 8 March 2018, he did not highlight to me the fact that the Bank's solicitors had replied to him on 6 February 2018 and had referred to para 2 of his letter of 5 February 2018. This was highlighted only subsequently in the Supporting Affidavit for RS which he filed late on 29 March 2018.

59 At the next hearing on 2 April 2018, I asked the Bank's solicitor whether he wished to respond to this development and he said that he did not notice the date of 23 February 2018 (when V was expected to be back in Singapore) when the hearing of the appeal was initially fixed for 22 February 2018. When he had written on 6 February 2018 to V, his focus was on V's "usual reason" and not the actual date of absence.

60 Obviously the Bank's solicitor had acted erroneously in failing to inform the court on 22 February 2018 that V had written to him on 5 February 2018 to say that he would be away from 6 February 2018 to 23 February 2018. While I was not happy with this state of affairs, I could not conclude for the time being whether the error was inadvertent or deliberate. Hence, I saw no need to "criticise" the conduct of the Bank's solicitor which had no bearing on the merits of V's appeal.

61 I add that I also did not criticise V for filing the Recusal Summons late, *ie*, after the deadline I had given him to do so. Neither did I criticise him during the hearing on 2 April 2018 for making baseless accusations of prejudice against me.

62 As V has asked for reasons for my decisions on both the Recusal Summons and his appeal in RAS 3/2018, I have elaborated in writing.

63 I hope I have given a flavour of V's allegations against me. While he chose to pick on those decisions or comments which were adverse to him, he ignored the fact that on 22 February 2018 when he was absent for the hearing of his appeal, I could have dismissed his appeal as I was not aware that he had informed the Bank's solicitor that he would be away until 23 February 2018. I did not dismiss his appeal then. Instead, I adjourned the appeal and directed the Bank's solicitors to write to him to inform him of the next hearing date.

64 At the next hearing date of 8 March 2018 when V asked for an adjournment and the Bank did not agree, I could have refused the adjournment. After all, as the Bank's solicitor had submitted, V had already personally presented his arguments before DJ Chiah for the Summons for an AP order and should therefore have been prepared to argue his appeal on 8 March 2018.

65 As for V's reason for seeking an adjournment, *ie*, that he might want to apply for recusal, this was not the first time that he had alluded to such an application. In V's letter dated 2 March 2017 to the Registrar of the Supreme Court, he had asked for his appeal in RAS 9/2017 to be fixed before a judge other than me. The Registrar replied on 9 March 2017 to inform him that he was to file an application for recusal if he wished to object to my hearing that appeal. He did not do so then. Hence, when he filed RAS 3/2018 on 25 January 2018, he should already have considered whether to file an application for my recusal if the appeal was fixed for hearing before me which was likely given the past fixtures. Therefore he had had enough time to prepare and file that application too if he had wanted to. It would have been within my discretion to refuse the adjournment. Yet I decided to give him the indulgence he sought and adjourned the appeal to 2 April 2018 with the directions mentioned above (see [17] above).

66 It seemed to me that V was trying to engage in judge shopping in the hope that he would find a judge who would give him a favourable outcome. This he cannot do.

67 The test for recusal on the ground of apparent bias is whether the acts complained of give rise to a reasonable suspicion or apprehension in a fair-minded reasonable person with knowledge of the relevant facts that the judge is biased (see *TOW* at [31]). As the High Court observed in *TOW* at [35], a judge is not banned from hearing a matter simply because he may have criticised a party's conduct in an earlier decision. At [42], the High Court said that the mere fact that a judge had previously made adverse comments or findings against a litigant is, on its own, not sufficient for a recusal application to succeed. Also, I did not consider the language in my previous GD to be intemperate in the circumstances. I add that even if a judge were wrong in his reasons or conclusion, that in itself is not a reason to allege prejudice on his part. Having considered the lengthy Supporting Affidavit for RS, I was of the view that my observations or reasons in my previous GD were not so illogical or inconsistent that they would lead to a reasonable suspicion or apprehension of bias. Neither were my previous decisions, when compared with any subsequent decisions of mine, so illogical or inconsistent.

68 In the circumstances, I had no hesitation in concluding that a fair-minded observer would not have harboured a reasonable suspicion that the court was prejudiced against V. In my view, V had made baseless allegations of prejudice against this court and I dismissed the Recusal Summons. Indeed it may well be that he also committed contempt of court by his baseless allegations.

69 I wish to make another observation. I have mentioned that it appeared likely that V was assisted by a solicitor or someone with legal expertise in preparing the Supporting Affidavit for RS. If this is so, I wish to say that no one, whether a solicitor or a lay person, is entitled to assist another to make allegations of prejudice against a judge when he knows or ought to know that the reasons for the allegations are baseless. He cannot use the excuse that he was merely acting on instructions or trying to help a friend or someone in need of help. The cloak of anonymity only hides his identity for the time being. It does not exonerate him from culpability.

RAS 3/2018

70 I come now to V's appeal against DJ Chiah's decision to dismiss the Summons for an AP Order.

71 An AP order is a draconian order to be made only when the circumstances warrant it. The following requirements, as set out in *Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901 at [14] and cited in *BP Singapore Pte Ltd v Quek Chin Thean and others* [2011] 2 SLR 541 at [21], must be satisfied before an AP order may be granted:

(a) The plaintiff must have an extremely strong *prima facie* case.

(b) The damage suffered by the plaintiff would have been very serious.

(c) There is a real possibility that the defendant would destroy relevant documents.

(d) The effect of the AP order must not be out of proportion to the legitimate object of the order.

72 As mentioned in my previous GD, since November 2010, the Bank had offered (as an alternative proposal) on a number of occasions to hand over the contents removed from the Box to V (in the presence of others) without requiring him to sign release forms of the Bank to waive his rights against the Bank. He refused to accept the offer.

73 Furthermore, the very long delay in V's filing of the Summons for an AP Order and the existence of an inventory list previously given by the Bank to him militated against his allegation about the likelihood of tampering of the contents of the Box by the Bank. If the Bank was minded to tamper with any of the contents, the Bank would have had more than enough time to do so. Indeed in V's first supporting affidavit dated 23 October 2017 for the Summons for an AP order, he himself referred at para 19 to the fact that the Bank had more than enough time to tamper if it really wanted to do so. V also alleged that the Bank gave him the inventory list late (several months after the Box had been opened). However, the point was that when he received the list, apparently in 2008 according to the Bank's solicitor, he did not then allege that there was a likelihood of tampering or further tampering by the Bank. Neither did he file the Summons for an AP order until 17 November 2017, about nine years after he received the inventory list.

74 Insofar as V sought to rely on my previous GD to justify the Summons for an AP Order, I have elaborated above (at [50]–[53]) to show that he had twisted the meaning of my words.

75 V submitted that there was already evidence of tampering by the Bank because the Bank had opened the Box and removed the contents therein without his consent. However, that was not the complete picture. The Box had been maintained at the Bank's branch at Specialist Shopping Centre which was being re-developed. The Bank alleged that it had notified and/or tried to notify V to clear the contents of the Box in view of the re-development plans. However, V did not respond. It was in such circumstances that the Bank then had to open the Box and remove the contents. The Bank said that the contents in the Box were accounted for and recorded by external accountants. An inventory list was prepared.

76 Apparently, V challenges the notifications and attempts by the Bank to contact him before the Box was opened and the contents therein removed. However, he has not yet adduced objective evidence to suggest that the Bank was acting *mala fides* in removing the Box and contents. His own perception or assessment of the evidence so far is not enough. Accordingly, it was incorrect for V to allege that what the Bank did constituted tampering. That was an unjustifiable quantum leap. Based on the evidence so far, what the Bank did did not constitute any tampering which would justify the granting of an AP order.

77 Also, it was premature for V to seek a recording of the forced opening of the Box on 28 June 2007 and/or any other day by way of an AP order.

78 First, the opening of the Box and the removal of its contents are not in dispute.

79 Secondly, V has not even said whether any of the contents of the Box is missing and, if so, to identify the item even though he was given an inventory

list of the contents. In addition, since November 2010, the Bank made an alternative proposal to give him the opportunity to go and collect the contents from the Bank without waiving his rights against the Bank. He chose not to do so. The relevance of the recording has not been made out yet.

80 Thirdly, there was insufficient evidence to show that, if the recording exists and it becomes relevant, the Bank is likely to tamper with it such that an AP order was appropriate instead of the usual process of discovery. As mentioned above, I did not agree that there was already evidence of tampering by the Bank.

81 I would mention that when I asked V at the hearing on 2 April 2018 why he refused to accept the Bank's alternative proposal, V suggested that it was not clear from the letters from the Bank (or its solicitors) that he need no longer sign a form to waive his rights against the Bank if he should go and collect the contents of the Box from the Bank. He said it was not expressly stated as such. I found this suggestion disingenuous. The substance of those letters made it clear that the Bank was aware that he did not want to sign its "prescribed release forms". Hence the Bank made an alternative proposal for him to collect the contents in the presence of the Bank's representatives, external lawyers and auditors without mentioning that he would also be required to sign a form to waive his rights. He knew this. His latest suggestion was a poor attempt to explain his refusal to accept the alternative proposal. In para 16 of his first supporting affidavit for the AP order, he said that, "It is absurd for OCBC to expect me to give them a full discharge before I can check my property/sealed pack". However, the Bank was no longer asking for a discharge.

82 As far as V was concerned, the Bank had previously acted wrongly when on 2 December 2009, the Bank did not allow him to collect the contents because he had reserved all his rights against the Bank (see [28] of my previous GD). To him, the Bank could not erase the wrong by making the alternative proposal subsequently. Also, to him, there was no legal basis for the Bank to make that proposal.

83 I would also mention that recently V asked for a typed version of the inventory list which was handwritten. However, this was not part of the Recusal Summons or his appeal in RAS 3/2018. The Bank refused to provide a typed version unless V could say which part of the inventory list was unclear.

84 It appeared that V had assumed that he was entitled to demand that the Bank provide him with a typed version. However, he did not raise any objection or problem with the handwritten copy or request a typed version when he received the handwritten one many years ago.

85 V also did not explain why he could not get someone else to type the list for him. Neither did he offer to pay for a typed version from the Bank. Neither was he going to collect the contents.

86 In any event, V's request for a typed version of the inventory list was a distraction. The need for a typed version had not been established yet since V had not specified so far whether anything was missing. Should it become necessary to refer to the specific items in the inventory list in the future, I agree that a typed version will be helpful for easier reading. Whether it is V or the Bank who should then produce a typed version is a matter which they should resolve without troubling the court.

87 That said, I would suggest that if and when V should eventually collect the contents of the Box, a typed version of the collected contents should be prepared for his signature to avoid or minimise further dispute. That signature should simply be for the purpose of his acknowledgement of the contents he has collected and not a waiver of his rights against the Bank.

88 In the circumstances, the requirements for the grant of an AP order as set out above at [71] were not met. There was no basis for the Summons for an AP Order. It was an abuse of the process of the court and was rightly dismissed by the court below.

The substantive action

89 DC 3051 was filed in 2013. Until now, the substantive action still has not been heard. When I asked why this was so, I did not receive any satisfactory response. The Bank's solicitors appeared to think that they had to await the outcome of all interlocutory matters before the hearing of the substantive action. In my view, it was not necessary to wait. Aside from the application for security for costs, the other applications and appeals need not have delayed the hearing of the substantive action. For example, even if the AP order was granted, V was not saying that he would withdraw the substantive action. Indeed his application to obtain a recording of the 2007 removal of the Box and contents suggested that he was still intent on pursuing the substantive action.

90 On V's part, all he could say was that he was forced to take certain steps. He would have the trial when the facts were clear. He needed help from lawyers. In my view, these were not good reasons. The certain steps he took were the interlocutory applications or appeals he has filed. These skirmishes have

engaged much time and resources needlessly and succeeded in distracting the parties such that the substantive action was apparently put on hold. V did not say what facts were unclear and how long it would take him to clarify them before he was ready for trial. If he really needed help from lawyers for the substantive action, I have no doubt that he is resourceful enough to get that help bearing in mind all the steps he has taken so far.

91 The delay in the hearing of the substantive action is not satisfactory. I have expressed my concern to the parties at this unsatisfactory state of affairs. I hope the Registry of the State Courts will take active steps to bring the substantive action to its trial without further delay.

Woo Bih Li
Judge

Appellant/Plaintiff in person;
Jansen Chow, Sara Sim and Ang Leong Hao (Rajah & Tann Singapore LLP) for the Respondent/Defendant.