Lim Meng Chai v Heng Chok Keng and Another
[2001] SGHC 33

Case Number : OS 116/2000
Decision Date : 20 February 2001
Tribunal/Court : High Court
Coram : Chan Seng Onn JC
Counsel Name(s) : Tan Phuay Khiang and Tan Shiew Hwa (Tan Loh & Wong) for the applicant; V K Rai (V K Rai & Partners) for the respondent
Parties : Lim Meng Chai — Heng Chok Keng; Krishana Bhaktavatsalu (respondent/stakeholder)

JUDGMENT:

Grounds of Judgment

1. The defendant, Mdm Heng Chok Keng (Mdm Heng), applied for an order of committal for contempt of court against the plaintiff, Mr Lim Meng Chai (Mr Lim), and the respondent, Mr Krishna Bhaktavatsalu (Mr Krishna). At the hearing, the application against Mr Lim was withdrawn but that against Mr Krishna proceeded.

2. I found that Mr Krishna had committed contempt of court and imposed on him a total imprisonment term of 4 months. I now give my reasons.

Background

3. Mr Krishna, the sole proprietor of Krishna & Co, was the solicitor acting for Mr Lim in his divorce petition filed sometime in July 1998. The marriage of Mr Lim and Mdm Heng was eventually annulled in May 1999. In January 2000, Originating Summons No. 116 of 2000 was taken out by Mr Krishna on behalf of Mr Lim for the property known as Block 819 Yishun Street 81 #04-672 (the flat) and jointly owned by the ex-spouses to be sold, and the net proceeds of the sale to be dispersed solely to Mr Lim.

4. By a deed of settlement made on 11 May 2000, Mr Lim and Mdm Heng agreed, *inter alia*, that:

> (a) The flat would be sold on the open resale market;
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> (b) Mr Lim would have conduct of the sale;
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> (c) Krishna & Co would hold the net proceeds of sale as stakeholder;
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> (d) Subject to payment of legal costs, the stakeholding monies together with interest accrued thereto would be utilised solely for the purpose of paying off the mortgage loan due to MBf Finance Berhad (MBF).

5. Mr Krishna attested the signature of Mr Lim on the deed. Being the solicitor advising Mr Lim on the deed, he ought to know his obligations as a stakeholder and to whom he had to pay over the stakeholding monies.

6. When the sale of the flat was completed, Krishna & Co, being the conveyancing solicitors, received a cheque dated 6 June 2000 for S$101,454.19. In a letter dated 20 July 2000, Krishna & Co advised the parties that there was a balance sum of S$87,789.09 in the clients account after certain agreed deductions.

7. However, Krishna & Co failed to release the stakeholding monies despite several written reminders (dated 24 August 2000, 31 August 2000 and 8 September 2000) from Mdm Hengs solicitors, Tan Loh & Wong (TLW). On 18 September 2000, Mr Krishna informed Mr Tan Shiew Hwa (Mr Tan), the solicitor from TLW handling the matter for Mdm Heng, that Mr Lim had refused to give him the authority to release the stakeholding monies and instead wanted Mr Krishna to release the monies to him. On the same day, TLW wrote to Krishna & Co stating that his client had wilfully breached the terms of the deed and they would be taking out proceedings against his client.

8. On 26 September 2000, TLW applied under Summons-in-Chambers No. 603944/00 (SIC) for the following orders:

> 1. A declaration that the stakeholding monies for the sum of S$87,789.09 together with interest accrued thereto (collectively called "the said sum") being the net sale proceeds in respect of [the flat] shall be utilised solely for the purpose of paying off the mortgage loan due to [MBF];
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> 2. That the stakeholders namely, M/s Krishna & Co do **forward forthwith** to [TLW] the cheque for the said sum to be made in favour of [MBF] for [TLW] to forward the same to the Malaysian firm of solicitors acting for the Mortgagors and Mortgagees in the redemption of the mortgage loan in respect of the Malaysian property known as No. 3, Jalan Cenderai 22, Taman Perindustrian Kota Putri, 81750 Johor Bahru;
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> 3. .
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> .
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> (Emphasis is mine.)

9. On 3 October 2000, Mr Lim appointed Myintsoe Mohamed Yang & Selvaraj to act for him in place of Krishna & Co. After that, Thomas Tham & Partners acted for him. However at the hearing of the SIC before Lai Siu Chiu J on 11 October 2000, Mr Lim discharged his solicitors and acted in person. Mr Tan applied orally to amend prayer 2 of the SIC. I noted that the words *or its equivalent in Malaysian Ringgit* (the oral amendments) were penned on the SIC in the court file after the words the said sum in prayer 2 of the SIC. From the handwriting, it appears to me that the judge wrote those words herself on the SIC following Mr Tans oral application to amend the SIC.

10. After the hearing, TLW immediately informed Krishna & Co vide a letter dated 11 October 2000 that Lai J had granted an order in terms of all the prayers in their clients SIC and that the sealed copy of the order of court would be served on them once it was extracted.

11. On the next day, TLW wrote to Krishna & Co enclosing a copy of the letter signed by the ex-spouses, where they jointly gave their irrevocable authority and directed Krishna & Co to release forthwith the net sale proceeds of the flat together with interest accrued to TLW. In the letter, both ex-spouses agreed to indemnify Krishna & Co against all claims, proceedings, suits or actions arising from their acting on their instruction to release the said sum to TLW. TLW requested for the release to them of the cheque for the stakeholding monies by 4.00 p.m. in exchange for the original of the aforesaid letter of authority and indemnity.

12. On the same day, Krishna & Co replied requesting for reasonable notice of at least 48 hours for verification of the document and confirmation that they would not be liable to any party in respect of the release of the stakeholder sum. They said that they would revert the next day and asked for a copy of the order of court. Mr Krishna signed that letter.

13. Subsequently, TLW extracted the court order as an order by consent in the following terms:

> 1. Order in terms for Prayer 1;

2. Order in terms for Prayer 2 as orally amended by Counsel for the Defendant; and

3. Costs to Defendant payable by the Plaintiff agreed at S$2,500.

14. On 18 October 2000 at 5.40 p.m., TLW served on Krishna & Co their letter enclosing the duly sealed order of court and a copy of the SIC. In that letter, attention was drawn to the amendments made to prayer 2 of the SIC, for which Lai J had granted leave. The specific amendments allowed were unambiguously set out and highlighted in that letter. By now, there was no question that Mr Krishna was personally aware of the full terms and ambit of the order made by Lai J.

15. That letter further made reference to a telephone conversation between Mr Krishna and Mr Tan, where Mr Krishna indicated that he preferred to make a telegraphic transfer (TT) to MBF the equivalent of the said stakeholding monies in Malaysian Ringgit because of the Malaysian foreign exchange control policy. Mr Tan said that he had no objections provided that Mr Krishna made the TT within the next 48 hours, and the copy of the TT slip and the statement of account with the relevant copies of the bank statement or deposit slips showing the fixed deposit facility and accrued interest earned were furnished to them.

16. On 20 October 2000, Mr Tan made four unsuccessful attempts between 9.00 a.m. till 5.45 p.m. to reach Mr Krishna on his office telephone. After expiry of the 48 hours, TLW wrote a letter dated the same day stating that both Mr Lim and Mdm Heng required him to hand over the stakeholding monies, and gave notice that unless they received their firms cheque for the stakeholding monies plus accrued interest by 11.30 a.m. on 21 October 2000, they would report to the relevant bodies on the matter.

17. Finally at about 11.15 a.m. on 21 October 2000, Mr Tan managed to speak to Mr Krishna by which time the 48 hours had expired. **Mr Krishna said that he had uplifted the fixed deposit in respect of the stakeholding monies.** (The significance of this would only be apparent later). However, Mr Krishna told Mr Tan for the first time that he was not prepared to release the cheque for the stakeholding monies together with the accrued interest as directed by the court order unless TLW gave his firm a letter of indemnity because a creditor of his ex-client, Mr Lim, had served him a garnishee order to show cause. Mr Tan then pointed out to Mr Krishna that the judgment debtor in the garnishee order was neither his ex-client Mr Lim nor the ex-spouse Mdm Heng, but one Creative Ceiling Design & Contracts. It was further pointed out to Mr Krishna that both the ex-spouses had given their written irrevocable authority to Mr Krishna to release the stakeholding monies to TLW and they also had given to him their written indemnity in respect of his acting on their written authority.

18. TLW followed up with another letter dated 21 October 2000 setting out the telephone conversations between Mr Tan and Mr Krishna. TLW put Mr Krishna on notice in the letter that the ex-spouses were relying on the stakeholding monies to complete the sale and redemption of their Malaysian property fixed on 11 November 2000. As Mr Krishna had told Mr Tan that he had uplifted the fixed deposit in respect of the stakeholding monies, TLW specifically asked for a copy of their initial letter addressed to the bank to place the stakeholding monies on fixed deposit, the relevant fixed deposit slips and their letter addressed to the bank instructing them to uplift the said fixed deposit facility and the banks statement showing the interest earned thereon. This was of considerable significance on the subsequent issue of whether Mr Krishna was mistaken about the details of this alleged fixed deposit as he had claimed. The constant reminders sent to Mr Krishna to furnish these documents, I believe, would have made it extremely improbable for Mr Krishna to be mistaken about this alleged fixed deposit and its uplifting.

19. TLW warned him that they were in the midst of taking their clients instructions on commencement of contempt proceedings in respect of Lai Js order dated 11 October 2000. As Mr Krishna had told Mr Tan that he would be making an application to the court, presumably an Interpleader Summons on the stakeholding monies, TLW asked to have by 2.30 p.m. on 23 October 2000 either the copies of their court application or alternatively their firms cheque, failing which their client would be at liberty to take appropriate action.

20. Krishna & Co replied on the same day stating that they would be filing an application to vary Lai Js order because of the

garnishee proceedings against the sum held by them as stakeholders. Krishna & Co further said that they could not accept the indemnity offered by the parties in their personal capacity.

21. On 23 October 2000, Krishna & Co took out a Summons-in-Chambers No. 604221 of 2000 with Mr Krishna himself as the applicant to vary paragraph 1 of Lai Js order to the following:

> A declaration that the sum of $84,489.09 being the stakeholding monies of $87,789.09 less the garnishee sum of $3,300.00, together with interest accrued thereto (if any) (collectively called "the said sum") being the net sale proceeds in respect of [the flat] shall be utilized solely for the purpose of paying off the mortgage loan due to [MBF].

22. In support of that application, Mr Krishna affirmed an affidavit on 23 October 2000 averring that his firm was served on 13 October 2000 with a garnishee order to show cause for $3,300, which hearing was fixed on 9 November 2000. Being in a dilemma as to which order of court to comply with, he requested that $3,300 be deducted from the stakeholding monies held by his firm pending disposal of the garnishee proceedings. In the meantime, he applied for Lai Js order to be varied. He attached to his supporting affidavit the extracted order of Lai J together with the SIC that the order referred to, which I noted was however without the oral amendments. Nevertheless, this confirmed that Mr Krishna was personally in receipt of TLWs letter of 18 October 2000, which had unambiguously set out in full the specific oral amendments allowed, and which had enclosed the SIC and the LS copy of the court order.

23. I therefore found beyond a reasonable doubt that Mr Krishna knew that he had been ordered to **forward forthwith** to TLW the cheque made out to MBF for S$87,789.09 *or its equivalent in Malaysian Ringgit* together with interest accrued. There could be no question that he was fully aware of all the terms of Lai Js order. Being a solicitor, Mr Krishna could have no confusion as to the meaning of order in terms for prayer 1, and prayer 2 as orally amended in the court order that he was served with.

24. On 23 October 2000, TLW again asked Krishna & Co for a copy of:

> (a) their firms initial letter addressed to the bank and the relevant fixed deposit slips in respect of the stakeholding monies of S$87,789.09;
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> (b) their firms letter addressed to the bank giving the bank their instructions to uplift the fixed deposit facility; and
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> (c) the banks statement showing the interest earned on the stakeholding monies.

25. They were put on notice that unless the abovementioned documents were forwarded by 2.30 p.m. on the same day, their client would be at liberty to take appropriate action as she deemed fit.

26. TLW made the 3rd request for the same documents on 28 October 2000. On 1 November 2000, the request was repeated. Despite these four requests, Mr Krishna did not provide the documents to TLW. Mr Tan in his affidavit filed on 2 November 2000 in response to Mr Krishnas affidavit, highlighted at paragraph 8 the reminders for the abovementioned documents and stated that they had instructions to seek the courts direction to give a deadline for the stakeholders to forward the relevant copies of these documents, failing which, to report to the relevant bodies as their client was concerned over the stakeholders persistent refusal to confirm the fixed deposit for the stakeholding monies and its uplifting.

27. At the hearing of Mr Krishnas SIC application on 6 November 2000, Lee Seiu Kin JC dismissed the application with no order as to costs, and further ordered that the "Applicant shall **comply forthwith** with the Order of Court dated 11 October 2000 made by her Honour Justice Lai Siu Chiu". This order directed Mr Krishna **personally** to comply forthwith with Lai Js order. Since Mr Krishna argued the matter himself before Lee JC, he obviously knew exactly what order the judge had made.

28. On the same day, TLW wrote to Krishna & Co referring to a discussion between Mr Krishna and Mr Tan at the High Court, presumably after Lee JC had made the order. The letter was to confirm that Mr Krishna preferred to let TLW do the telegraphic transfer (TT) of the stakeholding monies to the Malaysian mortgagees, and that Mr Krishna would therefore be forwarding to TLW on 7 November 2000 a cheque to be made in favour of TLW for the sum of S$87,789.09 together with accrued interest to enable TLW to effect the TT. Mr Krishna would also forward to TLW the relevant fixed deposit slips and the bank statement showing the amount of interest earned on the fixed deposit.

29. On 7 November 2000, the firm of Alfred Dodwell (now acting for Mr Lim) faxed a letter to Krishna & Co with a copy to TLW, stating that their client would like the ancillaries of the divorce to be resolved prior to any further step being taken in the release of the stakeholding monies and its utilisation to pay off the mortgage loan with MBF. The letter requested Krishna & Co to hold back the release of the monies to TLW as their client had instructed them to apply to the High Court to stay and/or vary Lai Js order.

30. On 8 November 2000, TLW forwarded a copy of Lee JCs order. The covering letter further referred to a discussion between Mr Krishna and Mr Tan where Mr Krishna assured Mr Tan that if he did not receive the court applications from Alfred Dodwell by 6.00 p.m., he would proceed forthwith to forward the requisite cheque to TLW. When Mr Tan telephoned Mr Krishna at about 6.20 p.m., he confirmed that he had not received the court papers and then referred to Alfred Dodwells letter. It would appear that Mr Krishna was now singing a different tune. TLW thus put Krishna & Co on notice that unless they received the cheque on or before 11.00 a.m. on 9 November 2000, they would proceed without reference to them.

31. Following this, Alfred Dodwell wrote to TLW with a copy to Krishna & Co, stating that they would be making the necessary application on the next day, 9 November 2000, to stay and/or vary Lai Js order. They would also be applying in the Family Court for a pre-determination of the respective rights of the ex-spouses to the stakeholding monies. The applications would be served on TLW on 9 November 2000. The letter went on to say that if TLW still insisted on the monies being transferred to them, then TLW was requested to confirm that they would not release the monies to MBF or to their client until the applications were dealt with.

32. On 9 November 2000, the LS copy of Lee JCs order was served on Krishna & Co. Meanwhile, there was a further exchange of letters between Alfred Dodwell and TLW. Alfred Dodwell informed TLW on 9 November 2000 that they had taken out an application in the Family Court and would be applying on the next day for a stay and/or variation of Lai Js order pending the determination of the issues in the Family Court. Alfred Dodwell reiterated that their client, Mr Lim, had no objections to the transfer of the stakeholding monies to TLW provided that TLW agreed to act as a stakeholder until the distribution issue was resolved in the Family Court. If TLW were agreeable, they would release Krishna & Co as stakeholders. This letter was copied to Krishna & Co.

33. However, Alfred Dodwell never made any application on behalf of Mr Lim to stay and/or vary Lai Js order.

Pre-Committal Proceedings

34. When there was still no compliance with the two orders of court, TLW on behalf of Mdm Heng filed an ex-parte SIC on 13 November 2000 for leave to apply for an order of committal against both Mr Krishna and Mr Lim. Lee Seiu Kin JC granted leave on 17 November 2000.

35. Meanwhile, the application by Mr Lim in the Family Court was withdrawn when the matter was heard on 20 November 2000 before Yap Siew Yong DJ. TLW then wrote to Krishna & Co on 22 November 2000 informing them of the same, and making it clear that their lame excuse to continue to withhold the release of the stakeholding to TLW pending that application before the Family Court would no longer hold water.

36. On 28 November 2000, TLW took out a Notice of Motion (with 15 December 2000 as the return date) on behalf of Mdm Heng

for an order that:

> (a) Mr Krishna be committed to prison for his contempt of court by his omission/neglect to obey the aforesaid two orders of court; and
>
> (b) Mr Lim be committed to prison for his contempt of court by his wilful act of abetting and/or instigating and/or inducing Mr Krishna to perpetuate his omission/neglect to obey the aforesaid orders of court.

37. The penal notice stated that if they neglected to obey the order by the time therein limited, they would be liable to the process of execution for the purpose of compelling them to obey the same.

38. On 8 December 2000, Ang & Partners, the new solicitors acting for Mr Lim, wrote to TLW with a copy to Krishna & Co, confirming that Mr Lim had no objections to the release of the stakeholding monies currently held by Mr Krishna to MBF. Ang & Partners wrote another letter on the same day to Krishna & Co. and referred to the attached copy of the earlier signed irrevocable authority and instruction dated 11 October 2000 directing them to release forthwith the stakeholding monies to TLW. Ang & Partners then made it very clear to Krishna & Co that Mr Lim was reiterating his instruction to them to release forthwith the said monies to TLW.

39. Subsequently on 11 December 2000, TLW received a faxed letter from Krishna & Co confirming that they would be forwarding the cheque for the stakeholding sums in view of the aforesaid letter from the solicitors for Mr Lim. Mr Krishna himself signed this letter.

40. On the day of the hearing of the Motion fixed for 15 December 2000, Mr Krishna and his solicitor, Mr Magintharan of Netto Tan & S Magin, enquired from Mr Tan outside the corridor of Court 15 at the High Court whether the matter could be resolved. Mr Tan reiterated his clients stand that so long as the stakeholding monies were received and the costs were resolved, his client would be prepared to settle the matter. Mr Krishna then orally assured Mr Tan that he would arrange to forward to TLW within one hour from the conclusion of the court session the cheque to be made in favour of TLW so that TLW would be able to execute the TT of the monies directly to MBF.

41. On 15 December 2000, the Motion was heard before Choo Han Teck JC. Mr Goh Phai Cheng SC, now acting for Mr Lim, informed the judge that his client had advised that the money be handed over. Mr Magintharan said that his client had agreed to hand over the stakeholding money. Mr Tan told the judge that the matter might be settled amicably leaving only the question of costs. The judge then adjourned the matter for a week. Later that day, TLW received a faxed letter dated 14 December 2000 from Krishna & Co enclosing **a copy** of his firms clients account OCBC cheque no. 397564 dated 15 December 2000 for the sum of S$87,789.09 made in favour of MBF.

42. But by 18 December 2000, the original of the cheque was still not received by TLW. TLW wrote again on 18 December 2000 to Netto Tan & S Magin stating that their clients several assurances could not be relied on and that he had resorted to issuing his firms cheque in favour of MBF instead of TLW in an attempt to buy more time, probably because of some financial problems. Again TLW offered an amicable settlement and urged them to impress on their client to proceed to TT the stakeholding monies with interest accrued directly to MBFs bank account, or alternatively, to send his firms cheque made payable to TLW by 20 December 2000. Details of MBFs bank account were also provided in TLWs letter.

42. At the resumed hearing a week later on 22 December 2000, Choo Han Teck JC was told that the matter could not be settled and the parties needed a date for hearing. The judge adjourned to a date to be fixed since he had a criminal case before him on that same day. The judge also impressed on the respective parties counsel to explore an amicable settlement of the matter.

43. The parties and their respective counsel conferred and mutually agreed that Mr Krishna would, through his solicitors, forward to TLW **two** separate cheques both made in favour of TLW by the close of business that day in respect of the stakeholding monies and accrued interest. Mr Krishna requested and TLW agreed to return to him, again through his solicitors,

the original cheque dated 15 December 2000 for S$87,789.09 made out to MBF (the original MBF cheque) upon TLWs receipt of the aforesaid two cheques.

44. Later in the afternoon of 22 December 2000, TLW received in their mail the original of Krishna & Cos letter dated 14 December 2000 together with the original MBF cheque. The envelope was in fact **postmarked** 21 December 2000. This clearly indicated that there was considerable delay on Mr Krishnas part in sending out the original MBF cheque to TLW and that the posting was timed such that it was done only on the day immediately preceding the date of the adjourned hearing fixed before Choo Han Teck JC. Obviously, that much delayed posting prevented TLW from forwarding the said cheque to MBF for them to encash it before the hearing.

45. TLW subsequently received two cheques dated 22 December 2000, made payable to TLW and drawn on Krishna & Cos clients account with OCBC, vide a letter dated 22 December 2000 sent by Netto Tan & S Magin. That letter stated that it was mutually agreed by all parties and their counsel that although the order of court was for sums to be made payable to MBF, the payment to TLW would constitute full compliance with the order of court dated 11 October 2000.

46. TLW then proceeded to present the aforesaid two cheques for payment. On 26 December 2000, their bank informed them that payment on the two cheques had been stopped. TLW immediately wrote to inform Mr Krishnas solicitors of the stop payment and to state that their clients insincerity in settling the matter warranted an urgent order of committal.

47. On 28 December 2000, solicitors for Mr Krishna and the applicant appeared before AR Sharon Lim. Mr Tan, on behalf of the applicant, informed AR Sharon Lim briefly what had happened in relation to the stop payment on the two cheques forwarded by Netto Tan & S Magin. Mr Tan told AR Sharon Lim that the matter was very urgent because the stakeholding monies were at stake. AR Sharon Lim fixed the matter for hearing before me on 5 January 2001.

48. On the same day, TLW enclosed the original MBF cheque and returned it to Netto Tan & S Magin. According to Mr Krishna, he had no knowledge of its return.

49. Later that afternoon, Mr Krishna telephoned Mr Tan and explained that he stopped payment on his two OCBC cheques because he thought that he could put in an application to the court to claim his costs of approximately S$20,000 against Mr Lim to be deducted from the stakeholding monies. However, Mr Krishna undertook to forward to TLW by the close of business day 29 December 2000 three cashiers orders made in favour of TLW for the stakeholding monies, the accrued interest and S$5,000 as the agreed costs of TLW. This undertaking was recorded in TLWs letter of 28 December 2000 sent to Netto Tan & S Magin for their information. Mr Krishna also informed Mr Tan that he knew of the refixing of the committal motion on 5 January 2001.

50. On 30 December 2000, TLW wrote to Mr Krishnas solicitors to inform them that they had yet to receive the three cashiers orders as promised.

51. On the evening of 4 January 2001, Mr Krishna telephoned Mr Tan and insisted on seeing him at TLWs office. He requested for time to repay the stakeholding monies, interest and agreed increased costs of S$8,000.

52. On the hearing on 5 January 2001, Mr Magintharan informed me that his client, Mr Krishna, was ill and tendered a medical certificate from Tekka Clinic Surgery stating that Mr Krishna was unfit to attend court for one day. Mr Magintharan also told me that he was applying to discharge himself and that Mr Krishna needed time to appoint new solicitors to take over. He applied for a weeks adjournment to have the matter resolved. In the meantime, I dealt with the other application against Mr Lim. The applicants solicitors agreed to withdraw their application against Mr Lim for committal and I therefore released Mr Lim from the proceedings. With regards to Mr Krishna, I told Mr Magintharan that his client would either have to appoint a solicitor who could proceed with the hearing in a weeks time or else he would have to defend himself. I told him to warn his client that the hearing would go on at the next hearing. After Mr Magintharan assured me that he had warned his client of it, I adjourned the hearing before myself on 12 January 2001. I told Mr Magintharan that he was not discharged yet.

53. I noted from Mr Magintharans affidavit filed in support of his formal application for discharge made on 8 January 2001 that

he had dutifully written a letter dated 3 January 2001 and sent it by fax and post to Krishna & Co for the specific attention of Mr Krishna. In his letter, Mr Magintharan stated in very forceful terms (with emphasis added) the importance of Mr Krishnas personal attendance in court at the next hearing:

> The Honourable JC however, directed that he would be only willing to adjourn the said matter for one (1) week on the following conditions:
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> (a) That you appoint new solicitors to take over and conduct the trial on 12 January 2001 with no further adjournments to be granted or
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> (b) You conduct and defend the committal personally on 12 January 2001.
>
> Our Mr S. Magintharan had spoken to you of these directions and you had agreed to the said conditions imposed by the Honourable JC which has been recorded. In the premises, please take immediate actions to appoint your new solicitors who are required to conduct the trial on 12 January 2001 without fail or you will have to personally conduct your own defence. **Please note that in either event your presence in Court No: 6 High Court is compulsory on 12 Jan 2001 at 10.00 a.m.**
>
> The Honourable JC has also directed that our office remain on record as solicitors until the takeover or conduct on 12 January 2001. We are required to attend court on 12 January 2001 on this matter wherein we would be officially discharged and you or your new solicitors conduct the trial.
>
> We would therefore again reiterate that your presence in High Court No: 6 on January 2001 at 10.00 a.m is compulsory failing which the court would take drastic actions against your absence.
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> .
>
> Kindly note that we would reiterate our advise that you should make immediate payments and comply with the High Court orders without fail.

54. In this letter, Mr Magintharan had very properly advised Mr Krishna in no uncertain terms that he should immediately comply with the court orders without fail and make payment. There was nothing in this letter to indicate that his client was unsure about what the terms of the court order were and what his client was supposed to do.

55. On 11 January 2001, the eve of the next hearing, Krishna & Co faxed and posted an urgent letter to TLW stating Mr Krishnas new proposal to settle the sum. It was stated that their client had just issued the option for the sale of their clients property at No. 47 Jalan Lengkok Sembawang. The payment of $120,000 being 10% of the purchase price was to be made by the purchaser on or before 5 February 2001. If the proposal to settle was acceptable, Mr Krishna would request his conveyancing solicitors to forward (a) the option to purchase, (b) the letter of authority from the sellers giving the irrevocable authority to release the sum of S$87,789.09, plus S$731.58 and the agreed costs at S$8,000 in favour of TLW, and (c) a letter from the solicitors confirming the irrevocable instructions.

56. On the hearing before me again on 12 January 2001, Mr Leslie Netto of Netto Tan & S Magin appeared on behalf of Mr Krishna. Mr Netto tendered another medical certificate, this time from Shifa Clinic & Surgery excusing Mr Krishnas attendance in court again for one day. I then told Mr Netto to inform his client that I would be fixing the motion for hearing everyday until he attended court. The next hearing was therefore fixed at 11.30 a.m. on the next day, 13 January 2001, which was Saturday and not normally a day for hearing. In the meantime, I instructed Mr Netto to call his client at his home telephone number to ascertain if he was resting at home and also to tell him of the adjourned hearing that I had fixed. If he was not at home, then Mr

Krishna was to attend court immediately.

57. Mr Netto reported back to me that he called Mr Krishnas mobile telephone and managed to speak to Mr Krishna. Mr Krishna said that he would come to court tomorrow at 11.30 a.m. Mr Netto requested for his home telephone number and Mr Krishna gave it to him. Mr Netto then asked if he was at home to which Mr Krishna answered in the affirmative. **Five minutes later**, Mr Netto called him at his home number. Mr Krishnas son answered the telephone and told Mr Netto that his father was sleeping. Mr Netto told his son to wake him up. His son said he would do that and that he would ask his father to return his call. Mr Netto told his son to wake him up stating that it was urgent. He heard his son saying "Papa, wake up!" Then the son suggested that he would wake his father up to return his call. Mr Netto never heard Mr Krishna answering from his home telephone.

58. I found it incredible that Mr Krishna, who was speaking on the mobile telephone just 5 minutes earlier on a matter that concerned a court hearing, which telephone call I assumed should have caused him some anxiety, could have fallen asleep so soundly after 5 minutes, that he could not be woken up to answer the call from his solicitor from his fixed line home telephone. I had my doubts whether Mr Krishna was in fact at home.

59. I left the matter at that and adjourned it to 11.30 a.m. on the following day. I also adjourned the formal application for discharge by Mr Krishnas solicitors as I did not want to discharge them until such time that Mr Krishna attended court either to defend himself or with his new solicitors who would be prepared to go on with the hearing.

60. On the next day, Saturday 13 January 2001, Mr Krishna appeared. Mr V K Rai of V K Rai & Partners was present and he informed me that he was taking over the matter and that he was prepared to go on with the hearing. I therefore granted Mr Magintharans formal application for discharge.

Committal Proceedings

61. Mr Tan Phuay Khiang from TLW took me through his written submissions, which had set out the background facts. He referred to Mr Krishnas failure to comply with the two orders of court. Mr Krishnas excuses for non-compliance were (a) the garnishee order against him which meant that he had to hold back the release of the stakeholding monies, and (b) his former clients application to the Family Court to vary the High Court order. Mr Tan Phuay Khiang informed me that no payment had been received till date. The cheques sent purportedly in compliance with the court orders were stopped by Mr Krishna without any reason given to TLW. Mr Lim, upon appointing Ang & Partners, had already given clear instructions to Mr Krishna to release the stakeholding monies to TLW.

62. When I enquired from Mr Rai about the whereabouts of the stakeholding monies, I observed that Mr Rai immediately turned round to take instructions from Mr Krishna, and I could hear the instructions being given in an assertive and positive fashion by Mr Krishna. Mr Rai reported back to me that his client instructed him that the stakeholding monies were placed on fixed deposit with UOB until around 15 December 2000. When I asked Mr Rai for more details, Mr Rai again took immediate instructions from Mr Krishna and reported to me that the fixed deposit had been uplifted on or around 15 December 2000 and had been banked into the clients account of Mr Krishnas firm with OCBC. I was told that the whole amount plus accumulated interest on the fixed deposit had been deposited into the clients account with OCBC. When I enquired of the mode of payment by UOB upon uplifting of the fixed deposit, I was further informed that UOB issued a cheque to return the fixed deposit with interest, and that cheque was banked into the clients account. Mr Rai, on instructions from Mr Krishna, further maintained that the money was still in the firms clients account.

63. Immediately I ordered production of the bank statement for the clients account with OCBC for the month of December 2000 by Monday 15 January 2001 at 10.00 a.m.

64. Mr Rai then submitted on the merits of the application for committal. He contended that certain prerequisites must be met before an order for committal could be obtained:

(a) With no personal service of the court orders on Mr Krishna, the committal order could not be made.

(b) The court order for which compliance was sought must contain a penal notice, informing the person that if he neglects to obey the order within the time specified therein, he is liable to the process of execution to compel him to obey it: Rules of Court Order 45 Rule 7 (4). See also Form 87 under (a). The committal proceedings were therefore bad because the prerequisite to enforcement of a court order by way of contempt under Order 45 Rule 5 had not been complied with.

65. The second ground was that the terms of both the court orders were ambiguous. The complaint was that Lai Js order dated 11 October 2000 as extracted was simply -- Order in terms of prayer 2 as amended orally. There was no time frame stated by which the order had to be complied with. Since it also did not say what the amendment was, the amendment was altogether unclear. It was not clear that his client was to forward any cheque at all, let alone forward a cheque forthwith. Lee JCs order of 6 October 2000 was to comply forthwith with Lai Js order. That second order was also unclear because it simply ordered compliance forthwith with an unclear order. For committal proceedings, the evidential burden was high. Since Lai Js order did not state the number of days for compliance and was ambiguous in its terms, Mr Rai submitted that it was not proven beyond reasonable doubt that Mr Krishna was in contempt.

66. The third ground was the failure by the applicant to make full and frank disclosure of the facts in his ex-parte application for leave, which facts his client had now alluded to in paragraphs 6 to 11 of his clients affidavit. Mr Rai said that the original MBF cheque was returned to Mr Krishnas former solicitors Netto Tan & S Magin only on 28 December 2000.

67. I terminated the hearing at this stage as it was already 1.25 p.m. on a Saturday and I did not want to detain the court staff any longer. Due to other hearing commitments, I adjourned the hearing to Wednesday 17 January 2001 at 3.45 p.m.

68. At the adjourned hearing, Mr Rai continued with his submissions that Mr Magintharan was not personally aware until 13 January 2001 that the original MBF cheque had been returned by TLW to Mr Magintharans firm on 28 December 2000 at about 12.20 p.m. Mr Rai said that Mr Tan informed him of it, and he then brought up the matter with Mr Magintharan on 13 January 2001. The thrust of this submission appears to be that Mr Krishna believed that he had complied with the court orders by his tender of the original MBF cheque, which he allegedly did not know had been returned to his previous solicitors until 13 January 2001.

69. As there was a second lot of two cheques sent to TLW, I asked Mr Rai for clarification as to which cheques he was going to rely on for his clients defence. He confirmed to me that that he was relying only on the 1st cheque dated 15 December 2000 payable to MBF i.e. the original MBF cheque. Obviously, it would be ridiculous to rely on the second lot of two cheques for compliance with the court orders since Mr Krishna himself had stopped payment on them.

70. If indeed the tender of the original MBF cheque constituted good compliance, I had to know in the first place whether that cheque was covered by funds in the clients account from which the cheque was drawn, before it could be a good tender in what I considered to be already very late compliance with the two orders of court. If indeed there were insufficient funds, the next point was whether he had personal knowledge of that when he issued the cheque. Had he known, his issuance of a dud cheque in purported compliance with an order of court would constitute an aggravating factor for consideration at the time of punishment for his contempt for non-compliance.

71. I would leave aside for the moment the point that he had asked for the return of this original MBF cheque in exchange for his two new cheques, which TLW presented and later discovered that payment was stopped. In my opinion, that would have meant a total non-compliance already.

72. To know for sure whether there were indeed funds to support the original MBF cheque, the best evidence would be the

December 2000 bank statement that I had ordered him on 13 January 2000 to produce by 10.00 a.m. on Monday 15 January 2000. But Mr Krishna still had not produced it despite the fact that it was already the afternoon of 17 January 2001. Was this to be another brazen contempt in the face of the court?

73. Not wanting any further adjournments for further affidavits to be filed, I asked Mr Krishna to take the witness stand to confirm what steps he had taken to comply with my order for production of the bank statement.

74. He testified under oath that he was engaged in court till 12.00 noon on Monday 15 January 2001. He tried to contact the bank officer, Ms Serene, after he returned to his office. He failed to contact her. On Tuesday, he was again engaged in the Subordinate Courts. He tried calling the bank on a few occasions but the line was busy. He called the bank again on Wednesday and managed to instruct someone at the bank that he wanted the statement of account. This person told him that they would get a messenger to send the statement to him. He said that he needed it by 2.00 p.m. At about 12.00 p.m., Ms Serene telephoned him to inform him that she would get a messenger to send the statement to him. Later, another bank officer called him to say that the messenger was not available. When I asked if he knew whether the bank already had the statement and the only problem was to send it to him, he said that he believed that the bank was having the statement in their possession although he could not say for sure. In response to my queries, I also discovered that the bank was actually in the same building as the office of Krishna & Co. The bank was on the ground floor and Mr Krishnas office was on the 30th floor.

75. I then asked Mr Krishna:

> Ct : If you believe that they already have the statement in their possession, why did you yourself, in coming down from your office at the 30th floor in the same building, not just walk over to the Bank on the 1st floor to collect it, in obedience to the court order?
>
> A : Immediately, I offered my services to Serene to take it. I offered my services to Serene to take it during my conversation today with Serene, at about 12.00 p.m. She said she would get the messenger to send it. I pointed out to her in my conversation with her that previously another officer Mr Ronald Soh had allowed me to collect documents from the bank personally. Serene replied that it was not the banks policy to let customers collect their documents. Mr Ronald Soh was not authorised to let customers collect documents. I was surprised as I had done this previously. But since there was a change of personnel at the bank, there could be a change in their policy.
>
> Ct : Are you then saying that the Bank had told you that you cannot personally collect the bank statement of your firms client account with this OCBC Branch in High Street?
>
> A : Yes. I believe the reasons are because firstly if they allow customers to collect at short notice, that might disrupt their work. All these matters are referred to their Headquarters, and I believe their branch has no say in granting customers request, in this case, for example a request to get a bank statement and to collect personally. I understand they have to refer to Headquarters.
>
> Ct : Is that something out of your imagination or something you had been told by a reputable bank like OCBC at their branch in High Street?
>
> A : It is not my imagination. It is through my experience with OCBC.
>
> Ct : Do you have sufficient funds in this client account when you issued the MBF

cheque dated 15 Dec 2000 and sent it to Messrs Tan Loh & Wong? i.e. sufficient funds to cover the cheque.

A : I have to look at the statement of account. During the period, my firm was closed from 17 Dec to 1 Jan 2001.

Ct : Are you saying you have till date, not seen your client account bank statement for Dec 2000?

A : I have not seen it.

Ct : Till date, have you seen the client account bank statement for November 2000?

A : No. The documents are with the book-keeper.

Ct : When was the last time you had a look at the clients account bank statements?

A : Cant remember. I leave it to my book-keeper and my secretary. It could be as long as one year ago that I last looked at the bank statement.

Ct : So you do not know what amounts are in that client bank account at all?

A : Thats true.

Ct : So when you write the MBF cheque, you had no knowledge of the balance in the account, whether or not the balance is sufficient to cover the cheque that you had sent out to the Messrs Tan Loh & Wong?

A : I assumed that the account had sufficient money.

Ct : Can you tell me the basis of that assumption?

A : Because the cheques issued to clients account had been cleared previously. Thats all.

Ct : How do you know what these clients' cheques are and how do you know they had been cleared into the account, without you looking at the statement?

A : The book-keeper will inform if there is any discrepancy.

Ct What do you mean?

A : I leave it to the book-keeper to keep the accounts properly as I am a one-man firm.

Ct : Before you write any cheque, do you check with the book-keeper whether the cheque you write can be covered, particularly when it is a large sum?

A : I dont usually do so.

Ct : In this case, when you issued a cheque to MBF for a fairly large sum of over $80,000, did you check with the book-keeper if the account can cover the cheque?

A : No. I had no reason to.

Ct : So you could not care whether or not the cheque can be covered by sufficient funds?

A : That is not true.

Ct : So it is true then, that you care?

A : Yes.

Ct : If so, why do you make no checks on the account balance at all?

A : Because I have no reason to suspect anything is amiss.

Ct : So you think that your client account had sufficient funds to cover the cheque without any checking of the account balance?

A : Yes because I relied on the book-keeper.

Ct : How do you rely on the book-keeper when you never check with the book-keeper of the account balance, and you simply write a cheque?

A : I dont simply write a cheque. It is a cheque due to a client that is why I write a cheque.

Ct : You dont understand the question. If you rely on the book-keeper, then obviously it can only be to rely on his answers as to the account balance. Without checking, I cannot understand your answer of any reliance on the book-keeper to enlighten you on the available amount in the account, whereby you can then safely write out a cheque for a large amount?

A : There was no reason to suspect that the account had very little money.

Ct : So at that time, how much money did you think your client account had, say in Oct, Nov, Dec 2000?

A : I have no idea of the amount that I have in my client account whatsoever.

Ct : So you have turned a Nelsonian eye to whatever may be the amount you have in the account, and recklessly write out cheques, for which your account may not have sufficient funds to cover it?

A : I was not reckless.

Ct : Till date, you do not know as a fact whether or not your client bank account has enough money to cover the MBF cheque you issued?

A : As a fact, No.

Ct : As a fact, you never at any time since writing out that MBF cheque for over $50,000, knew whether or not you had sufficient funds in that account to cover the cheque?

A : Yes.

Ct to Counsel : Anything you wish to ask.

Mr Tan : No.

V K Rai : No.

Ct : Are you prepared to see Serene tomorrow and request if they can make an exception to their policy and give you the bank statement for December?

A : Yes. After my hearing in the Subordinate Court, I will go to the Bank at about 11 oclock. I will, if after getting the statement, deposit the original with the court secretary and later forward copies to Mr Rai and Mr Tan.

76. As it was about 6.00 p.m., I adjourned this case to 5.00 p.m. the following day as I was having another ongoing trial during this period.

77. At the resumed hearing at 5.25 p.m. on 18 January 2001, Mr Rai informed me that he had just received by fax a copy of what appears to be a bank statement at about 4.08 p.m. His instructions were that it was a copy of the statement of Krishna & Cos clients account with OCBC. If the figures therein were correct, Mr Rai said that he was obliged to make an apology to discharge himself because it conflicted with the instructions he was given by his client, and that it was possible that he might have been misled by his client. He further said that in furthering his duties to his client and to the court, he might have put forward a case, which might not have been true.

78. I then asked Mr Rai concerning what he had told me, on his clients instructions, about the fixed deposit with UOB being banked into his clients account with OCBC Bank in December 2000, and whether this deposit could be found in the bank statement. Mr Rai confirmed that it was probably also untrue, which was the main reason for his discharge application before me. Obviously, Mr Rai was aware of section 57 of the Legal Profession Act (Cap 161), which states:

Clients perjury or fraud

57. If at any time before judgment is delivered in any case, an advocate and solicitor becomes aware that his client has committed perjury or has otherwise been guilty of fraud upon the Court, the advocate and solicitor

(a) may apply for a discharge from acting further in the case; or

(b) if required to continue, shall conduct the case in such a manner that it would

not perpetuate the perjury or fraud.

79. When Mr Krishna agreed to the discharge of Mr Rai and said he would act in person, I allowed Mr Krishna to continue with his own defence. Nevertheless, I asked Mr Rai to remain in court, as I did not formally grant him a discharge on his oral

application.

80. Mr Krishna then submitted that he was withdrawing the point that the UOB cheque for the fixed deposit was deposited into his clients account at OCBC. He explained that it was not his intention to lie but that he based it on a **false assumption**. He said that he was careless in not checking first before confirming that fact to the court. He realised now that he should be more careful and should have ascertained the facts before giving assertive answers. He apologised to the court.

81. When I asked him where he had deposited the proceeds of the fixed deposit at UOB, he said he was uncertain. He was unable to say whether the fixed deposit existed at all until he checked with his bookkeeper. I believed that Mr Krishna was trying to be evasive. I could not see how he could be uncertain on such a recent matter involving large sums of money. Later he confirmed that he had deposited the proceeds of sale (amounting to $101,454.19) into his clients account with OCBC sometime on 7 July 2000. After some further probing, he revealed that he did not place these proceeds of sale into any fixed deposit with UOB. Then I asked him:

> Ct to Mr Krishna : So after the deed of settlement, did you ever place an amount of $87.789.09 into any fixed deposit at all, whether or not with UOB?
>
> A : No.
>
> Ct : So what Mr Rai, your counsel told me, on your instructions in the course of these proceedings were untrue?
>
> A : Yes. Based on a false assumption.

82. These facts which Mr Krishna apprised me of in the course of his submissions above were later confirmed by him on oath as being true.

83. Mr Krishna then continued with his submissions and reiterated that the court orders were ambiguous. He briefly alluded to the garnishee application served on him. He said that Mr Lims solicitors had put him on notice not to release any money pending the disposal of Mr Lims application in the Family Court. Due to this notice, he did not make immediate arrangements to comply with the order of court. The committal proceedings were taken up soon thereafter on 13 November 2000. He stubbornly maintained that he had complied with the order by sending the original MBF cheque. He appeared to be blaming TLW for not presenting that cheque and returning it to his previous solicitors instead. However, he admitted that he had agreed to the return of this cheque probably sometime on 22 December 2000. Thereafter, his firm was closed for the holiday and he was also on medical leave.

84. He then said that he did not have sufficient money in his clients account to pay the stakeholding money back, but he would clear the debt with his own funds to comply with the order of court. **He said that even now, he was able to pay to comply with the order of court**. He maintained that he had no intention to deprive the parties of the stakeholding sum. It was due to the existing circumstances: shortage of manpower at the office, reliance on staff and his health. Having a busy practice, he overlooked one important point: to keep a proper supervision of his staff and the accounts. Until he had investigated into the conditions in the account, he would not know the full extent. He said he had learnt a bitter lesson and was very remorseful.

85. His submission was in the form of mitigation until I reminded him that I had not yet found him guilty of contempt.

86. Since his defence was that he had no mens rea and that apparently, he was not responsible for the way his firms clients account was operated, I asked him to confirm certain facts on oath.

87. He then confirmed under oath that he was the sole signatory of the clients account. He operated this account, which had a telephone fund transfer facility. He then testified much to my surprise that apart from him, his secretary and his bookkeeper also operated the telephone transfers for his clients account.

88. After he confirmed that he had operated the telephone transfers for 8 December 2000 and 13 December 2000 as shown in the bank statement, I asked him if he knew what the bank balances in his firms clients account were, having regard to the usual message relayed on the telephone pertaining to the bank balance whilst doing the telephone transfers. He said that he could not recall whether he had heard the balances in the account after the telephone transfers on 8 and 13 December 2000.

89. When faced with the latest affidavit of Mr Tan in relation to his meeting together with Mr Krishna and Ms Serene Cheong, OCBC Branch Manager at the High Street Branch in the morning, Mr Krishna then stated on oath that his earlier testimony in respect of his conversation with Ms Serene Cheong (i.e. to offer his service to her to take the bank statement at about 12.00 p.m., but that she had said that she would get a messenger to send it instead), was not with Serene but was with another staff. He still insisted that his earlier evidence was true except for the name. The conversation, which I regarded as inherently unbelievable when I first heard it, was now with another officer in the bank, whose name he did not know.

90. Mr Krishna agreed with the following paragraphs of Mr Tans affidavit affirmed on 18 January 2001, except that he alleged that he did contact Serene on 17 January 2000 for the marking of the cheque as well as to get the statement:

> 5. Ms Serene Cheong confirmed that on the afternoon of Monday 15th January 2001, she was out on an assignment.
>
> 6. Ms Serene Cheong told us that Mr. Krishna contacted her on her mobilephone on the morning at about 11.00 a.m. on Wednesday 17 January 2001 wherein Mr. Krishna discussed with her on a matter relating to the direct marking of one of his clients cheque.
>
> 7. Ms Serene Cheong told us that Mr. Krishna made a request to the bank for the December 2000 bank statement in respect of account no. 517-071460-001 (M/s Krishna & Co. clients account) at about 5.00 p.m. plus only on Wednesday 17th January 2001 when Mr. Krishna personally after making prior arrangement to meet her at the bank. Prior to that she was not aware of any request made by Mr. Krishna for the December 2000 bank statement in respect of the aforesaid bank account maintained with the bank.
>
> 8. Upon our query to her whether a customer of the bank can request for a copy of the bank statement at any time, she replied that the bank would entertain such request provided the statement requested for is not more than two months old. The bank can churn out such statement within 24 hours of request and usually they are done by their backroom boys and usually send to their customers by post. In view of her aforesaid answer it became apparent to us that the bank do not usually send such bank statements by messengers as they are already having shortage of manpower and therefore it would look quite ridiculous for us to try to confirm whether their bank had the policy to send such statement by messengers.

91. There were a few important points in the latest affidavit of Mr Tan. Firstly, based on what Ms Serene Cheong had said, it would appear that Mr Krishna made no real effort whatsoever to obtain a copy of the bank statement despite my order for him to do so. He only did so after the hearing on 17 January 2001, when I asked for its production again. Secondly, Ms Serene Cheong did not appear to have any trouble furnishing Mr Tan and Mr Krishna with a copy of it when they saw her on the 18 January 2001, which bank statement Mr Tan exhibited in his affidavit. This clearly proved that Mr Krishna should have no difficulty in obtaining a copy of the bank statement if he genuinely wanted to comply with my order for production by the stipulated date and time, or at least by the next hearing on 17 January 2001 at 3.45 p.m. It was certainly not a mere lapse on Mr Krishnas part. Thirdly, Ms Serene Cheong confirmed to them that the bank would entertain a customers request to come personally to the bank to pick up a copy of the bank statement by prior appointment, although such a practice was not encouraged due to their shortage of staff. Mr Krishnas office being in the same building meant that he had numerous opportunities to drop by at the

bank to simply ask for and collect his OCBC bank statement. He could easily do so when he was shuttling between his office and the Subordinate Courts. The totality of his failure to do so simply pointed to a flagrant disregard and defiance of my clear order for production.

92. I concluded that Mr Krishna patently wanted to evade production of the bank statement, which would immediately have revealed the appalling state of his firms clients account. It stood at an overdraft position of $19,034.52 as at 30 November 2000, and again at an overdraft position of $149.56 as at 30 December 2000. In my mind, I was satisfied beyond a reasonable doubt that Mr Krishna had committed contempt of my court order.

93. The bank statement produced revealed a telephone transfer out of $900 on 1 December 2000, another telephone transfer out of $500 on 8 December 2000 and a third telephone transfer out of $1,500 on 13 December 2000. The account was hardly active in December 2000. Clearly, there was no deposit of the stakeholding monies from an uplifting of a fixed deposit with UOB or any other bank, which was banked into his clients account with OCBC. Plainly, the clients account did not have sufficient funds to cover the issuance of the original MBF cheque for $87,789.09, or for that matter, also the other two cheques payable to TLW for which payment was stopped. Basically, Mr Krishna issued three dud cheques to TLW.

94. Mr Krishnas defence as averred in his affidavit was that he had on 15 December 2000 forwarded to TLW the original MBF cheque in compliance with the order of court. Since that cheque was not received by TLW, he assumed that the cheque was lost in the post. He then despatched another two cheques, this time made payable to TLW. Upon realising that these cheques were not in compliance with the order of court (i.e. that it had to be made payable to MBF), he stopped payment on the two cheques. As such, Mr Krishna believed that he had substantially complied with the order of court. Mr Krishna seemed to have forgotten his solicitors cover note enclosing the two cheques, which had recorded the mutual agreement by all parties and their counsel that although the order of court was for sums to be made payable to MBF, the payment to TLW would constitute full compliance with the order of court dated 11 October 2000.

95. Then on 2 January 2001, the Law Society of Singapore served him with a notice of intervention in the sole practice. With immediate effect, no monies could be released from the clients account. Mr Krishna said that he instructed his bookkeeper to comply with the notice.

My decision

96. Part (a) of the first ground of defence in relation to non-personal service on Mr Krishna was wholly unmeritorious. TLW had effected service on 18 October 2000 on Krishna & Co of the copy of the duly sealed order of court of Lai J and the SIC. In fact, what better evidence of personal receipt would there be than in Mr Krishnas own affidavit affirmed on 23 October 2000 where he himself exhibited the extracted order of Lai J and the relevant SIC application associated with that order. As for Lee JCs order, Krishna & Co had acknowledged receipt of it by impressing the firms stamp on TLWs office copy of the said order. In any event, Mr Krishna was present personally to argue before Lee JC and must have heard the judge pronouncing his order. Clearly, Mr Krishna had personal knowledge of both orders, which was the whole purpose and desired result of the personal service requirements in the Rules of Court.

97. Part (b) of the first ground was the absence of penal notice on the two orders of court. The solicitors from TLW stated that at no time did it occur to them that they had to apply for committal for contempt against a fellow solicitors refusal to obey the court orders. They trusted that Mr Krishna, as a fellow solicitor, would obey the court orders without hesitation. Mr Krishna, being an advocate and solicitor and an officer of the court, should be fully aware of the importance and seriousness of a deliberate refusal to comply with a court order. I agree entirely.

98. The penal notice telling him that he would be liable to the process of execution to compel him to obey the order of court was unnecessary in his case, and certainly non-fatal to the motion for committal. He never pleaded, and it would be foolish of him as a lawyer to feign ignorance that he did not know that he had to comply with an order of court or else he could be liable to be

compelled by an order of committal to comply. It was noteworthy that TLW inserted a penal notice to the same effect in their Notice of Motion for an order for committal, which I think served much the same purpose. I further agreed with the submission of counsel for the applicant (Mdm Heng), that to allow Mr Krishna to pick on these technicalities to wriggle out of a blatant disregard of the orders of court in this case would cause grave injustice to her. I had no hesitation in deciding that any further delays by such technicalities would be unjustifiable having regard to the long history of the matter which I have painstakingly set out above, showing the cat and mouse games he was playing with TLW, the extraordinary deception of his fellow solicitors including his own counsel, and the resulting delays he managed to engineer, in defiance of not one but two orders of court requiring forthwith compliance.

99. Counsel for the applicant urged that I grant dispensation with service of a copy of the orders of court under Order 45 Rule 7 (7) if the court thought it just to do so, which then essentially dispenses even with the penal notice. This was a case, which amply justified dispensation with the penal notice on the court orders themselves, and I did so, which then removed the technical pre-requisite stated in Order 45 Rule 7 for enforcement of the court orders by way of committal under Order 45 Rule 5. Not to do so, would be to allow Mr Krishna to abuse the process of the court, to delay matters even further and to persist in his obstinate refusal to obey, which would result in serious prejudice to the applicant, who had already given so many opportunities to Mr Krishna to comply voluntarily with the two court orders.

100. The second ground of defence was also without any substance. The relevant oral amendments had been clearly brought to the attention of Mr Krishna by way of TLWs letter, which had set out the amendments in full. At least by the time he personally argued the matter before Lee JC, he should have known what the terms of Lai Js order were. The several letters exchanged plainly showed that Mr Krishna knew exactly what he was ordered to do. The time frame required for compliance had been to comply **forthwith** with the order. It could not be any clearer. Three months had elapsed with no compliance. By any yardstick, Mr Krishna had knowingly failed to comply with the terms of both orders. There was nothing ambiguous or unclear about the two orders. It was inherently incredible for Mr Krishna, a solicitor, not to understand the meaning of an order in terms of specified prayers. Even if he did not know what the amendments and prayers were, it would be incumbent on him as a solicitor, to find out what they were, to enable him to comply dutifully with the orders of court. In my view, it was impertinent of him, as an officer of the court, to claim that the two court orders were not clear to him whether he was to forward any cheque at all, let alone, forward a cheque forthwith.

101. On the third ground, Mr Rai had not made clear exactly what material facts known to the applicant were not disclosed to the court in the ex-parte application. I found that Mr Tan had, in his supporting affidavit affirmed on 13 November 2000, exhibited all the material and relevant documents and correspondence up to 9 November 2000, and had stated all the material facts known to him at that time. Consequently, there was full and frank disclosure made of all the relevant documents and correspondence.

102. Finally, Mr Krishna had the audacity to state in his affidavit that he had complied with the order of court by issuing the original MBF cheque. He even averred that since this cheque had been issued to the applicant, it was for the applicant to claim the stakeholding monies by getting the consent of the Law Society. His main defence that this original MBF cheque was good compliance was absolutely farcical since that was a dud cheque, and the circumstances indicated to me that he must have known, and I would go on further to find beyond reasonable doubt that he knew as a fact, that there were insufficient funds in the clients account to cover the original MBF cheque that he had issued in purported compliance. This defence failed miserably. To make a mockery of matters, he averred in his affidavit that he was prepared to issue a cashiers order for the stakeholding monies if so ordered by the court. Did he mean to say that he needed a third order of court, this time from me, before he would comply?

103. I thus accepted the submission of counsel for Mdm Heng that despite the numerous requests and demands that TLW had made to Mr Krishna to release the stakeholding monies, he had failed, refused and/or neglected to comply with the two orders of court. The non-compliance was deliberate and contumacious. Accordingly, I found Mr Krishna guilty of contempt of court.

Punishment for contempt

104. In mitigation, he asked me to treat parts of his earlier submission as mitigation. He further said that he had two school-going children and that any committal would affect them personally and financially. He asked me to show compassion in ordering compliance with terms. According to him, the just term would be to grant a stay of execution pending his compliance with the order of court. He reiterated that he was able to pay and he undertook to pay the money in compliance with the order of court.

105. I did not find Mr Krishnas mitigation to carry much weight at all. Enough empty promises and assurances had been given to TLW to avoid payment for as long as possible. He never intended to hand over the stakeholding monies entrusted to him, and he never did. His conduct was on the whole deplorable, dishonest and deceptive. It was in my view wholly inappropriate to adjourn the matter and stay execution to enable him to delay further. I summarily refused his plea for a stay.

106. The following factors were relevant in deciding on the punishment. Court orders made must be taken seriously and complied with. Until set aside, varied or overturned by a court of competent jurisdiction, the order of a court of unlimited jurisdiction must be obeyed by the person against whom it was made. Being an advocate and solicitor and an officer of the court, he ought to know better. On the contrary, he acted in blatant defiance of the two orders. He should know the seriousness and gravity of his disobedience of the two court orders. He relied on lame excuses to ignore and flout the court orders. The fact that the contemnor had sought ways and means to evade or circumvent the order of court would be relevant: *William Jacks & Co (M) Sdn Bhd v Chemquip (M) Sdn Bhd & Anor* [1994] 3 MLJ 40. I had to take a grave view of such utterly contemptuous and disgraceful conduct by an advocate and solicitor and an officer of the court. Furthermore, I could not detect any real remorse or regret throughout the proceedings. The deceptive means he used to postpone the hearing of the motion was shameful. He raised absolutely unmeritorious defences involving legal niceties and technicalities in the hope of further delaying his compliance. His deception of the court in relation to (i) the existence of the stakeholding monies in a fixed deposit with UOB, (ii) the uplifting of that fixed deposit, and (iii) the cheque payment by UOB, which was subsequently deposited into his clients account, was atrocious conduct, totally unbefitting of an advocate and solicitor. There were no mitigating circumstances worth considering. I would be failing in my duty if I were to impose a fine. Anything other than imprisonment would be too lenient in the circumstances of this case, and would certainly bring court orders into disrepute and encourage others to disregard them with gay abandon. The need for deterrence must be taken into consideration. The image of advocates and solicitors that they, as officers of the court, would always dutifully and respectfully obey the orders of court must not be tarnished. Honesty and integrity should be the hallmark of the legal profession. It would be a very sad day if lawyers are no longer respected and regarded as members of an honourable profession.

107. If Mr Krishna was not going to comply with the court orders to hand over the substantial sum of stakeholding monies, the appropriate sentence for the contempt of court commensurate with the aggravating circumstances of this case should be at least 5 months imprisonment in my estimation. Anything less would have been insufficient to mark the seriousness of the contempt, which involved disobedience of the two forthwith court orders to hand over the stakeholding monies amounting to S$87,789.09 plus S$731.58 accrued interest. However, I must emphasize that in punishing him for this contempt, I did not take into consideration the fact that he might well have committed an offence of criminal breach of trust of the stakeholding monies at the same time. This would of course be far more serious, and it would be a matter for the Public Prosecutor to decide whether there should be prosecution in the public interest, if further investigations by the relevant authorities subsequently reveal that such an offence has indeed been committed.

108. In view of his stand that he was able to pay, and having regard to his letter dated 11 January 2001 to TLW that he was expecting a payment of $120,000 on or before 5 February 2001 being 10% of the sale price of his property at No. 47 Jalan Lengkok Sembawang, I decided to give him a last chance to purge himself of his contempt by dividing the 5 months sentence of imprisonment that I had in mind into essentially two parts.

109. I imposed an immediate imprisonment term of two months first, with a return date for him to be brought before myself where I could then assess whether he had wisely seized the window of opportunity I gave him to comply with the court orders by the return date. If he did not pay at all, then I was minded to impose a further 3 months imprisonment.

110. As Mr Krishna is due to be released earlier on 27 February 2001 due to the remission of 1/3 of the sentence normally granted for good behaviour in prison, I instructed that he be brought back to court one week before his scheduled date for

release. Accordingly, he was brought before me on 20 February 2001.

111. At this further hearing, I was informed by Mr Tan Phuay Khiang that Mr Krishna had paid his client a total sum of $70,000 after the adjournment of the last hearing. There was still an outstanding balance of $18,520.67. Mr Krishna confirmed this. I asked Mr Krishna about his arrangements for paying the balance sum. He informed me under oath that he had put up his property at No 47 Jalan Lengkok Sembawang for sale since October 2000 at the asking price of $1.2 million. He was expecting the sale to proceed and to be completed at the latest by the 2nd week of March. Based on a sale price of $1.2 million, Mr Krishna expected the net cash sale proceeds to be about $200,000. However, he was not aware of the status of the sale because he had been incarcerated. He was also awaiting the completion of the sale of his wifes HDB flat. The completion was due between the 16th and 28th February 2001, and the net cash sale proceeds of the HDB flat, after refunding the CPF monies, would be about $150,000. He further told me that he had an arrangement with his wife to use those sale proceeds to pay the balance outstanding. According to Mr Krishna, there was every possibility that payment of the balance sum would be made on or before 27 February 2001. As such, he said that it was premature for the court to assume that he would not be able to make the payment before the expiry of the term of his imprisonment. He submitted that to impose a further term of imprisonment would mean that the court was dealing with a second application for contempt, for which there was none. He asked for an opportunity to pay before the expiry of this present term of imprisonment and to purge himself of the contempt, though he could not make immediate payment of the balance sum nor give a definite answer as to when he could pay. He said that he had no opportunity to arrange for payment because he was serving a sentence of imprisonment. He had to rely on his wife to raise the amount.

112. I then asked if the contents of his letter dated 11 January 2001 to TLW stating that he was expecting a payment of $120,000 on or before 5 February 2001 being 10% of the sale price of his property at No 47 Jalan Lengkok, Sembawang were true. Mr Krishna told me, The letter is true, the contents are untrue. Thus, it was another fabricated story fed to TWL on the eve of the second hearing before me.

113. When I enquired from Mr Krishna if he had any cash in fixed deposit or in any bank account, local or overseas, with which he could pay the outstanding balance, Mr Krishna confirmed under oath that he had some cash but it would be insufficient to pay up the balance. He confirmed thereafter that he had in fact used the stakeholding monies.

114. After considering all the circumstances including his part payment of $70,000, I extended his imprisonment term by another 1 1/2 months for payment of the substantial balance sum to be made, and for his contempt to be fully purged. His use of the money meant not only that he had put himself in a position where he was no longer able to forward the stakeholding monies **forthwith** to TLW as ordered, but that in all probability, he had also committed criminal breach of trust.

Contempt in the face of the court

115. At the final hearing on 20 February 2001, I gave Mr Krishna notice that I intended to punish him summarily for contempt for his disobedience of my order to produce the December 2000 bank statement for his clients account by 10.00 a.m. Monday 15 January 2001. I invoked Order 52 Rule 4 of the Rules of Court, which provides the power to commit without application. It stipulates:

> Nothing in Rules 1, 2 and 3 shall be taken as affecting the power of the High Court or the Court of Appeal to make an order of committal of its own motion against a person guilty of contempt of Court.

116. I had asked him to state his defence, if any, for my consideration. He told me that he had asked Ms Serene for the statement at about 5 p.m. on 17 January 2001. But this was after I had asked for production the second time. He then gave the excuse that he had contacted Serene earlier at about 11.00 a.m. on 17 January 2001, but had unfortunately concentrated on obtaining information on marking a cheque. He said that he had forgotten to ask her for the bank statement at that particular time. He then submitted that he had no intention to defy my order for production of the bank statement of his clients account. Neither did he

wish to show any disrespect to the court. It was due to the pressure on him at that particular time. He was bent on raising the full amount to pay to the applicant, who had actually told him that the application for committal would be withdrawn if the full amount was paid.

117. I rejected his defence, which lacked merit. I found him guilty of contempt in the face of the court. Knowing that he was facing a committal application for disobedience of two court orders, I would imagine that he would treat my order with some seriousness and take immediate steps to ensure his compliance with it. Instead, he remained disrespectful and defiant of my order. There was nil compliance even 2 days after the dateline. There was ample time and opportunity to obtain it (if he wanted to) from the OCBC branch where his clients account was with, and which branch was situated on the ground floor in the same building where his office was located. I thus concluded that there was no genuine effort at all to comply. In my judgment, his objective was to thwart the court from discovering the true status of his clients account, which would then have exposed the fact that he had been deceiving his counsel and the court earlier in relation to the purported uplifting of the fixed deposit account, the subsequent deposit of those stakeholding monies into his clients account with OCBC, and hence, the continued presence of those monies in the account. All the while, his main defence was that he had complied with the court orders when he tendered the original MBF cheque to TLW, which defence necessarily depended on the existence of sufficient funds in the account for the cheque to be a good tender. Basically, he hoped to prevent me from finding out that his main defence was a sham. When viewed in that context, the non-compliance took a different colour altogether, and I regarded it as despicable conduct adversely affecting the administration of justice.

118. I am fully aware that the summary power to punish for contempt should only be exercised sparingly and the decision to deal with matters summarily should not be taken likely. But in this case, Mr Krishnas obstinate disobedience of my court order tainted with ulterior motives to suppress evidence in order to mislead me in the course of the contempt hearing, required that I summarily punish him for his contempt in the face of the court, for which I imposed a further term of imprisonment of 1/2 month to be served upon expiry of the 3 1/2 months imprisonment for the other contempt of court. Total sentence would therefore be 4 months imprisonment.

Reference to the Attorney-Generals Chambers

119. In view of the serious criminal offences that Mr Krishna might have committed, it was incumbent on me to refer the matter to the Attorney-Generals Chambers for them to take whatever appropriate action that they deem fit.

120. In the course of these proceedings before me, it would appear that he might have committed the following criminal offences of:

> (a) cheating by issuing 3 dud cheques from his firms clients account on two separate occasions when he purportedly returned the stakeholding monies in compliance with the two court orders, when he had reason to believe that there were insufficient funds in that account;
>
> (b) criminal breach of trust of the stakeholding monies of $87,789.09 and accrued interest;
>
> (c) perjury when he testified on oath on 17 January 2001 that Ms Serene, the OCBC Bank officer, had allegedly called him at about 12.00 p.m. on 15 January 2000 and said that she would try to get a messenger to send to him the OCBC bank statement, but he had immediately offered to collect the bank statement from the bank himself. However she still insisted that she would be getting the messenger to send it. When he pointed out that another officer had allowed him to collect the documents from the bank personally, Ms Serene replied that it was

not the banks policy to let customers collect their documents from the bank. When confronted with what Ms Serene had told Mr Tan, in his presence, Mr Krishna quickly retracted that incredible story, and then spun yet another story telling me that the conversation with Ms Serene at 12.00 noon was not with Ms Serene, but with another staff whose name he did not know; and

(d) perjury by testifying under oath on 18 January 2001 that apart from himself, his secretary and bookkeeper operated telephone transfers for his clients account, which he subsequently informed Mr VK Rai on 31 January 2001 was not the case and which Mr VK Rai had informed the court of that fact vide his letter to the Registrar dated 1 February 2001. Mr Krishna at the further hearing on 20 February 2001 confirmed on oath the truth of the facts stated in Mr Rais letter.

Reference to the Law Society

121. Section 85(3) of the Legal Profession Act provides that:

> The Supreme Court or any Judge thereof or the Attorney-General may at any time refer to the Society any information touching upon the conduct of an advocate and solicitor and the Council shall
>
> (a) refer the matter to the Chairman of the Inquiry Panel; or
>
> (b) where the Supreme Court or a Judge thereof or the Attorney-General requests that the matter be referred to a Disciplinary Committee, apply to the Chief Justice to appoint a Disciplinary Committee.

122. Vide this judgment, I am referring the matter to the Law Society and I am requesting that Mr Krishna be referred directly to a Disciplinary Committee under Section 85(3)(b) of the Legal Profession Act concerning the following:

> (a) his contempt of the orders of Lai J and Lee JC to hand over forthwith the stakeholding monies, for which I had sentenced him to a total of 3 1/2 months imprisonment;
>
> (b) his further contempt of my order to produce the December 2000 bank statement for his clients account with OCBC, for which I had sentenced him to further 1/2 month imprisonment, to be served consecutively;
>
> (c) his appalling conduct in relation to his dealings with TLW and his fellow solicitors as could be seen in the background facts set out in some detail above in my grounds of judgment;
>
> (d) his dishonest stand taken during the contempt proceedings, when he misled both his own counsel and the court on 13 January 2001 by stating falsely that the stakeholding monies were placed in a UOB fixed deposit until 15 December 2000, which was uplifted on or around 15 December 2000 and the UOB bank had sent a cheque to him, which he had banked into his clients account with OCBC, and that amount was still there in his clients account, when the bank statement subsequently obtained clearly showed that no such stakeholding monies were banked into the account and the said monies were no longer there;
>
> (e) his subsequent dishonest explanation that it was not his intention to lie but he had merely based it on a false assumption and that he had been careless in not checking first before confirming those facts to his counsel. TLW had

previously written to him several letters hounding him to furnish them with a copy of the initial letter addressed to the bank to place the stakeholding monies on fixed deposit, the relevant fixed deposit slips and the letter addressed to the bank instructing them to uplift the said fixed deposit facility and the banks statement showing the interest earned thereon. That was after Mr Krishna had informed Mr Tan of the uplifting of the fixed deposit. How Mr Krishna could now allege that he basically made a slip somewhere along the line, and based it on a false assumption was simply beyond the limits of believability. Placing a large fixed deposit of some $90,000 for stakeholding monies received about 7 months ago, especially for a small sole proprietor firm like Mr Krishnas, would not be a matter that could be so readily forgotten or mistaken. The detailed facts put up by Mr Krishna surrounding the deposit, its uplifting and subsequent deposit into his clients account with OCBC smacked more of a detailed fabrication than of some mistaken facts due to a lapse of memory;

(f) his actions aimed at frustrating and delaying the contempt hearings at all cost including betraying the trust of a fellow solicitor by offering sham promises and assurances of payment to adjourn hearings in order to avoid the inevitable consequence of having to face the contempt proceedings brought against him for his wilful disobedience of the two court orders;

(g) his mockery of the oath he took when he lied through his teeth during his testimony, which was, to say the least, grossly improper conduct, unbefitting of an advocate and solicitor and an officer of the court.

123. Confidence in the administration of justice is lost when right-minded persons go away thinking that the oath need not be respected and can be disregarded with impunity. As a lawyer, Mr Krishna, should have appreciated all the more, the full meaning and seriousness of taking the oath and giving evidence under oath. In my view, he blatantly lied and destroyed the meaning of the oath he had taken to tell the truth, the whole truth, and nothing but the truth. He made a mockery of the judicial process, which relies on witnesses giving truthful testimony under oath. The trial process is rooted in the confidence that witnesses will tell the truth and not lie. That is why perjury is regarded as such a serious criminal offence for which the offender is punishable with imprisonment for a term which may extend to 7 years, and is also liable to a fine, under section 193 of the Penal Code.

124. At the hearing on 20 February 2001, I accordingly notified Mr Krishna of my intended reference as aforesaid to the Attorney-Generals Chambers and to the Law Society of Singapore, through the Registrar of the Supreme Court.

125. I also ordered Mr Krishna to pay all the applicants costs for the motion on an indemnity basis to be taxed, if not agreed.

Chan Seng Onn

Judicial Commissioner