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

[2024] SGHC 184

Originating Application No 894 of 2023
(Summons No 387 of 2024)

Between

(1) Madison Pacific Trust Limited
(2) Tor Asia Credit Master Fund LP
(3) TACF Institutional Credit Master Fund LP
(4) Investment Opportunities V Pte Limited

… *Applicants*

And

(1) PT Dewata Wibawa
(2) PT Supermal Karawaci
(3) David Salim

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Stay of proceedings]
[Contempt of Court — Contempt in face of court]
[Contempt of Court — Sentencing]

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v
PT Dewata Wibawa and others

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Chua Lee Ming J
22 March, 10 May 2024

17 July 2024

Chua Lee Ming J:

1 In HC/SUM 387/2024, the applicants sought a committal order against the third defendant in connection with alleged breaches of an anti-suit injunction. I found the third defendant to be in contempt and granted the application. The third defendant has appealed against my decision.

Background facts

2 References in these grounds to "applicant", "applicants", "defendant" or "defendants" will refer to the applicant/s or defendant/s in the present proceedings unless otherwise specifically stated.

Arbitration and related proceedings in Singapore

3 The applicants and the defendants were parties to an agreement (the "Agreement") under which:

(a) the second to fourth applicants granted a loan to the first and second defendants;

(b) the first applicant was the security agent;

(c) the third defendant and two other entities, DS Global Holdings Pte Ltd ("DS Global") and Rodamco Indonesia BV ("Rodamco"), were guarantors of the first and second defendants.

4 The Agreement contained an arbitration agreement (the "Arbitration Agreement") that provided for disputes to be resolved by arbitration in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016). The seat of the arbitration was to be Singapore.

5 In December 2021, the first and second defendants commenced arbitration proceedings against the applicants (the "Arbitration"). The main contention by the first and second defendants was that the Agreement had been discharged. Subsequently, the three guarantors (the third defendant, DS Global and Rodamco), were joined as the third, fourth and fifth claimants, respectively, in the Arbitration.

6 In January 2023, the arbitral tribunal (the "Tribunal") issued a partial award in which the Tribunal dismissed the claim that the Agreement had been discharged (the "Partial Award").

7 By way of letter dated 8 February 2023, Gabriel Law Corporation ("GLC") informed the Tribunal that the defendants and DS Global would be "appealing" against the Partial Award and they would not be participating in the Arbitration until the "appeal" was finally resolved.[1] The letter did not refer to Rodamco as the applicants had taken over operation and control of the company. Although the letter used the words "appealing" and "appeal", it was clear that the defendants and DS Global were referring to their right to apply to set aside the Partial Award under the International Arbitration Act 1994 (2020 Rev Ed). Shortly after, GLC sent an email informing the Tribunal that they had been discharged from acting for the claimants in the Arbitration.[2]

8 On 17 February 2023, the third defendant sent an email to the Tribunal making a number of serious allegations concerning the Tribunal's conduct and impartiality. The Tribunal denied the allegations. In the same email, the defendants and DS Global also withdrew their claim in the Arbitration against the second to fourth applicants for malicious prosecution of the 1st and 2nd PKPU Applications (see [11] and [12] below).

9 The Tribunal proceeded with the remaining issues in the Arbitration notwithstanding the withdrawal from the Arbitration by the defendants and DS Global. On 16 August 2023, the Tribunal issued its final award (the "Final Award") in which it found that the payment of default interest under the Agreement was not a penalty and that the applicants were entitled to costs and expenses under the Agreement and costs of the Arbitration.

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1 1st affidavit of Cassandra Louise Ho affirmed on 31 August 2023 ("Ho's 1st affidavit"), at pp 856–858.

2 Ho's 1st affidavit, at pp 865–866.

10 On 20 March 2023, the defendants and DS Global filed an application to set aside the Partial Award (the "Setting Aside Application"). The application was dismissed by the Singapore International Commercial Court on 21 August 2023. The defendants and DS Global appealed to the Court of Appeal; the appeal was dismissed on 25 March 2024.

The applicants' PKPU applications in Jakarta

11 In November 2021, the second to fourth applicants commenced Suspension of Debt Payment Obligations (known in Indonesia as *Penundaan Kewajiban Pembayaran Utang* ("PKPU")) proceedings in the fourth applicant's name in the Central Jakarta District Court against the first and second defendants to enforce their rights under the Agreement (the "1st PKPU Application").[3] As stated earlier, the first and second defendants commenced the Arbitration in December 2021. The first and second defendants relied on the existence of the then ongoing Arbitration for their objection to the 1st PKPU Application.[4] On 19 January 2022, the Indonesian court dismissed the 1st PKPU Application.

12 In March 2022, the second to fourth applicants again commenced PKPU proceedings in the fourth applicant's name in the Central Jakarta District Court against the first and second defendants to enforce their rights under the Agreement (the "2nd PKPU Application").[5] The first and second defendants again relied on the existence of the then ongoing Arbitration to successfully obtain a dismissal of the 2nd PKPU Application.[6]

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3 Ho's 1st affidavit, at para 17 and pp 283–293.

4 Ho's 1st affidavit, at para 19.

5 Ho's 1st affidavit, at para 21 and pp 323–332.

6 Ho's 1st affidavit, at para 23.

13 Both the 1st and 2nd PKPU Applications were submitted to provide an opportunity for the first and second defendants to submit a settlement plan for the repayment of their debts. The petitions for both Applications were signed by one Mr Jason Tabalujan ("Tabalujan") on behalf of the fourth applicant.

14 Following the issuance of the Partial Award, on 6 February 2023, the second to fourth applicants again commenced PKPU proceedings in the Central Jakarta District Court against the first and second defendants to enforce their rights under the Agreement (the "3rd PKPU Application").[7] The proceedings were again commenced by way of a petition filed by the fourth applicant except that this time, the petition was signed by one Mr Ranjan Lath ("Lath").

15 On 9 May 2023, the first and second defendants successfully obtained a dismissal of the 3rd PKPU Application by relying on the existence of the Setting Aside Application, which was then still pending.[8] As stated in [10] above, the Setting Aside Application was dismissed on 21 August 2023.

The defendants' court actions in Jakarta

1st Jakarta Court Action

16 On 9 February 2023 (after the Tribunal issued the Partial Award), the defendants commenced a claim in the Central Jakarta District Court against the second to fourth applicants and Tabalujan (the "1st Jakarta Court Claim").[9] As stated in [13] above, Tabalujan had signed the petitions in the 1st and 2nd PKPU Applications. The defendants claimed that the second to fourth applicants had

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7 Ho's 1st affidavit, at para 42 and pp 838–851.

8 Ho's 1st affidavit, at para 47.

9 Ho's 1st affidavit, at para 49 and pp 997–1045.

acted in bad faith and had committed an unlawful act in prosecuting the 1st and 2nd PKPU Applications because the Applications were in breach of the Agreement and the Arbitration which was ongoing then.[10] The defendants also sought the "confiscation" of all bills/receivables due to the second to fourth applicants pursuant to the Agreement, and the suspension of the second to fourth applicants' rights under the Agreement and related security documents including guarantees.[11]

17 On 18 December 2023, the second to fourth applicants and Tabalujan submitted a jurisdiction challenge by which they contended that the Central Jakarta District Court had no jurisdiction in respect of the 1st Jakarta Court Claim as the claims were subject to the Arbitration Agreement. On 4 March 2024, the Central Jakarta District Court dismissed the 1st Jakarta Court Action on the ground that it had no jurisdiction.[12]

18 On 7 March 2024, the defendants appealed against the decision of the Central Jakarta District Court dismissing the 1st Jakarta Court Claim.[13]

2nd Jakarta Court Claim

19 On 11 May 2023, the defendants commenced another claim in the Central Jakarta District against the second to fourth applicants and Lath (the "2nd Jakarta Court Claim"). As stated in [14] above, Lath had signed the petition filed in the 3rd PKPU Application. The defendants' claim was again

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10 Ho's 1st affidavit, at para 46(a).

11 1st affidavit of Holly Jocelyn Hamilton affirmed on 11 December 2023 ("Hamilton's 1st affidavit"), at para 13(m).

12 2nd affidavit of Ayana Ki Su Jin sworn on 6 March 2024 ("Ki's 2nd affidavit"), at paras 10–11 and p 83.

13 2nd affidavit of Cassandra Louise Ho affirmed on 20 March 2024, at para 12(a).

premised on allegations of an unlawful act by the second to fourth applicants. As in the case of the 1st Jakarta Court Claim, the defendants also sought the "confiscation" of all bills/receivables due to the second to fourth applicants pursuant to the Agreement, and the suspension of the second to fourth applicants' rights under the Agreement and related security documents including guarantees.[14]

Anti-suit injunction

20 On 4 September 2023, the applicants filed the present originating application, HC/OA 894/2023 ("OA 894"), seeking (among other things) an anti-suit injunction against the defendants.

21 On 3 November 2023, I made the following orders (the "ASI Order"):

(a) The defendants, whether by themselves, their servants or agents or otherwise howsoever, shall immediately each be restrained from:

(i) proceeding with or continuing with or assisting or participating in the prosecution of the 1st Jakarta Court Claim other than to take steps to withdraw and/or discontinue the same;

(ii) proceeding with or continuing with or assisting or participating in the prosecution of the 2nd Jakarta Court Claim other than to take steps to withdraw and/or discontinue the same; and

(iii) commencing and/or proceeding with or continuing with or assisting or participating in any other claims in the courts of Indonesia against any of the applicants (including their directors

[14] Hamilton's 1st affidavit, at para 13(m).

and/or former directors) pertaining to any subject matter which falls within the scope of the Arbitration Agreement.

(b) It is declared that the 1st and 2nd Jakarta Court Claims are in breach of the Arbitration Agreement.

(c) The applicants be at liberty to effect service of the order on the defendants by way of emailing copies of the same to Dentons Rodyk & Davidson LLP ("DRD LLP") being the solicitors on record for the defendants in the Setting Aside Application and the related appeal to the Court of Appeal.

22 On 11 March 2024, the defendants filed HC/OA 245/2024 ("OA 245") in which they sought the following orders:

(a) The service of the originating application in OA 894 be set aside and that pending the final disposal of the application in OA 245 (including any appeals therefrom), all proceedings in OA 894 be stayed.

(b) Alternatively, to revoke and/or set aside the ASI Order and the defendants be allowed to file their reply affidavit(s) and to defend OA 894.

Committal proceedings

23 On 11 December 2023, the applicants filed HC/SUM 3802/2023 seeking permission to make an application for committal.

24 On 29 January 2024, I made the following orders (the "Permission Order"):

(a) Permission be granted for the applicants to make an application for a committal order ("Committal Application") against the third defendant:

(i) in his personal capacity, pursuant to s 4(1)(*a*) of the Administration of Justice (Protection) Act 2016 (2020 Rev Ed) ("AJPA") for intentionally disobeying and/or breaching the ASI Order; and

(ii) in his capacity as the first defendant's sole director, pursuant to s 6(2) read with s 4(1) AJPA, for, by his act or omission, being knowingly concerned in and/or a party to the commission of the first defendant's contempt of court by intentionally disobeying and/or breaching the ASI Order.

(b) The applicants be at liberty to effect service on the third defendant of documents relating to the application for permission and the Committal Application, including any order(s) made therein, by way of emailing copies of the same to DRD LLP, being the solicitors on the record for the third defendant in Setting Aside Application and the related appeal to the Court of Appeal.

25 On 31 January 2024, the applicants filed the Committal Application (HC/SUM 387/2024) in which the applicants sought an order that the third defendant be committed to prison and/or fined for his contempt of court committed:

(a) in his personal capacity, pursuant to s 4(1)(*a*) AJPA for intentionally disobeying and/or breaching the ASI Order; and

(b) in his capacity as the first defendant's sole director, pursuant to s 6(2) read with s 4(1) AJPA, for, whether by his act or omission, being knowingly concerned in and/or a party to the commission of the first defendant's contempt of court by intentionally disobeying and/or breaching the ASI Order.

26 On 15 March 2024, the defendants applied, by way of HC/SUM 736/2024, to stay all proceedings in OA 894 (including the Committal Application) pending the final disposal of OA 245 (the "Stay Application").

The Stay Application

27 I heard the Stay Application on 22 March 2024. The defendants submitted that OA 245, if successful, would be nugatory if OA 894 was not stayed and the Court made a committal order pursuant to the Committal Application. As stated in [22] above, in OA 245, the defendants sought to set aside the service of the originating petition in OA 894, or alternatively to set aside the ASI Order. Setting aside the service of the originating petition in OA 894 would lead to the setting aside of the ASI Order. The ultimate objective of OA 245 was therefore to set aside the ASI Order.

28 The applicants submitted that even if the defendants subsequently succeeded in OA 245 and the ASI Order was set aside, the defendants would still be liable for contempt of court arising from breaches of the ASI Order committed *before* the ASI Order was set aside. As long as the ASI Order stood, the applicants were entitled to have them respected and obeyed and it was not for the defendants to disregard the order on the basis of a belief that the order was wrong: *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR(R) 60 ("*OCM*") at [29].

29 During the hearing before me, the defendants agreed with the proposition that even if the ASI Order was subsequently set aside, they would remain liable for contempt of court in respect of breaches of the ASI Order that had been committed before the ASI Order was set aside. However, the defendants argued that a setting aside of the ASI Order would still be relevant to the Committal Application as it would support his defence under s 21 AJPA.

30 I disagreed with the defendants. In my view, whether or not the ASI Order would be set aside was irrelevant to the question as to whether the defendants could successfully invoke s 21 AJPA.

31 Section 21 AJPA states:

> **Honest and reasonable mistake**
>
> **21.** A person is not guilty of contempt of court under section 4(1), (2) or (3) if the person satisfies the court that the failure or refusal to comply with a judgment, order, decree, direction, writ or other process of court or any undertaking given to a court was wholly or substantially attributable to an honest and reasonable failure by that person, at the relevant time, to understand an obligation imposed on the person bound by the judgment, order, decree, direction, writ, process or undertaking and that that person ought fairly to be excused.

32 It appeared from the third defendant's affidavit filed in support of OA 245 that the grounds for OA 245 were as follows:

(a) the service of the originating petition in OA 894 was invalid because it did not comply with Indonesian law;[15]

(b) the ASI Order should be set aside because (i) the subject-matter of the 1st and 2nd Jakarta Court Claims did not fall within the scope of

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15 1st affidavit of David Salim in OA 245 affirmed on 8 March 2024 ("Salim's 1st affidavit in OA 245"), at para 34.

the Arbitration Agreement, and/or (ii) there was material non-disclosure and/or misrepresentation in OA 894.[16]

33 A setting aside of the ASI Order would merely show that the defendants were correct as to one or more of the above grounds. However, none of the grounds would assist the defendants in showing (for the purposes of s 21 AJPA) that:

(a) they did in fact fail to understand the obligation under the ASI Order;

(b) their failure to comply with the ASI Order was wholly or substantially attributable to their failure to understand the obligation under the ASI Order; or

(c) their failure to understand the obligation under the ASI Order was honest and reasonable.

34 Whether the defendants in fact believed that they did not have to comply with the ASI Order because it was invalid, or whether this belief wholly or substantially caused them to not comply with the ASI Order, or whether this belief was an honest one were all matters that pertained to the defendants' state of mind. Whether the belief was reasonable depended on the grounds for the belief; a subsequent setting aside of the ASI Order would be irrelevant in this regard.

35 Accordingly, I dismissed the Stay Application. The defendants have not appealed against my decision dismissing the Stay Application.

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16 Salim's 1st affidavit in OA 245, at paras 53–65.

The Committal Application

36 The Committal Application was against only the third defendant (see [24] and [25] above). The applicants alleged that the third defendant committed contempt of court in his personal capacity, pursuant to s 4(1)(*a*) AJPA, and in his capacity as the first defendant's sole director, pursuant to s 6(2) read with s 4(1) AJPA.

37 Section 4(1) AJPA states:

> **Contempt by disobedience of court order or undertaking, etc.**
>
> **4.**—(1) Any person who —
>
> (*a*) intentionally disobeys or breaches any judgment, decree, direction, order, writ or other process of a court; or
>
> (*b*) intentionally breaches any undertaking given to a court,
>
> commits a contempt of court.

38 Section 6(2) AJPA states:

> **Contempt by corporations**
>
> **6.**—(2) Where a corporation commits contempt of court under this Act, a person —
>
> (*a*) who is —
>
> (i) an officer of the corporation, or a member of a corporation whose affairs are managed by its members; or
>
> (ii) an individual who is involved in the management of the corporation and is in a position to influence the conduct of the corporation in relation to the commission of the contempt of court; and
>
> (*b*) who —

> (i) consented or connived, or conspired with others, to effect the commission of the contempt of court;
>
> (ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the contempt of court by the corporation; or
>
> (iii) knew or ought reasonably to have known that the contempt of court by the corporation (or contempt of court of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that contempt of court,
>
> shall be guilty of the same contempt of court as is the corporation, and shall be liable on being found guilty of contempt of court to be punished accordingly.

39 There was no dispute that the first and third defendants had not complied with the ASI Order or that the third defendant satisfied s 6(2) AJPA with respect to the first defendant.

40 The third defendant submitted that he should not be punished for contempt of court because:

(a) the service of the Committal Application was not valid; and

(b) he was entitled to rely on the defence in s 21 AJPA.

Whether service of the Committal Application was valid

41 Order 23 r 4(1) of the Rules of Court 2021 ("ROC 2021") requires the committal applicant to serve the following documents (the "Committal Documents") on the committal respondent by personal service:

(a) the application for permission to make an application for committal and the supporting affidavit;

(b) the order granting permission; and

(c) the application for the committal order.

42 In the present case, the applicants served the Committal Documents:

(a) by leaving copies of the same at the registered address of GLC;[17] and

(b) by way of an email to DRD LLP, pursuant to the Permission Order (see [24(b)] above).[18]

Service on GLC

43 One of the ways of effecting personal service is to effect service "in any manner agreed with the person or entity to be served": O 7 r 2(1)(*d*) ROC 2021.

44 The applicants relied on cl 43.3 of the Agreement which provided as follows:[19]

> 43.3 **Service of process**
>
> (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in Singapore):
>
> (i) irrevocably appoints Gabriel Law Corporation having its registered office at 55 Market Street, #12-02, Singapore 048941 as its agent for service of process (which includes service of all and any documents relating to such proceedings) arising out of or in connection with any arbitration proceedings or any proceedings before the courts of Singapore arising out of or in connection with any Finance Document

17 2nd affidavit of Tan Shengmin affirmed on 5 March 2024, at para 6.

18 Ki's 2nd affidavit, at paras 8(a).

19 Ho's 1st affidavit, at p 186.

> (including any proceedings before the Singapore courts related to any aspect of an arbitration);
>
> (ii) agrees to maintain the appointment for service of process in Singapore for so long as any amount is outstanding under any Finance Document; and
>
> (iii) agrees that failure by a process agent to notify that Obligor of the process will not invalidate the proceedings concerned.
>
> (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the relevant Obligor must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this the Agent may appoint another agent for this purpose.

The term "Obligor" included the third defendant. The term "Finance Document" included the Agreement. The term "Agent" referred to the first applicant.

45 The third defendant submitted that cl 43.3 of the Agreement did not apply to committal proceedings because committal proceedings were not proceedings arising out of or in connection with any Finance Document. It was not disputed that the committal proceedings arose from the breaches of the ASI Order. However, the third defendant argued that the ASI Order was too far removed from the Agreement.

46 I disagreed with the third defendant's submissions. Clause 43.3(a)(ii) applied to service of process "arising out of or in connection with … any proceedings before the courts of Singapore arising out of or in connection with any Finance Document …" The words "arising out of or in connection with" are words of broad import, which should be given their natural meaning in the context in which they are found: *Sabah Shipyard (Pakistan) Ltd v Government of the Islamic Republic of Pakistan* [2004] 3 SLR(R) 184 at [12].

47 In seeking the ASI Order, the applicants were enforcing their rights under the Agreement to stop or prevent breaches of the Arbitration Agreement (contained in the Agreement). It was clear that the application for the ASI Order was a proceeding before the courts of Singapore arising out of or in connection with the Agreement. The committal proceedings arose out of the breaches of the ASI Order. In my view, it was clear that the committal proceedings were also proceedings before the courts of Singapore arising out of or in connection with the Agreement and therefore fell within the scope of cl 43.3(a) of the Agreement.

48 The third defendant next submitted that the applicants could not rely on cl 43.3(a) because the defendants, DS Global and Rodamco had revoked the appointment of GLC as process agent in an email to GLC dated 25 May 2023.[20]

49 I rejected the third defendant's submission. Under cl 43.3(a)(i), the third defendant's appointment of GLC as his process agent was *irrevocable*. The third defendant was not entitled to unilaterally disavow cl 43.3 by simply informing GLC that its appointment as process agent was revoked.

50 The third defendant sought to rely on cl 43.3(b), which dealt with the situation where the appointed process agent was unable for any reason to act as process agent. In my view, cl 43.3(b) did not come into play. The third defendant's revocation of the appointment of GLC was in breach of the cl 43.3(a) and was not effective as against the applicants.

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[20] 2nd affidavit of David Salim affirmed on 5 April 2024 ("Salim's 2nd affidavit"), at para 8.

51 In my view, the applicants had validly effected personal service on the third defendant by way of service on GLC pursuant to cl 43.3(a) of the Agreement.

Service on DRD LLP

52 In addition to effecting service by way of service on GLC, the applicants' solicitors also effected service by way of service on DRD LLP.[21] This was done pursuant to my order (see [24] above) granting the applicants liberty to effect service on the third defendant by way of emailing copies of the requisite documents to DRD LLP, being the solicitors on the record for the third defendant in Setting Aside Application and the related appeal to the Court of Appeal.

53 It should be noted that it was sufficient for the applicants' case that service on *either* GLC or DRD LLP constituted valid service.

54 The third defendant submitted that my order granting the applicants liberty to effect service by way of email to DRD LLP should be set aside because there were no attempts made by the applicants to effect personal service on the third defendant in Indonesia. I rejected the third defendant's submission.

55 Order 7 r 1(2) ROC 2021 gives the Court the discretion to dispense with personal service or with ordinary service or with service altogether in "an appropriate case". Dispensation of personal service means service may be effected by way of ordinary service.

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[21] Ki's 2nd affidavit, at paras 8(a).

56 Order 7 r 1(2) does not require attempts at personal service to be made before the Court can dispense with personal service, and there is no reason to limit the scope of the provision by introducing such a requirement.

57 What then would constitute an "appropriate case" for the dispensation of personal service? Personal service has traditionally been viewed as the most effective means of ensuring that the recipient is notified of the documents: *Singapore Rules of Court – A Practice Guide* (Chua Lee Ming editor-in-chief) (Academy Publishing, 2023) at para 07.004. In my view (without in any way limiting the scope of O 7 r 1(2)), it would be an appropriate case to dispense with personal service if personal service can reasonably be expected to be difficult or disproportionately time-consuming and the mode of ordinary service to be employed would be as effective in ensuring that the recipient is notified of the documents. Such an approach would be consistent with the Ideals of achieving expeditious proceedings and fair and practical results suited to the needs of the parties: O 3 r 1(2)(*b*) and (*e*) ROC 2021.

58 Under O 7 r 3(*e*), ordinary service may be effected in any manner which the Court may direct, including the use of electronic means. This provision gives the Court a broad discretion as to the manner in which ordinary service may be effected, subject of course to the overarching consideration that the manner of service can be expected to notify the recipient of the documents.

59 In this case, the third defendant was in Indonesia at the material time and he had previously made it difficult for the applicants to effect service on him through his solicitors, GLC (including service of OA 894 and service of the ASI Order).[22] On the other hand, at the time that I made the Permission Order, the

[22] Hamilton's 1st affidavit, at para 71.

appeal to the Court of Appeal against the dismissal of the Setting Aside Application was still pending and DRD LLP were the solicitors on record for the third defendant.

60 I was satisfied that this was an appropriate case for me to exercise my discretion under O 7 r 1(2) ROC 2021 to dispense with personal service on the third defendant and to permit the applicants to effect ordinary service by way of email to DRD LLP. In my view, ordinary service by way of email to DRD LLP would be effective in ensuring that the third defendant was notified of the documents.

Approval for service out of jurisdiction was not required

61 The third defendant further submitted that the applicants had to apply for the court's approval to serve out of Singapore (which they had not done) because he was a citizen and resident of Indonesia and at all material times was not physically present in Singapore.

62 In my view, the third defendant's submission was misconceived. The issue of applying for approval to serve out of the jurisdiction simply did not arise. The court's approval is required only if an originating process or other court document is to be served out of Singapore: O 8 r 1(1) ROC 2021. In the present case, the Committal Documents were served in Singapore on GLC and DRD LLP. The fact that the third defendant was outside the jurisdiction was irrelevant in this regard.

Whether the third defendant could rely on s 21 AJPA

63 The third defendant claimed that he was advised and honestly believed that:[23]

(a) the ASI Order was not effective and/or binding on him because the documents in OA 894 were not served on him personally; and

(b) the service that was effected on him was not compliant with Indonesian law and did not have any legally binding effect on him.

64 According to the third defendant, the defendants were advised that under Indonesian law, legal documents for international proceedings must be served by requesting Singapore's diplomatic representatives to request a rogatory letter to the Indonesian Supreme Court, which would in turn effect physical delivery through the relevant Indonesian court officials.[24]

65 The third defendant submitted that s 21 AJPA afforded him a defence. It would be useful to set out s 21 AJPA again. Section 21 states:

> **Honest and reasonable mistake**
>
> **21.** A person is not guilty of contempt of court under section 4(1), (2) or (3) if the person satisfies the court that the failure or refusal to comply with a judgment, order, decree, direction, writ or other process of court or any undertaking given to a court was wholly or substantially attributable to an honest and reasonable failure by that person, at the relevant time, to understand an obligation imposed on the person bound by the judgment, order, decree, direction, writ, process or undertaking and that that person ought fairly to be excused.

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23 Salim's 2nd affidavit, at para 46(a).

24 Salim's 2nd affidavit, at para 29.

66 To succeed under s 21 AJPA, the third defendant had to show on a balance of probabilities (see s 29 AJPA) that:

(a) he failed to understand the obligation imposed on him by the ASI Order;

(b) his failure to understand the obligation under the ASI Order was honest and reasonable;

(c) his failure to comply with the ASI Order was wholly or substantially attributable to his failure to understand the obligation under the ASI Order; and

(d) he ought fairly to be excused.

67 The issues before me were:

(a) whether the third defendant failed to understand the obligation imposed on him by the ASI Order; and

(b) whether the third defendant's mistake was honest and reasonable.

There was no dispute that if both issues were answered in affirmative, the third defendant ought fairly to be excused. On the other hand, if either of the issues was answered in the negative, the defence under s 21 AJPA would not be available to the third defendant.

Whether the third defendant failed to understand the obligation imposed on him by the ASI

68 The substance of the third defendant's case was that he had believed that the ASI Order was not valid. Section 21 AJPA applies to a "failure … to understand an obligation imposed on the person bound by the judgment, order …" The question was whether a mistake as to the validity of the ASI Order fell within the meaning of the words "failure … to understand the obligation".

69 The third defendant relied on *VFV v VFU* [2021] 5 SLR 1428 ("*VFU*") as authority for the proposition that for the purposes of s 21 AJPA, a mistake may pertain to the validity of the court order itself and need not relate to the substantive contents of the court order.[25] In that case, the question was whether the appellant was guilty of contempt of court for breaching a consent order (entered in the Family Justice Courts) by failing to provide the respondent with physical access to the children of the marriage. The appellant had taken the position that she was no longer bound by the consent order once the respondent commenced proceedings in the Syariah Court. The High Court held that the appellant's failure to provide access was "an honest and reasonable failure arising from a misapprehension of the validity of the Consent Order" for purposes of s 21 AJPA (at [15]).

70 The applicants submitted that the words "failure … to understand the obligation" in s 21 AJPA meant a mistake as to the substance or nature of the obligation that was to be complied with. In other words, s 21 was applicable only if the mistake was a mistake as to what the ASI Order required the third defendant to do or to not do.

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[25] Salim's written submissions dated 24 April 2024, at paras 41–42 and 45.

71 I agreed with the applicants, and I respectfully disagreed with *VFU*. First, in my view, the ordinary meaning of the words "failure … to understand an obligation" means a failure to understand the nature of the obligation rather than the validity of the obligation. If Parliament intended s 21 to apply to mistakes as to the validity of the order, it would have expressly provided for it, especially given the common law position that as long as an order stands, it is to be obeyed and is not to be disregarded on the basis of a belief that it is wrong, irregular or void (see [73] below).

72 Second, as the applicants submitted, the legislative intent behind s 21 AJPA was to provide a defence where a person "honestly and reasonably *did not understand what the court had ordered* …" [emphasis added]: *Singapore Parliamentary Debates, Official Report* (15 August 2016) vol 94 (K Shanmugam, Minister for Law).

73 Third, the third defendant's submission that s 21 applied to a mistake as to the validity of the ASI Order was inconsistent with the principle in *OCM* (which the third defendant did not dispute) that as long as an order stands, it is to be respected and obeyed and it is not to be disregarded on the basis of a belief that the order is wrong, irregular or void (see [28] above). See also Mark S W Hoyle, *Freezing and Search Orders* (Informa, 4th Ed, 2006) at para 9.17 (cited with approval in *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 at [82]):

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

There is nothing to suggest that Parliament intended s 21 AJPA to depart from the common law position.

74 In the circumstances, the third defendant's mistake was not a failure to understand the obligation imposed on him by the ASI Order, within the meaning of s 21 AJPA.

Whether the third defendant's mistake was honest and reasonable.

75 I agreed with the applicants that in any event, the third defendant's mistake was not honest and reasonable. The question as to whether the ASI Order was valid or binding on the third defendant had to be determined by a Singapore court under Singapore law. Indonesian law on service would be relevant only if *under Singapore law*, the validity of service depended on whether the service was validly effected under Indonesian law.

76 However, for reasons best known to the third defendant, he chose to rely on the advice of his Indonesian lawyers that under Indonesian law, he did not have to comply with the ASI Order until the documents in OA 894 were served on him in accordance with Indonesian law.

77 The third defendant did not state in any of his affidavits that his Singapore lawyers had advised him that he did to have to comply with the ASI Order. In fact, his affidavits are conspicuously silent as to whether he had sought advice from his Singapore lawyers as to whether he had to comply with the ASI Order and, if he had not, why he sought the advice of his Indonesian lawyers instead of seeking the advice of his Singapore lawyers.

78 I also agreed with the applicants that the third defendant could not have honestly or reasonably believed that he did not have to seek advice from

Singapore lawyers. As the applicants pointed out, the third defendant was no stranger to Singapore legal proceedings. In my view, it was inconceivable that it would not have occurred to the third defendant to seek advice from his Singapore lawyers. After all, the ASI Order was issued by a Singapore court and any question as to the validity of the order or its binding effect on the third defendant would be dealt with by the Singapore court.

79 Further, in HC/OA 550/2023 ("OA 550"), the third defendant had, through his Singapore counsel, argued before a Singapore court against the validity of service effected pursuant to cl 43.3 of the Agreement. The applicants had filed OA 550 to enforce certain interim orders made by the Tribunal as orders of the Singapore Court. The interim orders were designed to preserve the integrity of the security under the Agreement. The court papers in OA 550 were served on the third defendant through GLC pursuant to cl 43.3 of the Agreement.[26] The third defendant would have been aware from OA 550 that the question as to the validity of service effected pursuant to cl 43.3 of the Agreement was a question for a Singapore court.

80 I agreed with the applicants that the inferences to be drawn from the evidence were that the third defendant deliberately did not seek advice from his Singapore counsel, or if he did, he has remained silent because the advice did not give him reasonable grounds to believe that he did not have to comply with the ASI Order. The third defendant's mistake therefore could not be described as honest.

81 Even if the decision not to seek advice from Singapore counsel was not deliberate, that decision was not a reasonable one given the circumstances of

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[26] 2nd affidavit of Holly Jocelyn Hamilton affirmed on 19 April 2024, at para 17.

the case. The third defendant had the opportunity to consult, and ought to have consulted, his Singapore lawyers. No explanation has been given as to why he did not consult Singapore lawyers.

The third defendant was guilty of contempt

82 Accordingly, I found the third defendant guilty of contempt:

(a) in his personal capacity, pursuant to s 4(1)(*a*) AJPA for intentionally disobeying and/or breaching the ASI Order; and

(b) in his capacity as the first defendant's sole director, pursuant to s 6(2) read with s 4(1) AJPA, for by his act or omission, being knowingly concerned in and/or a party to the commission of the first defendant's contempt by intentionally disobeying and/or breaching the ASI Order.

Sentencing

83 Under s 12(1)(*a*) AJPA, the punishment is a fine not exceeding $100,000 or imprisonment for a term not exceeding three years or both.

84 The applicants submitted that the third defendant's conduct was brazen and egregious. Not only did he not comply with the ASI Order, he even took steps in Indonesia to nullify the ASI. The applicants emphasised the importance of an anti-suit injunction and referred to *Mobile Telecommunications v Prince Hussam* [2018] EWHC 3749. The applicants submitted that a fine would not be sufficient and that there was no practical alternative to imprisonment in the present case. The applicants sought a sentence of at least nine months' imprisonment for each offence.

85 The third defendant submitted that a fine was sufficient punishment and deterrence. He argued that imprisonment would have greater deterrent effect on a contemnor who is resident in Singapore, whereas he was ordinarily resident in Indonesia. He submitted a fine of $40,000 for each offence.

86 I agreed with the applicants that the third defendant's conduct was egregious. I also noted that the third defendant had continued to deliberately ignore the ASI Order even after his counsel accepted during the first hearing before me on 22 March 2024 (see [29] above) that as a matter of principle, the third defendant had to comply with the ASI Order pending the determination of his application to set aside the ASI Order.

87 As the Court of Appeal held in *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 (at [103]), in most cases involving continuing breaches, the sentence to be imposed would include both punitive and coercive elements. In my view, although the third defendant was ordinarily resident in Indonesia, the coercive element was still an important factor. The third defendant described himself as a "reputable businessman with friends and connections in Singapore".[27]

88 I agreed with the applicants that a custodial sentence was clearly called for in the present case. I sentenced the third defendant to a term of imprisonment of two months for each offence. However, I gave the third defendant a chance to purge his contempt by complying and procuring the first defendant to comply with the ASI Order. To that end, I made the following orders:

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[27] Salim's 2nd affidavit, at para 46(c).

(a) If the third defendant's claims in the 1st and 2nd Jakarta Court Claims were discontinued by 7 June 2024, the imprisonment term of two months against the third defendant for contempt in his personal capacity was to be substituted with a fine of $50,000 (in default, seven days imprisonment) to be paid within seven days of such discontinuance.

(b) If the first defendant's claims in the 1st and 2nd Jakarta Court Claims were discontinued by 7 June 2024, the imprisonment term of two months against the third defendant for contempt in his capacity as the first defendant's sole director was to be substituted with a fine of $50,000 (in default, seven days imprisonment) to be paid within seven days of such discontinuance.

(c) If the first and third defendants' claims in the 1st and 2nd Jakarta Court Claims were not discontinued by 7 June 2024, the third defendant was to surrender to the Sheriff of the High Court by noon on 10 June 2024 to serve the respective terms of imprisonment.

Subsequent events

1st Jakarta Court Claim

89 As stated in [18] above, the defendants appealed against the decision of the Central Jakarta District Court dismissing the 1st Jakarta Court Claim. On 21 May 2024, the Jakarta High Court dismissed the defendants' appeal.[28]

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[28] 3rd affidavit of Holly Jocelyn Hamilton affirmed on 20 June 2024 ("Hamilton's 3rd affidavit"), at para 14.

90 On 4 June 2024, the *second* defendant filed an appeal on cassation to the Supreme Court of Indonesia against the Jakarta High Court's decision dismissing the defendants' appeal in the 1st Jakarta Court Claim.[29]

91 On 5 June 2024, the first and third defendants' Indonesian counsel informed the Central Jakarta District Court that they would not file a cassation petition and waived their right to do so.[30] The first and third defendants' right of appeal lapsed on 6 June 2024 and, according to the first and third defendants, the 1st Jakarta Court Claim was deemed discontinued in so far as they were concerned.[31]

2nd Jakarta Court Claim

92 On 22 May 2024, a hearing for the 2nd Jakarta Court Claim took place during which the defendants' Indonesian counsel informed the Court that there was no change to the defendants' case.[32]

93 On 30 May 2024, the *first and third* defendants' Indonesian counsel requested the Central Jakarta District Court to discontinue the examination process of the 2nd Jakarta Court Claim.[33]

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29 Hamilton's 3rd affidavit, at para 18.

30 Hamilton's 3rd affidavit, at para 19; 1st affidavit of Ibrahim Senen affirmed on 6 June 2024 ("Ibrahim's 1st affidavit"), at para 8(c).

31 Ibrahim's 1st affidavit, at para 8(d).

32 Hamilton's 3rd affidavit, at para 15; Ibrahim's 1st affidavit, at para 9.

33 Ibrahim's 1st affidavit, at pp 24–27 (at p 26).

Dispute over whether the third defendant had purged his contempt

94 The third defendant took the position that he had purged his contempt and that the sentences of imprisonment were therefore substituted with fines. On 12 June 2024, he paid the fines. The applicants disagreed. The resolution of this issue has been adjourned for further affidavits to be filed and will be dealt with in due course.

Conclusion

95 For the reasons stated above, I found the third defendant guilty of contempt of court and imposed the sentences set out in [88] above.

96 I ordered the third defendant to pay costs fixed at:

(a) $30,000 (inclusive of disbursements) with respect to the application for permission to make an application for committal and the Committal Application; and

(b) $9,000 with respect to the Stay Application.

Chua Lee Ming
Judge of the High Court

Danny Ong, Yam Wern-Jhien, Bethel Chan and Ayana Ki (Setia Law LLC) for the applicants;
Zhulkarnain Rahim, Sean Chen and John Cheong (Dentons Rodyk & Davidson LLP) for the first and third respondents.