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

[2024] SGHC 227

Originating Application No 679 of 2023 (Summons No 1940 of 2024)

In the matter of Order 11, Rule 11
of the Rules of Court 2021

Between

Alliance Divine Impex Pte Ltd

… *Applicant*

And

Arulappan Tony

… *Respondent*

And

DBS Bank Ltd

… *Non-party*

GROUNDS OF DECISION

[Civil Procedure — Discovery of documents — Application for inspection of "banker's book" — Section 175(1) Evidence Act 1893 (2020 Rev Ed)]
[Banking — Banker's books — Proceedings — Civil]

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v
Arulappan Tony
(DBS Bank Ltd, non-party)

[2024] SGHC 227

General Division of the High Court — Originating Application No 679 of 2023 (Summons No 1940 of 2024)
Goh Yihan J
7 August 2024

4 September 2024

Goh Yihan J:

1 This was the applicant's application against the non-party, DBS Bank Ltd ("DBS"), to produce the respondent's bank statements and related specific documents. The application was made pursuant to s 175(1) of the Evidence Act 1893 (2020 Rev Ed) ("EA") and/or O 11 r 11 of the Rules of Court 2021 ("ROC 2021"). While DBS agreed to the terms of the order sought by the applicant pursuant to s 175(1) of the EA, it did not consent to the application on the record.

2 After considering the applicant's submissions, I allowed the application. I provide the reasons for my decision in these grounds particularly to elaborate on the applicable considerations for a court's exercise of its discretion under

s 175(1) of the EA, as well as the relationship between s 175 and O 11 r 11 of the ROC 2021.

Background facts

3 The applicant, Alliance Divine Impex Pte Ltd, is in, among others, the business of sale of meat products to various other businesses in Singapore. The respondent, Mr Arulappan Tony, was employed by the applicant from February 2019 to May 2022 as a senior sales and marketing manager ("Sales Manager").[1] The respondent's responsibilities as a Sales Manager included inputting various records into the applicant's business ledger in connection with the sale of food products.[2] The respondent left the applicant's employ in May 2022.[3]

4 In January 2023, the director of Alliance Frozen Food Pte Ltd ("AFF"), one Elangovan, informed the applicant's sole director that the respondent had allegedly conspired with an employee of AFF.[4] Pursuant to a business audit undertaken by AFF, it appeared that the respondent had, without authorisation, sold and delivered food products from the applicant to AFF. AFF had made payments towards the invoices drawn in connection with these sales.[5] However, the applicant and AFF were at all material times competitors and in the same

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1 Affidavit of Parameshvaran s/o Shanmugiah dated 10 July 2024 ("Param's Affidavit") at para 7.

2 Param's Affidavit at para 7(iii).

3 Param's Affidavit at para 8.

4 Param's Affidavit at para 9.

5 Param's Affidavit at para 9.

business of selling food products. There should therefore have been no business dealings between the applicant and AFF.[6]

5 After further investigations, the applicant discovered that there was a shortfall of food products in its inventory. This amounted to about 30 to 40 pallets of missing food products worth approximately $300,000 to $400,000.[7] Further, the applicant verified that the invoices which AFF had purportedly paid were not set out in the applicant's business ledger or any such business records, and that the invoices issued to AFF had contained payment details stipulating for payment to be made to the respondent's bank account with DBS and not the applicant's account therewith. In addition, the total amount payable pursuant to the allegedly unauthorised invoices issued in the name of the applicant to AFF was considerably less than the value of the missing food products. The applicant therefore believes that the respondent had entered into various unauthorised transactions, not only with AFF, but also with other business entities.[8]

6 The applicant therefore applied to court for pre-action discovery against the respondent on 6 July 2023 in HC/OA 679/2023 ("OA 679"), relying on potential causes of action such as conversion and unjust enrichment. On 11 December 2023, the court granted OA 679 and ordered the respondent to disclose:

(a) bank statements of his bank account with DBS from February 2019 to May 2022 (both months inclusive); and

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6 Param's Affidavit at para 12.

7 Param's Affidavit at para 13(i).

8 Param's Affidavit at para 13(ii).

(b) bank statements of all such other bank accounts that the respondent may have in Singapore from February 2019 to May 2022 (both months inclusive), also for the same period.

7 The respondent did not, however, furnish the applicant with the documents that he was ordered to disclose. The applicant therefore commenced HC/OA 420/2024 ("OA 420") on 3 May 2024 pursuant to O 11 r 11 of the ROC 2021 to seek the documents (at [6(a)] above) from DBS. After discussions with DBS's solicitors, the parties agreed that OA 420 be withdrawn, and for the applicant to file the present summons in HC/SUM 1940/2024 ("SUM 1940") within OA 679 to seek the production of the same documents under s 175(1) of the EA and/or O 11 r 11 of the ROC 2021. The applicant did so on 10 July 2024.

The applicable law

8 I turn now to the applicable law. The default position in law is the duty of banking secrecy established in s 47(1) of the Banking Act 1970 (2020 Rev Ed) ("BA"). That provision prohibits the disclosure of customer information by any bank in Singapore to any other person "except as expressly provided in this Act". Such "expressly provided" circumstances, pursuant to s 47(2) of the BA, are those specified in the Third Schedule in which disclosure of customer information is permitted. That includes the scenario particularised in para 7 of the Third Schedule, *viz*, where disclosure is necessary for compliance with an order of the Supreme Court pursuant to the powers conferred under Part 4 of the EA. This is what the High Court had termed the "Bankers' Books Exception" in *Ong Jane Rebecca v Lim Lie Hoa* [2023] 5 SLR 656 ("*Ong Jane Rebecca*") at [21] and [38].

9 Indeed, Part 4 of the EA concerns "Bankers' Books", being sub-titled as such. Section 175 thereunder is the authorising provision setting out the power of the court to make an order for the inspection or taking of copies of entries in a banker's book, in the following terms:

> **Court or Judge may order inspection**
>
> **175.**—(1) On the application of any party to a legal proceeding, the court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings.
>
> …

10 Accordingly, an order by the court made pursuant to its power under s 175(1) of the EA carves out an exception to the default requirement of banking secrecy under s 47(1) of the BA. This exception is permitted by s 47(2) read with para 7 of the Third Schedule of the BA.

11 The High Court in *Ong Jane Rebecca* held (at [41]) that the application of the Bankers' Book Exception should be analysed in three steps: (a) whether the documents concerned fall within the definition of "bankers' books" under the EA; (b) if so, whether the proceeding in which the application for inspection was made is a "legal proceeding" under the terms of s 175(1) of the EA; and (c) if so, whether the court should exercise its discretion to order inspection.

My decision: SUM 1940 was granted

12 As I stated at the outset of these grounds, I granted SUM 1940 on 7 August 2024. I did so for the following reasons, which I structure in the order of the three-step framework in *Ong Jane Rebecca* (see at [11] above).

The bank statements sought in SUM 1940 fell within the definition of "bankers' books" under s 170 of the EA

13 As stated in s 170 of the EA, "bankers' books" includes "ledgers, day books, cash books, account books and all other books used in the ordinary business of the bank". In this regard, the Court of Appeal in *Wee Soon Kim Anthony v UBS AG* [2003] 2 SLR(R) 91 ("*Anthony Wee*") held (at [36]) that any form of permanent record maintained by a bank in relation to the transactions of a customer, including correspondence between a bank and a customer which records a transaction, thereby forming an integral part of the customer's account, would fall within the scope of "other books" in the definition of "bankers' books" under s 170 of the EA. More recently, the High Court in *La Dolce Vita Fine Dining Co Ltd v Zhang Lan and others* [2022] 5 SLR 602 ("*La Dolce Vita*"), citing *Anthony Wee* (see *La Dolce Vita* at [24]–[26]), further emphasised that for information to be considered an entry in a banker's book, such entry must amount to a transactional record of the bank concerning a customer, although it need not concern *specific* transactions where it records transactional *facts* (see *La Dolce Vita* at [37]–[41]).

14 With the above definition in mind, I was satisfied that the requested bank documents fell within the definition of "bankers' books" under s 170 of the EA. This is because they consist of the complete and unredacted bank statements of the bank account held by the respondent with DBS. Such bank statements would therefore constitute a permanent record maintained by DBS and certainly amount to transactional records concerning the account of a customer (*ie*, the respondent) within the meaning of *Anthony Wee* at [36] and *La Dolce Vita* at [37] and [39].

OA 679 constituted "legal proceedings" under s 175 of the EA

15 Additionally, I was satisfied that OA 679 constituted "legal proceedings" under s 175 of the EA such that I could order that the applicant be at liberty to inspect and take copies of any entries in a banker's book of DBS for the purposes of such proceedings.

16 In this regard, the High Court in *Success Elegant Trading Ltd v La Dolce Vita Fine Dining Co Ltd and others and another appeal* [2016] 4 SLR 1392 ("*Success Elegant Trading*") held that the phrase "legal proceeding" in s 175(1) of the EA "would refer to the very application for disclosure, in which the applicant demonstrates a right to discovery independent of s 175" (at [92]). In other words, for an order of disclosure to be made, a party must demonstrate a substantive right to the documents, independent of s 175 of the EA. Any reliance on s 175 itself would be misconceived as it only provides for the court's power to make a disclosure order and is not a substantive basis that grounds a disclosure application. Put differently, s 175 does not provide an independent right to inspection of bankers' books where none otherwise exists. While the "legal proceeding" in *Success Elegant Trading* concerned applications for the discovery of bank documents to which the subject banks concerned there were parties, I was of the view that the reasoning in that case was equally applicable in the context of SUM 1940, wherein the underlying "legal proceeding" here (*ie*, OA 679) for production of the respondent's bank statements with DBS was sought pursuant to O 11 r 11 of the ROC 2021, to which DBS was *not* a party. In either scenario, the question is simply whether the applicant has shown a substantive basis for disclosure of the banking documents. That remains the case whether the banks at issue were party to the material "legal proceeding".

17 Applying *Success Elegant Trading*, I was satisfied that OA 679, brought pursuant to O 11 r 11 of the ROC 2021, constitutes a "legal proceeding" within the meaning of s 175 of the EA. This is because the applicant has shown a right in the court order granted in its favour in OA 679 to the relevant bank statements independent of s 175 (see HC/ORC 203/2024 dated 11 December 2023; see also at [6] above). This was based on the procedure for ordering the production of documents and information before the commencement of a substantive action to *inter alia* enable a party to trace the party's property or for any other lawful purpose, in the interests of justice. This includes enabling a potential plaintiff to have sufficient facts to commence proceedings (see the Court of Appeal decisions of *Ching Mun Fong v Standard Chartered Bank* [2012] 4 SLR 185 at [23] and *Dorsey James Michael v World Sport Group Pte Ltd* [2014] 2 SLR 208 ("*Dorsey Michael*") at [47]; and the High Court decision of *Gillingham James Ian v Fearless Legends Pte Ltd and others* [2023] SGHCR 13 ("*Gillingham*") at [14]). I accepted that the phrase "for any of the purposes of such proceedings" in s 175(1) of the EA includes the purpose of enabling the applicant to carry out the necessary investigations for their contemplated causes of action against the respondent for conversion and/or unjust enrichment.

An order under s 175 of the EA to inspect and take copies of the bank documents sought in SUM 1940 should be made

18 Given that the bank statements with DBS were reasonably required by the applicant for its investigations into its potential causes of action against the respondent, I decided that an order to inspect and take copies should be made under s 175(1) of the EA. In this regard, the court's power to make an order under s 175(1) is discretionary. It is trite that such discretionary power must be exercised in accordance with principle. While there does not appear to be any local decision in which the factors affecting the exercise of this discretionary

power have been expressly explored, I would think that a court should be concerned with (a) the relevancy of the documents to the underlying "legal proceeding" in s 175(1) of the EA; (b) the applicant's efforts in seeking disclosure of the documents concerned prior to taking out an application under s 175(1); and (c) the applicant's good faith in seeking inspection and taking of copies. The consideration of these factors would balance the need for banking secrecy with an applicant's need for the disclosure of documents from the bank for legitimate purposes.

19 These three factors for consideration dovetail with the historical origins of s 175(1) of the EA, *viz*, s 6(1) of the Indian Bankers' Books Evidence Act, 1891 (Act No 18 of 1891 of the Imperial Legislative Council of India). Section 6(1) is substantially similar to s 175(1) of the EA, save for the additional of several words. For completeness, s 6(1) provides as follows, with the words in emphasis missing from s 175(1):

> **6. Inspection of books by order of Court or Judge.**—(1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, *or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.*
>
> [emphasis added in italics; ss 6(2) and 6(3) omitted]

20 It is therefore useful to consider the relevant considerations under s 6(1) of the Indian legislation. In this regard, Sudipto Sarkar & Prof (Dr) V Kesava Rao, *Sarkar's Law of Evidence in India, Pakistan, Bangladesh, Burma, Ceylon, Malaysia & Singapore* vol 2 (LexisNexis, 20th Ed, 2021) ("*Sarkar's Law of Evidence*") at p 3285 states the following as to what is required of a supporting

affidavit for an application for an inspection order under s 6(1) of the Indian legislation:

> In order to have an inspection it is usual to require an affidavit, stating, (1) the nature of the proceedings (2) necessity for the inspection and for the copies, showing that the entries of which inspection is sought will be admissible in evidence at the trial of action [*Howard v Beall*, 23 QBD 2], and (3) the period over which it is proposed that the inspection should extend [Annual Practice].

The touchstone of the inquiry is therefore the reasonableness of the basis on which inspection of bankers' books is sought, stemming from the default rule that "[a] banker is bound not to disclose the state of a customer's accounts except upon *a reasonable and proper occasion* [*Hardy v Veasey*, LR 3 Ex 107]" [emphasis added] (see *Sarkar's Law of Evidence* at p 3285).

21 A similar inquiry is undertaken in respect of the English Bankers' Books Evidence Act 1879 (c 11) (UK) ("BBEA 1879"), which E P Ellinger, Eva Lomnicka and C V M Hare, *Ellinger's Modern Banking Law* (Oxford University Press, 5th Ed, 2011) ("*Ellinger's Banking Law*") describes (at pp 187–188) in the following terms:

> Where a party to proceedings wishes to inspect and take copies of a 'banker's books' for the purposes of those proceedings, he may apply to the court under the BBEA 1879 for an order to that effect. According to the Privy Council in *Wheatley v. Commissioner of Police of the British Virgin Islands*, the entire purpose of this procedure is to enable the bank to make disclosure without being liable to its customer for breach of its duty of confidentiality. In deciding whether to make an inspection order under the BBEA 1879, the courts have a discretion to exercise and will be guided by the principles relating to the inspection and disclosure of documents in other contexts. Giving due weight to issues of privacy and confidentiality, the courts will exercise their discretion sparingly, and *usually only make an order for inspection of documents that relate to a defined and limited period.* In particular, the courts will refuse an inspection order where the applicant is using the procedure under the BBEA 1879 'on a

> kind of *searching enquiry or fishing expedition beyond the usual rules of discovery*'. Accordingly, a court will likely refuse an application to investigate the bank records where there exist only unsubstantiated suspicions about the account in question, but may well grant the order where there is *prima facie* evidence of unlawful activity and an examination of the account in question is likely to confirm that fact. For example, in *Williams v. Summerfield* [[1972] 2 QB 512, 519], the Divisional Court granted the police an order to inspect the accounts of the defendants, who were accused of stealing money from their employer, because there was already independent evidence of the defendants' misappropriation and the only purpose of the order was to determine the amount involved. Similarly, although inspection orders under the BBEA 1879 are available in both civil and criminal proceedings, the courts appear more cautious when making such an order in the criminal context, and will only exercise their discretion against non-parties to the proceedings 'with great caution'. An order will only generally be made against a non-party's account where there is a close nexus between the defendant and that party, such as where the account is held by the defendant's nominee or by the company of which the defendant is the director. …
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> [emphasis added]

22 For completeness, s 7 of the UK's BBEA 1879 is also *in pari materia* with s 175(1) of the EA and s 6(1) of its Indian equivalent, providing that:

> On the application of any party to a legal proceeding a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. *An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court or judge otherwise directs.*
>
> [emphasis added]

The emphasised portion is absent from s 175(1) but found instead in s 175(2) of the EA (with some minor differences which are not material).

23 Thus, the three factors I have outlined at [18] above would serve to focus the analytical inquiry into the reasonableness and propriety of the application to

inspect otherwise confidential documents between a bank and its customer, in a structured format. It would strike the proper balance between the confidentiality of the banker-customer relationship on the one hand, and the reasonable juridical interests of the applicant for relief on the other, which is the focus of the analyses undertaken in respect of equivalent Indian and English legislation, as at [20]–[22] above.

24 On the relevancy of the documents sought in the present case, I note that the Court of Appeal in *Anthony Wee* (at [24]) took the view that any bank documents *not* relevant to the matters in issue in the underlying action should not be made available for inspection, but found on the facts there (at [23]–[26]) that the issue of relevancy had already been determined in prior interlocutory proceedings for discovery (see also the High Court decision of *Technigroup Far East Pte Ltd and another v Jaswinderpal Singh s/o Bachint Singh and others* [2018] 3 SLR 1391 at [57]). On the affidavit evidence before me, it was clear that the bank documents sought in SUM 1940 were relevant and material to the applicant's intended causes of action against the respondent. In particular, I was satisfied that the applicant had reasonable cause to seek the production of the bank statements to assist its prospective case against the respondent for conversion or unjust enrichment, by investigating the respondent's putative unauthorised transactions with AFF and other counterparties (see at [5] above).

25 Further, I was also satisfied that the applicant had tried other means, including pre-action discovery which the court granted but the respondent never complied with (see at [6] and [17] above), to obtain the said documents, thereby necessitating the taking out of SUM 1940 for inspection and taking of copies of the same against DBS.

26 Finally, I was satisfied that the applicant had brought the present application in good faith and not for a collateral purpose. This was evidenced by, *inter alia*, the restricted time period for the documents sought, which correspond to when the respondent was in the applicant's employ (see at [3] and [6(a)] above), and the methodology by which the applicant said that it intended to use the sought documents to frame or prove its prospective case against the respondent – including, *inter alia*, ascertaining whether the respondent had benefitted from the sale of the applicant's food products in unauthorised transactions and the quantum of the benefit that he obtained.

The interplay between the court's exercise of its discretion under s 175(1) of the EA vis-à-vis *O 11 r 11(1) of the ROC 2021*

27 For completeness, the applicant also submitted that O 11 r 11(1) of the ROC 2021 constituted an alternative ground to compel DBS to disclose the documents sought. O 11 r 11(1) provides as follows:

> **Production before action or against non-parties (O. 11, r. 11)**
>
> **11.**—(1) The Court may order the production of documents and information before the commencement of proceedings or against a non-party to identify possible parties to any proceedings, to enable a party to trace the party's property or for any other lawful purpose, in the interests of justice.

28 The applicant, citing *Singapore Civil Procedure 2024* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2023) ("*White Book 2024*") at para 11/11/4, argued that the new phrase "to enable a party to trace the party's property" in O 11 r 11(1) of the ROC 2021 is intended to expressly encapsulate the *Bankers Trust* order (named after the English Court of Appeal case of *Bankers Trust Co v Shapira and others* [1980] 1 WLR 1274 ("*Bankers Trust*"); see, *eg*, the Court of Appeal decision of *Goh Seng Heng v Liberty Sky Investments Ltd and another*

[2017] 2 SLR 1113 ("*Goh Seng Heng*") at [17] and [26]–[32]), and previously granted under O 24 r 6(5) of the Rules of Court (2014 Rev Ed) (see *Success Elegant Trading* at [57] and [66]). In this regard, a *Bankers Trust* order is a disclosure order against a bank or other financial institution to preserve or trace an asset. It is well-established that an applicant must show at least a reasonable *prima facie* case of wrongdoing by the bank's customer, such that the applicant has a proprietary claim over the moneys in the bank account (see *Goh Seng Heng* at [25]–[27], relying on *Bankers Trust* at 1282 (*per* Lord Denning MR); see also *Success Elegant Trading* at [54] and [57]–[58]). On the facts, the applicant submitted that it had shown a *prima facie* case of the respondent's wrongdoing.

29 In addition, the grant of a *Bankers Trust* order is not afforded as of right but as an exercise of the court's discretion, one requiring a balance between the interest of an applicant and the confidence of the banker-customer relationship. This is similar to the balancing exercise that a court must undertake in the case of an application for an inspection order under s 175(1) of the EA (see [18], [20] and [23] above). As explained in *Ellinger's Banking Law* (at p 183):

> Reversing Mustill J, the Court of Appeal [in *Bankers Trust*] stressed that courts should not lightly use their powers to compel disclosure of information arising in the confidential banker-customer relationship, as it was 'a strong thing to order a bank to disclose the state of its customer's account and the documents and correspondence relating to it'. Nevertheless, an order would be granted, even in interlocutory proceedings, where the claimant sought to trace funds and there was strong evidence that the claimant had been fraudulently deprived of those funds and that delay might result in the dissipation of any assets before trial. *Arab Monetary Fund v. Hashim (No. 5)* [[1992] 2 All ER 911, 914], Hoffmann J stressed two further factors that a court should take into account before making a *Bankers Trust* order: first, unlike a request for general discovery, a bank is entitled to some specificity in the documents or information that it is required to produce; and secondly, the balance of convenience must favour the making

> of such an order, in that *the potential advantages to the claimant must be balanced against any detriment to the bank*, not merely in terms of cost, for which the bank is usually compensated on an indemnity basis by the terms of the order, *but also in terms of the invasion of privacy and breach of confidentiality obligations owed to others*. …
>
> [emphasis added]

30 In the present case, DBS's position was that SUM 1940 is an application taken out under s 175(1) of the EA only. Given this, it must be that DBS's agreement to the terms of the order sought was premised on s 175(1) and not O 11 r 11(1) of the ROC 2021. As such, it was not necessary for me to decide if O 11 r 11(1) constituted an alternative ground for the applicant to access the documents in SUM 1940.

31 In any case, I doubted whether the applicant's intended cause of actions actually asserted any proprietary claim so as to bring them within the reasoning in *Bankers Trust*. As alluded to at [28] above, there is a general consensus among the authorities that the *Bankers Trust* jurisdiction can only be invoked where the claimant asserts a *proprietary* claim to assets (see *Paget's Law of Banking* (John Odgers KC & Ian Wilson KC gen eds) (LexisNexis, 16th Ed, 2023) at para 33.10). Mere personal claims that sound in damages, even if they may involve wrongful interference with proprietary rights, do not suffice. For instance, in the English High Court Chancery Division decision of *Arab Monetary Fund v Hashim and others (No 5)* [1992] 2 All ER 911, Hoffmann J (as he then was) said (at 918) that "the first principle of the *Bankers Trust* case is that the plaintiff must demonstrate a real prospect that the information may lead to the location or preservation of assets *to which he is making a proprietary claim*" [emphasis added]. A similar observation on this limitation of the court's *Bankers Trust* jurisdiction can also be found in Paul McGrath QC, *Commercial*

Fraud in Civil Practice (Oxford University Press, 2nd Ed, 2014) (at paras 15.156 and 15.158):

> Applications under the *Bankers Trust* jurisdiction are concerned with obtaining information relating to the *location of assets against which the claimant is asserting a proprietary claim*. They are typically sought against third parties who become mixed up in the laundering of the proceeds of a fraud and are therefore in a position to provide information and documentation to assist the tracing exercise.
>
> …
>
> Unlike *Norwich Pharmacal* orders, where the wrongdoing can take on a wide range of forms, *Bankers Trust orders are only concerned with the tracing of assets as part of the assertion of a proprietary claim by the applicant or the assertion or accessory liability (such as dishonest assistance) premised upon the movement of assets to which the claimant asserts a proprietary interest. No other manner of wrongdoing can form the basis of an application for a Bankers Trust order*.
>
> [emphasis added]

32 The applicant's intended claims against the respondent were for conversion and unjust enrichment. It seemed to me, based on the causes of actions as described in the supporting affidavit, that these were personal claims for compensation. This remained so even if there is some claimed interference with property rights in the claim for conversion, as the claim is still fundamentally an assertion that the respondent owes the applicant money and not that the moneys in the respondent's account with DBS belong to the applicant.

33 More broadly, had I not been bound by authority (see *Goh Seng Heng*), I would have doubted whether the applicant could rely on O 11 r 11(1) to compel a bank (being the "non-party" in question) to disclose a customer's banking documents via a court order. This is because s 47(2) of the BA read with its Third Schedule suggests that this is only permitted in the situation

provided for in para 7, which is when "[d]isclosure is necessary for compliance with an order of the Supreme Court or a Judge sitting in the Supreme Court pursuant to the powers conferred under Part 4 of the Evidence Act 1893". Part 4 of the EA includes s 175(1). Given that the Third Schedule is exhaustive of the situations where banking secrecy may be disregarded (see the Court of Appeal decision of *Susilawati v American Express Bank Ltd* [2009] 2 SLR(R) 737 at [67], as well as the High Court decision of *PSA Corp Ltd v Korea Exchange Bank* [2002] 1 SLR(R) 871 at [31]), it is arguable that the BA generally does not allow a party to circumvent s 175(1) of the EA by relying on O 11 r 11(1) to compel a bank to disclose a customer's banking documents. Although O 11 r 11 may have a limited role to play in particular factual contexts (see paras 3 and 4 of the Third Schedule), the effect of s 47(2) and the Third Schedule of the BA is arguably to close off O 11 r 11 as a general avenue of seeking discovery from a customer's bank in litigation concerning the customer. This is different from English law, where Waller LJ in *Bankers Trust* recognised that the order being made by the English Court of Appeal (*ie*, a *Bankers Trust* order) was beyond the scope of the BBEA 1879 (at 1283). This was possible because English law on banking secrecy is encapsulated in the common law and not subjected to statutory regime like the BA.

34 However, based on present authority (see *Goh Seng Heng*), the applicant may have relied on a different limb of O 11 r 11(1), namely, that of disclosure "for any other lawful purpose". The authors of the *White Book 2024* at para 11/11/5 describe this limb as providing "a catch-all ground" upon which "the court may order pre-action disclosure or disclosure against non-parties", which "may give O.11, r.11(1) a wider application than the preceding O.24, r.6(5) of the old Rules of Court". In exercising the court's discretion under O 11 r 11(1) "in the interests of justice", the court will have to consider and

strike a balance between such factors as (see the *White Book 2024* at para 11/11/6; see also *Gillingham* at [18]; *Dorsey Michael* at [26]–[27]; and *Intas Pharmaceuticals Ltd v DealStreetAsia Pte Ltd* [2017] 4 SLR 684 at [35]):

(a) the seriousness of the injury and/or the loss and damage behind the complaint made;

(b) the extent to which the intended cause of action that is said to underpin the complaint is supported by material facts or to the contrary is wholly speculative in nature;

(c) the degree of relevance of the material to the issues pertaining to the cause of action;

(d) the scope or width of the documents or information being sought;

(e) whether there is credible evidence that the alleged wrongdoing has a nexus to Singapore; and

(f) whether there are relevant confidentiality (or related) obligations that the defendant relies on, and if so, whether the interests of justice lie in favour of maintaining or compromising such confidentiality obligations.

35 It is readily appreciable that, based on current authority, where an O 11 r 11 application is taken out in respect of a "banker's book" to which s 175(1) is applicable, there would be a natural overlap between the factors the court must consider under O 11 r 11 and that of an application for a s 175(1) inspection order. Without deciding the issue, and assuming that it is equally open to a court to order disclosure under s 175(1) and O 11 r 11, I observe that it would be anomalous for the result of an application to differ depending upon whether the applicant chooses to proceed under s 175(1) or O 11 r 11(1). In both

cases, the court would have to strike the proper balance between the juridical interests of the applicant in seeking access to the "bankers' books" at issue and the confidentiality of the banker-customer relationship (see [18], [20], and [23] above).

36 All that said, I did not have to decide these issues in the present case as I found that the applicant was entitled to an inspection order under s 175(1) of the EA.

Conclusion

37 For all of the reasons stated above, I allowed SUM 1940 pursuant to s 175(1) of the EA.

Goh Yihan
Judge of the High Court

John Jeevan Noel and Ow Joshua (Pereira & Tan LLC)
for the applicant;
The respondent absent and unrepresented;
Tham Hsu Hsien and Edmond Lim Tian Zhong
(Allen & Gledhill LLP) for the non-party.