IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY, MALAYSIA (CIVIL DIVISION)
[CIVIL SUIT NO: WA-22NCVC-554-08/2019

BETWEEN

1. STEEL HAWK ENGINEERING SDN BHD
(No. Syarikat: 1019338-X)

2. DATO' SHARMAN KRISTY MICHAEL ... PLAINTIFFS

AND

1. SUNDERESWARAN RAJA MANICKAM

2. LAWRENCE GEORGE

3. THILAGA VELAYAN ... DEFENDANTS

AND

SUNDERESWARAN RAJA MANICKAM ... PROPOSED CONTEMNOR

JUDGMENT
(ENCLOSURE 122)

INTRODUCTION

[1] This Notice of Application (enclosure 122) filed by the plaintiffs seeking a committal order against the Proposed Contemnor which, I will refer to as the Alleged Contemnor ("AC") herein, with a view for him to be committed to prison for alleged failure to comply with an Injunction Order dated 09.10.2019 and costs of this application.

[2] The relevant cause papers and written submissions are as follows:

(a) Notice of Application (*ex-parte*) dated 02.07.2020 (enclosure 114);

(b) Plaintiffs' affidavit in support affirmed by Dato Sharman Kristy a/l Michael on 01.07.2020 (enclosure 115);

(c) Statement of Facts under O.52 r.3 ROC 2012 dated on 02.07.2020 (enclosure 116);

(d) Court's Order for leave dated 10.10.2020 (enclosure 123);

(e) Notice of Application dated 11.08.2020 (enclosure122);

(f) AC's affidavit affirmed by Sundereswaran a/l Raja Manickam on 25.10.2021 (enclosure 134);

(g) Plaintiffs' affidavit in reply affirmed by Dato Sharman Kristy a/l Michael on 08.11.2021 (enclosure 136);

Submissions and submissions in reply of the respective parties.

[3] This application was heard before me on 06.01.2022. After perusing the cause papers filed, hearing the evidence of the AC, and duly appraising the respective written and oral submissions of parties, I find that the AC has raised a reasonable doubt in this contempt proceeding and the plaintiffs have failed to prove their case beyond reasonable doubt. Therefore, I dismissed the said application with costs of RM4,000.00 to be paid to the AC within 14 days. Dissatisfied, the plaintiffs filed this appeal, and my reasons are as follows:

SALIENT FACTS

[4] The salient facts disclosed from the cause papers are as follows:

(a) The 1st plaintiff (P1), Steel Hawk Engineering Sdn Bhd ("SHESB"), is a private limited company incorporated

under the Companies Act 2016, while the 2nd plaintiff (P2) is a director and shareholder. SHESB, a Petronas contractor, is actively involved in the oil and gas industry that actively undertakes engineering, procurement, construction, and commissioning (EPCC) contracts for and on behalf of Petronas Carigali Sdn Bhd. According to the plaintiffs, the sole client for SHESB would be Petronas Carigali Sdn Bhd and/or its subsidiaries.

(b) The 1st defendant (D1) is who is the Alleged Contemnor ("AC") was a former employee and the Project Package Manager of SHESB. The 2nd defendant (D2) and the 3rd defendant (D3) are husband and wife, where D3 was employed as an account executive for SHESB, while the D2 was a Technical Engineer with a company called SS Innovations Sdn Bhd where P2 is the shareholder.

(c) On 05.08.2019, the plaintiffs filed an action against the defendants seeking a declaration that the defendants have unlawfully conspired to cause loss, harm, and damage to the plaintiffs. A mandatory injunction was sought to compel the defendants to return all company materials or documents in their possession to the plaintiffs.

(d) On 19.08.2019, the plaintiffs filed an ex-parte application for an injunction under O.29 ROC 2019, an order was granted on 23.08.2019 ("SKM-3 - enclosure 115) On 06.09.2019 an ad-interim injunction was granted against the defendants ("SKM-5"-enclosure 115).

(e) On 09.10.2019, an injunction was granted ["the said Injunction Order" - ("SKM-8"- enclosure 115)], whereby the defendants (including the AC) were to surrender all of the listed documents to the plaintiffs and be restrained from

disclosing them to third parties. For convenience, the terms of the said Injunction Order are reproduced as follows:

"a. This Honourable Court orders a mandatory injunction compelling the Defendants and/or their agents, servants and/or representatives to deliver up all of the Private documents listed in Annexure A, together with all such documents, books, computers, papers, items, correspondence and/or property belonging to the plaintiff, to the solicitors acting for the plaintiff by 09th October 2019;

b. This Honourable Court orders a prohibitory injunction restraining the Defendants and/or their agents, servants, and/or representatives from making any copy, reproduction, and/or substitute of the Private documents (Annexure A) and/or all such documents, books, computers, papers, items, correspondence and/or property belonging to the Plaintiffs pending the full and final disposal of this matter;

c. This Honourable Court orders a prohibitory injunction restraining the Defendants and/or their agents, servants, and/or representatives from divulging the Private documents (Annexure A) and/or any documents of the Plaintiffs to any third party pending full and final disposal of this matter;

d. That the Order granted by this Honourable Court shall be accompanied by a penal notice; "

(f) On being granted the said injunction, the defendants, via their solicitor Messrs Andy & Co, the Private Documents in

Annexure A were purportedly returned to the plaintiffs' solicitor.

(g) After the said Injunction Order, on or about 18.05.2020, P2 discovered that the AC had lodged a police report against the P1 ("SKM 11" - enclosure 115). Perusing the contents of the said police report, P2 found that the AC had disclosed the private documents to third parties, namely Petronas Carigali Sdn Bhd and Petronas Dagangan Berhad ("PETRONAS"), and this, according to P2, was in breach of the said Injunction Order. P2 then lodged a police report on 19.05.2020 ("SKM 12 - enclosure 115) against the conduct of the said AC. According to the plaintiffs, AC's behaviour is contumacious, contumelious and vituperative.

(h) On 23.07.2020, the plaintiffs filed an ex-parte application for leave to commence a committal proceeding against the AC, and leave was granted on 10.08.2020.

(i) On 11.08.2020, the plaintiffs filed the present application (L.122) under O.52 r.4 of the Rules of Court 2012 ("ROC 2012") and/or O.92 ROC 2012 for the AC to be committed to prison or fined for his alleged contumacious and wilful act of disobeying the said Injunction Order.

(j) The AC gave evidence in Court on 17.12.2021 denying the said charges and affirmed that he has complied with the said Injunction Order. He asserts that he no longer has any documents listed in Annexure A in his possession.

THE PLAINTIFFS' SUBMISSIONS

[5] The plaintiffs submitted:

(i) The law

(a) The learned counsel for P2 argued that O.52 r.3 ROC 2012 sets out a two-stage process for committal proceedings. The ex-parte stage must first be undertaken. In *Wee Choo Keong v. MBF* [1993] 2 MLJ 217, the Supreme Court stated that at the *ex-parte* stage, a *prima facie* case for contempt would need to be made out by the plaintiff. Where the leave to issue committal proceedings has been granted against the alleged contemnor, it means that the Court has accepted that there was a *prima facie* case for contempt against the alleged contemnor. In *Tiong Cheng Peng & Anor v. Ker Min Choo & Ors* [2014] MLJU 1735 allowed an application for committal and set out the law on contempt succinctly:

"[5] The Federal Court in Loot Ting Yee v. Tan Sri Sheikh Hussain b. Sheikh Mohamed& Ors [1982] 1 MLJ 182 dealt, inter alia, with the real question for the Court's determination in a case of contempt. Raja Azlan Shah, Ag. LP (as His Highness then was) laid down the test in these terms:

> *"We feel that the real question for the Court, in this case, to decide whether there is contempt is whether the risk of prejudice to a fair and proper trial of the pending legal proceedings is serious or real or substantial. That is an application of the ordinary de minimis non-curat lex principle - the law does not concern itself with trifles. intent alone is insufficient to establish contempt (see R v. Ingrams & Ors., Ex parte Goldsmith."*

(b) In *Tan Sri Dato (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & George Lim & Ors* [2012] 3 MLJ 458, FC, the Court adopted the general definition of contempt of Court given by Oswald's Contempt of Court (3rd Ed) at pg.6 as follows:

"To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants, or their witnesses during the litigation."

(c) The Federal Court in *Monatech v. Jasa Keramat* [2002] 4 MLJ 241, FC held that failing to abide by an order granted by the Court will necessitate a custodial sentence. Should a party fail to purge its contempt, the Court is not obligated to hear him until and unless he purges the contempt (see *Wee Choo Keong v. MBF* (*supra*).

(ii) The Service of The Order

(a) The AC has averred and admitted at para 7 that he fully knows the Injunctive Orders against him. In *Plastech Industrial Systems Sdn Bhd v. N&C Resources Sdn Bhd & Ors* [2013] 10 MLJ 837, it was found that the alleged contemnor did indeed have notice of the terms of the order, given that he had reproduced the same in full in his application to stay the order, and said:

"[8] The third defendant had constructive knowledge and notice of the terms of the judgment dated 6 October 2011 and order dated 25 November 2011 notwithstanding that the same was not served on the third defendant personally.

[9] The third defendant's constructive knowledge of the same is evinced by the fact that he and the other defendants had formally applied for a stay of the judgment vide summons in chambers dated 13 October 2011. In support of the defendants' application for stay of the same, the third defendant had affirmed an

affidavit dated 13 October 2011 on behalf of himself and the other defendants whereby the third defendant had sworn on oath in para 5.1(1)-(6) setting out the whole terms of the judgment verbatim.

[10] Further, the third defendant at all material times was represented by solicitors and must have been given legal advice on every step of these proceedings."

(iii) The Law on Sentencing

(a) In an application for committal and sentencing, *HSBC Bank Malaysia Bhd (Formerly Known As Hongkong Bank (M) Bhd) v. Tirathrai Sdn Bhd (Formerly Known As T Jethanand Sdn Bhd)* [2009] 7 MLJ 168 stated:

"[88] The Court will always look upon very seriously against any act that defies its order. This is because obedience to the order of the Court is the very foundation of our judicial and legal system. If any member of the public is 'at liberty[1] to disobey a court's order, then the judicial and legal system will collapse, and so will law and order. But the present case has a special aggravating element, and that is the manner the act of disobedience was done by the respondents. It has an element of subtlety and cunningness. By engaging lawyers and other professionals and invoking the legal process, the acts have an outward appearance of professionalism, sophistication, and legality. Such a modus operandi often makes the victim and, indeed, the judicial and legal system itself helpless. Because of the subtle method employed and the ruthless utilization of the court process, it is often an uphill task for the aggrieved party to convince a court of law that, behind

the fagade of 'legality' employed by his adversary, he is, in fact, being victimized or being mercilessly and unjustly deprived the fruits of his litigation; unless the victim is a person of means (like the plaintiff in the present case, being a bank with financial resources at its disposal) and able to employ an able prosecutor."

(b) The plaintiffs submitted that the AC had wilfully disobeyed the injunction, which clearly restrained him from making copies of any private documents. It further directed the defendants to return the same to the plaintiffs and not disclose it to any third parties. The AC has been made aware of the express terms of the said order, and he has also averred and admitted his knowledge of it in paragraph 7 of his affidavit in reply (enclosure 134). Despite this, the AC had refused to comply with it.

(iv) Wilful and deliberate contempt

(a) The AC had intentionally and deliberately disobeyed the Injunction Order, and hence he has committed an act of contempt.

(b) The AC is fully aware that he was prohibited from making any copies of the Private Documents belonging to the plaintiffs listed in Annexure A.

(c) Notwithstanding that, the AC had deliberately made soft copies of the Private Documents listed in Annexure A. He has further retained the same and refused to comply with the mandatory injunctive order, directing him to return all documents to the plaintiffs' solicitors.

(d) The AC had also passed the soft copies of these documents *via* a pen- drive to D2 and D3 to photocopy the same.

In *Chong Fook Hin v. Chong Ken Vun* [2009] MLJU 1869, HC, in an almost identical situation, the proposed contemnor retained documents that he was prohibited from keeping in breach of an injunction order. It was held that:

> *"Is there any truth in counsel's assertion that the Injunction order is confusing that the respondents were "left in total darkness of confusion as to which documents they ought not to retain"? I do not find so. The Injunction order dated 1.7.2008 is clearly an order to restrain the respondents from retaining or detaining the documents in question. I cannot see where the confusion is. The plaintiff has provided the list of the documents and has even exhibited photostated copies of the photos of the documents. By not allowing the bailiff to take even a single document from his office, the 1st respondent was making it clear that he had no intention to comply with the court order. His intention clearly was to retain and detain these documents in defiance of the Injunction order...*

On the facts, it is clear to me that the applicant has proved beyond any reasonable doubt that the 1st respondent was indeed in contempt of Court. He must therefore be imprisoned until he purges the contempt."

(e) The AC was also fully aware that he was prohibited from divulging the documents in Annexure A. Despite that, he revealed these documents to both the police and Petronas. In Mox-Linde Gases Sdn Bhd (Formerly Know As *Mox Gases Sdn Bhd And Prior To That As Mox Gases Bhd) v. Wong Siew Yap* [2015] 10 MLJ 413, it was ruled that:

> *"[4] On 18 April 2011, the order for the plaintiff's application for the said interim injunction was granted by the High Court of Shah Alam (another*

court) pending the completion and disposal of the trial of this action.

[5] The order for the said interim injunction was served vide the plaintiff solicitors letter dated 5 July 2011 on the defendant on 6 July 2011 by registered post and personal delivery at the defendant's last known address on 7 November 2011.

[6] The plaintiff then discovered that defendant had breached the said interim injunction by again circulating 14 emails containing words that were defamatory of the plaintiff in express breach of the court order for the said interim injunction against her. These said emails have been exhibited in CBDA from pp 98-102.

[7] The plaintiff accordingly sought leave of the Court to commence committal proceedings against the defendant, and the order for leave to commence committal proceedings (ex parte) was granted on 4 October 2013 (another court)."

(f) In *Rotta Research Laboratorum v. Ho Tack Sien* [2019] 7 CLJ 113, wherein an injunction was granted, and the proposed contemnor breached it. In sentencing the contemnor, the Court said:

"[24] I exercise my discretion to impose a custodial sentence (custodial sentence) on Mr. Ho, Ms. Chai and Ms. Loh (three contemnors) due to the following reasons:

(i) Public interest requires, if not demands, all parties to obey a judgment/order, especially when the judgment/order has been decided by

our highest Court. In this case, the injunction has been affirmed by the Court of Appeal and Federal Court. Public interest should override the mitigation in this case;

(ii) This case concerns the intellectual property rights (IPR) of the applicants. After our apex court has conclusively decided that an owner of IPR can enforce the IPR by way of, among others, a restraining injunction, it is in the public interest for the injunction to be obeyed by an infringer of the IPR (infringer). A custodial sentence for a breach of an injunction (which enforces IPR) deters infringers and like-minded persons from breaching the injunction with impunity (public deterrence). Public deterrence is important to promote the development and enforcement of IPR in this country. Public deterrence clearly supports a custodial sentence in this case;

(iii) the breach of the injunction, in this case, is not an isolated or a technical breach of a judgment/order. The sales of Artril products are purely commercial activities conducted over a long period of time with the sole motive of profit. There is no altruistic purpose involved in this case that can provide valid mitigation for the three contemnors; and

(iv) the averment constitutes an aggravating factor that supports the custodial sentence.

[25] In respect of the length of the custodial sentence:

(i) Mr. Ho and Ms. Chai are the first and second defendants in this case. They knew about the injunction from the date of the High Court's judgment and had exhausted their right to appeal against the High Court's judgment in the Court of Appeal and Federal Court. Accordingly, two months' imprisonment, in my view, is an appropriate sentence for them in the public interest; and

(ii) as for Ms. Loh, a lower imprisonment sentence of one month is appropriate in the public interest because she is only a director of the sixth defendant."

[6] The plaintiffs submitted that a clear prima facie case had been proven against the alleged contemnor, who has failed to purge his contempt. He has intentionally and deliberately disobeyed the Ad-Interim Order and the Injunction Order, thereby committing an act of contempt. In the circumstances, he is not entitled to address this Court and/or put forth any representations (see *Wee Choo Keong v. MBF* (*supra*).

[7] In his defense, the AC argued that:

(a) He had delivered all documents to the plaintiffs' solicitors and did not have a copy of them;

(b) He had not revealed any of the documents to third parties, and there is no order in place to prevent him from lodging a police report; and

(c) He knows the said contract names revealed to the police and Petronas while working for the plaintiffs.

[8] The plaintiffs argued that the defenses described above are hardly tenable because:

(a) From the plaintiffs' private investigator's report, the AC had made soft copies of the Private Documents, retained and handed over the same to D2 and D3 for them also to make copies thereof;

(b) From the AC's affidavit, he averred that the reports lodged must be accompanied by supporting documents. He had even claimed that he would be at risk of being remanded by the police for not divulging documents to support his police report;

(c) It would be impossible for the AC to lodge the said police without supporting documents. Therefore, his assertion that he does not have access to the documents is not tenable;

(d) The Injunction Order has specifically stated that the defendants are to surrender all Private Documents contained in Annexure A to the custody of the plaintiffs' solicitors by 09.10.2019;

(e) The AC is still in possession of the Private Documents that are the property of SHESB. The letter of appointment of the AC provides explicitly that there is an obligation to maintain confidentially and that he is prohibited from divulging these documents. With the lodging of the Police Report dated 20.02.2020 by the AC, there has been a breach on his part;

(f) The AC's contention that he had only disclosed the title of the contracts he acquired while working for the plaintiffs is untenable. He had resigned much earlier before the plaintiffs obtained the names of the contract. Evidently, the

AC had illegally obtained and retained copies of these contracts; and

(g) The AC had deliberately breached the ad-interim order and the Injunction Order. His defenses are entirely unsustainable.

[9] The plaintiff further submits that these defenses are caught by the doctrine of *ex turpi cause non-oritur actio* (a party will be unable to pursue legal relief if it arises in connection with their tortious act). The AC's defenses are spurious as he seeks to rely on his wrongful act (in retaining copies of the Private Documents and disclosing the same to third parties, the police, and Petronas) despite the injunction. In *Lee Nyan Hon v. Metro Charm* [2009] 6 MLJ 1, CA, it was emphasized that:

> *"[64] In evaluating the available evidence, the plaintiff as the tenant was in clear breach of the terms of the tenancy agreement. The plaintiff had breached the express covenants of the tenancy agreement with impunity, and this Court will not lend its assistance to the plaintiff. It is quite apparent that the plaintiff is relying on its illegal acts in not procuring the building plan and the license to operate the entertainment outlet in the building to advance its claim against the defendant. I have no hesitation in striking out the plaintiff's claim based on the ex turpi causa non-oritur actio principle. it is a principle that is applicable to all causes of action including claims in tort."*

[10] The plaintiffs submitted that the AC had caused unrelenting interference with the administration of justice, and there can be no mitigation for his actions. He had breached:

(i) The *Ex-Parte* Order dated 23.08.2019;

(ii) The *Ad Interim* Order dated 06.09.2019; and

(iii) The Injunction Order dated 09.10.2019.

[11] The conduct of the AC is a wilful disregard of these Orders that require a custodial sentence to be imposed or a punitive fine. The plaintiffs pray for order in terms of enclosure 122, with costs in the circumstances.

THE PROPOSED CONTEMNOR'S SUBMISSIONS

[12] The AC argued in his defense that:

(a) He has not breached any orders of this Court by lodging a police report and a report to Petronas. In reference to the *ad- Interim* injunction dated 06.09.2019 (enclosure 38) and the injunction dated 09.10.2019 (enclosure 72), nowhere in these orders is he prevented from lodging a police report or a report to Petronas on alleged wrongdoing by the plaintiffs.

(b) Before the filing of the *ex-parte* notice of application (enclosure 114), the plaintiffs had sent a Notice to Show Cause dated 12.06.2020, to which he had replied on 18.06.2020 ("SKM-13" - enclosure 115 at pages 297- 298) in the said Affidavit in Support. He had asserted that he was not in breach of any Court orders, nor did he disclose any documents to any third parties, and neither does he have any copies of the said documents in his possession.

(c) The plaintiffs, when serving the said Notice to Show Cause, had attached a police report lodged by P2 dated 19.05.2020 (exhibit SKM- 13 - enclosure 115 at pages 295 -296). This Notice to Show Cause was only sent about one (1) month after P2 had lodged the said police report; and

(d) He had only named the projects he is aware of while working with the plaintiffs. Petronas had taken no action as he couldn't provide any documentary evidence. His police

report is a mere covering report with no investigation by the police.

[13] He further argued that:

(a) [1995] 3 MLJ 549 He had surrendered all documents in his possession to the plaintiffs' solicitors on 09.10.2019 in accordance with the said injunction. He did not give and/or disclose any of the listed documents to any third parties as all the said documents have already been handed over to the plaintiffs' solicitors. He does not have any copies and/or reproduction and/or substitutes of those documents; and

(c) Nothing in the said injunctions would have prevented him from lodging a police report and/or lodging a report with Petronas. He knows about the deception and/or fabrication/fraud of documents committed by SHSB and the others involved. He believes in what is stated in the said police report and report to Petronas.

(d) Though he no longer has the said documents, he decided to lodge the reports as he believes the plaintiffs should not be allowed to proceed with these deceits and fabrications. He did not do anything wrong by lodging a report to the relevant authorities. The plaintiffs' failed to show that he is in breach of any Court orders by lodging the said report.

(e) Further, he argued that the plaintiffs failed to prove that the documents stated in paragraphs 8 to 9 of the said Affidavit in Reply ("SKM 14"- enclosure 136 at pages 27-49) are the documents in question. The pictures only show that only A4 papers were printed and not their contents. There is no clear evidence that those printed A4 papers are the documents in question.

[14] Further, how the plaintiffs claimed to have received a copy of the said reports is ridiculous and ought to be proven. He cited:

In *Wee Choo Keong; Houng Hai Hong & Anor v. Mbf Holdings Bhd. & Anor. & Other Appeals* [1995] 4 CLJ 427, the Supreme Court unanimously held:

> *"[1] In contempt of Court proceedings, the standard of proof required is proof beyond a reasonable doubt, and where there is doubt, such doubt ought to be resolved in favor of the person charged. In other words, the proof must be of the standard as is required in a criminal case."*

In *Foo Khoon Long v. Foo Khoon Wong* [2009] 9 MLJ 441, HC, said:

> *"[34] This Court finds that the evidence produced by the applicant against the first respondent is insufficient to establish the charge beyond a reasonable doubt. There is also insufficient evidence to establish the charge against the second and third respondents for allegedly aiding and abetting the first respondent with a joint effort to ensure that the ex parte injunction is breached and not complied with. There is no evidence of sufficient cogent facts to draw an inference of any blatant disobedience of the said ex parte injunction as alleged and consequently to have committed contempt of Court. The respondents are not obliged or required in law to disprove the prima facie case as found by this Court when it granted leave on 11 June 2007 pursuant to the ex parte application to the applicant to commence this committal proceeding, and this is not the correct proposition in law as alleged in para 18 of the Afidavit Balasan Plaintiff 2 (encl 119). The respondents are only obliged to raise a reasonable doubt against the charge framed, and there is no duty on the part of the respondents to prove that they did not commit contempt of Court.*

[35] As the evidence in the instant case is produced through affidavit on behalf of both sides and the evidence from the affidavits are conflicting on material aspects, it is quite impossible to say that the guilt of the respondents had been proved beyond reasonable doubt (see Tay Seng Keng v. Tay Ek Seng Co Sdn Bhd [1978] 1 MLJ 126). As the respondents are, in law, clearly entitled to the benefit of doubt, there is no reason why the benefit of doubt ought not to be accorded to them when the Court so finds. This Court is not satisfied that the charge has been proved beyond a reasonable doubt on the facts and circumstances as in the instant case. Accordingly, the respondents cannot be committed for contempt of Court and it is not safe to make such a finding (see Bishop Ex parte Langley Ex-parte Smith (1879) 13 Ch D 110). This Court finds there is also no real risk to the administration of justice or that there is a likelihood in any way to interfere in the proper administration of justice. In Re B (JA) (An Infant) [1965] 1 Ch 1112, Cross J said:

Committal is a very serious matter. The courts must proceed very carefully before they make an order to commit to prison.

[36] In the event and in accordance with the rules of reasons and justice, this Court finds that the applicant had failed to prove beyond reasonable doubt that the first respondent has committed contempt of Court and the second and third respondents had aided and abetted the first respondent (see Seaward v. Paterson [1897] 1 Ch 545,Cham Pei Chin & Ors v. Yap Sau Foong @ Yap Ah Kit & Ors [2000] MLJU 306, Pertamina Energy Trading Ltd v. Karaha Bodas Co LLC [2007] SGCA 10, TO Thomas v. Asia Fishing Industry Pte Ltd [1977] 1 MLJ 151).

[37] In the circumstances and accordingly, this Court finds the respondents not guilty of contempt of Court. Consequently, the notice of motion (encl 47) is dismissed with costs."

Lee Chang Yong v. Teng Wai Yee [2019] 7 MLJ 576,HC, said:

"[27] For committal proceeding, RW was cross-examined by learned counsel for PH on 16 August 2018. What the Court must consider is based on the evidence before it and to judicially determine whether there is enough material of probative value in totality adduced by PH to support the allegations of contempt against RW beyond a reasonable doubt. Clear proof must be adduced to satisfy the required threshold of the burden of proof that the alleged contemnor had indeed breached the terms of the Court's order. There is no room for implication. Proof by implication of facts alone would be unlikely to satisfy the required burden. Any argument based merely on the implication of certain facts finds no place in contempt proceedings. It is also trite that any doubt arising on the allegations of contempt, the benefit of the said doubt must be given in favour of the respondent. Where there is more than one inference that can be drawn from the facts, the inference favorable to the accused should be adopted. Anchored on the foregoing principles of law on contempt, I had perused the respective affidavits of the parties, the said ad interim order, and after looking at the reply by RW and the evidence given by RW in Court (during committal proceeding) as to the allegations made against her, I am not convinced as to her guilt. Committal is a serious proceeding as the outcome could and would affect the liberty of the alleged contemnor."

[15] The AC submitted that the plaintiffs failed to prove that he had breached any Court Orders beyond a reasonable doubt. The mere lodging of a report is insufficient to constitute a breach of the said

Court Orders. The delay in pursuing this contempt proceeding is an afterthought and ought to be dismissed. In the circumstances, the AC asks that this committal proceeding taken out against him be dismissed with costs.

THE LAW

[16] The legal position:

(a) The order for committal is penal in nature.

(b) This order is sought when a defaulting party refuses to obey a court order to do or abstain from doing an act.

(c) The disobedience constitutes contumacious conduct against the order of the Court.

(d) On the ex-parte application of any party to any cause or matter or on its motion, the Court may make an order for Committal in Form 107 (O.52 r.2 ROC 2012), governed by the procedure in Order 52 r.3 ROC 2012.

(e) The Courts' jurisdiction to issue an order for committal is derived from the Federal Constitution, Article 126 and the Courts of Judicature Act 1964 (Act 91), section 13.

(f) Being penal in nature, strict compliance with the rules and procedure governing committal proceedings must be observed at all times:

(i) The ex-parte leave application must be supported by a statement setting out the name and description of the applicant, the name, description, and address of the person sought to be committed, and the grounds on which his committal is sought;

(ii) An affidavit, verifying the facts relied on; and

(iii) After leave has been granted unless the Court otherwise directs, there must be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.

(iv) The application must be filed within 14 days from the grant of leave, failing which the leave shall lapse (see Order 52 r. 4 ROC 2012).

(g) The Court's power to punish for contempt ensures that the public will not lose confidence in the judicial authority leading to anarchy and disorder. The purpose is not to vindicate the dignity of the individual judge or other judicial officers of the Court or even the Court itself but to prevent an undue influence with the administration of justice in the public interest (see *MBF Holdings Bhd & Anor v. Houng Hai Kong & Ors* [1993] 2 MLJ 516; *R.e HE Kingdon v. SC Coho* [1948] MLJ 17).

(h) The standard of proof required is beyond a reasonable doubt (see i [1995] 3 MLJ 549), similar to the prosecution in a criminal trial. This was on the basis that contempt of Court is an offense of a criminal character where the contemnor can be imprisoned. Where there is doubt, the doubt must be resolved in favor of the person charged for contempt. It must be shown that:

(i) The procedural requirements have been complied with.

(ii) The respondents are guilty of the contempt as alleged beyond a reasonable doubt (see *Sivalingam a/l S Ponniah & Ors v. Balakrishnan all S Ponniah & Ors* [2003] 3 MLJ 353).

(iii) Criticism of the Court's decisions in exercising the right of free speech, even if it is inaccurate, is not a contempt of Court (see *Re-Run Run Shaw & Anor* [1949] MLJ Supp 16).

(iv) Conduct that is malicious and wicked or calculated to demean the dignity and standing of the Court is contempt of Court. Acts and words used to attempt to mislead the Court or any attempt to disrupt or interrupt court proceedings are contempt. Similarly, concealment of a document by counsel may amount to contempt (see *Dr. Leela Ratos & Ors v. Anthony Ratos (No. 3)* [1991] 1 CLJ Supp 115; *Cheah Cheng Hoc v. PP* [1986] 1 MLJ 299; *Attorney General & Ors v. Arthur Lee Meng Kuang* [1987] 1 MLJ 206).

(i) An order for committal will only be made where no other recourse is available. Where a reasonable alternative is available instead of committing to prison, that alternative must be taken.

[17] The object of the law of contempt is not to protect Judges and their dignity but to protect the rights of the public by ensuring that the administration of justice is not obstructed or prevented. To constitute contempt of Court, there must be some "act done, or writing published calculated to bring a Court or Judge of the Court into contempt or to lower his authority" or "calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts". Conduct that tends to bring the authority and administration of the law into disrespect or disregard or interferes with or prejudices parties, litigants, or their witnesses during litigation is generally what constitutes contempt of the Court. It is an act of interference with the due administration of justice.

[18] In *Tan Sri Dato' (Dr) Rozali Ismail &Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849, Tun Ariffin CJ, in delivering the Federal Court decision, said:

> *"[24] Contempt of Court has traditionally been classified either criminal or civil...the general approach has been that criminal contempt is an act that threatens the administration of justice that requires punishment whereas, by contrast, a civil contempt involves disobedience of a court order. However, O. 52 of the RHC is applicable for contempt in criminal proceedings where the contempt is in the face of the Court or consists of disobedience to an order or breach of an undertaking to the Court (see O.52 r. 1(2) (a) (ii) of the RHC). One thing is clear, be it civil or criminal contempt, the standard of proof required in either type is the same, which is beyond a reasonable doubt."*

-In *Segar Restu (M) Sdn Bhd v. Wong Kai Chuan & Anor* [1993] 4 CLJ 177, Abdul Malik Bin Hj Ishak J held that clear proof must be adduced to satisfy the Court beyond reasonable doubt that the alleged contemnor had indeed breached the terms of the Court's order. His lordship also commented that there is no room for implication in a charge for contempt. Only the relevant facts must be specifically proved. Proof by implication of facts alone would be unlikely to satisfy the burden of proof beyond a reasonable doubt.

-In *E & E Equipment Sdn Bhd v. Speci Avenue (M) Sdn Bhd & Ors* [2005] 6 MLJ 589, Vincent Ng J held that any argument based merely on the implication of certain facts finds no place in contempt proceedings.

-In *Foo Khoon Long v. Foo Khoon Wong* [2009] 6 AMR 543; [2009] 9 MLJ 441, it was held by VT Singam J that contempt of Court is an offense of a criminal character, and thus the Court also applied the principle in criminal cases that where there is more than one inference

that can be drawn from the facts, the inference most favourable to the accused should be adopted. The burden of proof on the applicant in these committal proceedings is similar to the prosecution in a criminal trial. This was on the basis that contempt of Court is an offense of a criminal character where the contemnor can be imprisoned, as well as that the violation must be proven beyond a reasonable doubt. Where there is doubt, the doubt must be resolved in favour of the person charged for contempt. The granting of leave does not amount to a finding of contempt. It is merely an ex- parte vetting process to consider there was a prima facie case of contempt (see *Lim Chau Leng (P) v. Wong Chee Chong* [2006]1AMR 151 and *Foo Khoon Long* case (*supra*).

FINDINGS OF THIS COURT

[19] In a contempt proceeding, being quasi-criminal, what is required is in appraising the totality of the evidence adduced by parties, a judicial determination must be made as to the sufficiency of the probative materials adduced to support the allegations of contempt against the proposed contemnor. The evidential burden of beyond a reasonable doubt imposed by the law must be met before the proposed contemnor can be found to have contumaciously disobeyed the injunctive order issued by the Court. It is trite that:

(a) The burden on the plaintiffs cannot be discharged by proof of facts on implications or speculations (see *Segar Restu (M) Sdn Bhd* (*supra*)). Any argument based merely on the implication of certain facts finds no place in contempt proceedings (see *E & E Equipment Sdn Bhd* case (*supra*)); and

(b) Any doubt raised on the allegations of contempt, the benefit of the said doubt must be given in favour of the respondent. Where there is more than one inference drawn from the

facts, the inference favourable to the accused should be adopted (see *Foo Khoon Long* (*supra*)).

[20] The facts from the parties in a nutshell before the Court are:

(a) The AC had been served and is aware of the terms of the (i) the Ad Interim Order dated 06.09.2019 and (ii) the said Injunction Order against him. The AC had averred and admitted to this.

(b) The AC is alleged to have wilfully disobeyed the injunction relating to the listed private documents of SHSB, the subject matter of the said injunctions. He was restrained from making copies or divulging those documents to third parties.

(c) The AC was ordered to return the said documents to the plaintiffs, to which he claimed to have complied.

(d) Though there is evidence that he had returned the said documents to the plaintiffs' solicitors, he is alleged to have made soft copies of the said documents stored in a thumb drive, which is in his possession, and he did not surrender it. In breach, he is alleged to have handed the soft copies to D2 and D3, who printed and made copies of the said documents. These were the alleged facts found in the private investigator's report engaged by the plaintiffs' to observe, monitor, and report the movements and activities of the defendants ("SKM 14" - enclosure 136). The Court takes cognizance that during the hearing of the contempt proceedings, the plaintiffs had elected not to call the said private investigator as the plaintiffs' witness to attest to and verify the said report, used by the plaintiffs against the AC, which hitherto remained merely speculative, hearsay in nature, and inadmissible.

(e) The plaintiffs elected to personally tender the alleged private investigator's report (unsigned and unnamed) in P2's affidavit ("SKM 14" - enclosure 136) with no accompanying affidavit from the maker of the said report to attest to its veracity, authenticity, and accuracy. The manner it was done denies the AC a right to challenge the maker on the said report in making his defense. The AC denies that it was him in the pictures exhibited in the said report, nor does he appear anywhere in the said report. It was asserted that the said report does not concern AC at all, and the plaintiffs have not refuted this evidence by the AC.

(f) In his defense, AC denied all charges and asserted that he has no copies of the said documents, which all had been surrendered to the plaintiffs' solicitors as ordered. There is no issue of him having disclosed the said documents to any third parties. His familiarity with the title of the contracts was acquired while working with the plaintiffs then as he was involved in all tender exercises and documentation.

(g) The plaintiffs argued speculatively that the AC must still have in his possession copies of the said documents as the defendants were seen to be printing from a thumb drive and making copies at a photocopy shop as observed by the private investigator engaged by the plaintiffs, who supposedly reported that he was told by the operator of the photocopy shop that they were merely printing documents on A4 size paper and nothing more with contents unknown. With the private investigator not called to attest to this evidence, it remains speculative, hearsay, and inadmissible in the circumstances.

(h) The plaintiffs speculated further and argued that the AC couldn't lodge the reports (police and Petronas) without the documents to support his allegations. Other than

speculation, no tangible evidential materials were adduced to support this assertion. It was asserted that the AC could not rely on his wrongdoings to exonerate himself.

(i) The AC argued and contended that there is no restriction in the injunctive orders to restrain him from reporting to the appropriate authorities on the alleged criminal wrongdoings of the plaintiffs, which he claimed is precisely what he did and believed in. It is because he had no documents to support his allegations that the police or Petronas took no further action. He contends that the plaintiffs' charges against him are ambiguous and failed to identify and prove beyond a reasonable doubt how he had disobeyed the injunctive orders.

[21] The AC took the stand in Court on 17.12.2021 to answer the allegations levelled against him. In the totality of the proceedings, I cannot find any evidence adduced by the plaintiffs that could conclusively show that the AC had breached the said injunctive order. The facts by the plaintiffs are premised fundamentally on speculations and inadmissible evidence. Consequently, such failure would impair the satisfaction of the required burden of proof imposed on the plaintiffs in their claims against the AC. As stated, the legal position is clear that the burden on the plaintiffs, cannot be discharged by proof of facts on implications or speculations. Arguments premised on the implication of facts find no place in contempt proceedings. The benefit of the doubt raised in the contempt proceeding must be given in favour of the AC. If more than one inference is drawn from the facts, the inference favourable to the AC must be taken in the circumstances. The Court of Appeal in *Subramaniam a/l P. Govindasamy v. Susila a/p S.Sankaran* [2017] MLJ 975, CA, said:

> *"[7] A threat by the respondent to issue committal proceedings on items which are said to be missing may tantamount to bringing the administration of justice to disrepute unless the*

respondent has clear evidence that the items are in possession of the petitioner…"

[22] I find the explanations and averments in the AC's affidavit as sufficient in the circumstances to create doubt in my mind as to his guilt. In the circumstances, I see no plausible reason to hold the AC disobeying the terms of the injunctive order based on the materials presented by the plaintiffs before me. Therefore, the plaintiffs have failed to discharge their burden to prove their allegations beyond a reasonable doubt.

CONCLUSION

[23] All things considered and after closely scrutinizing the application and examining all materials adduced before me, the written/oral submissions of learned counsels for the parties, I dismissed enclosure 122 for committal against the AC, anchored on the fact that the plaintiffs failed to prove their case beyond a reasonable doubt imposed by law in such an application. An evidence by implication has no place in committal proceedings, and the Court does not act upon speculation. Since the AC had succeeded in raising a reasonable doubt in the charges levelled against him by the plaintiffs, it follows that enclosure 122 cannot stand and costs of RM4,000.00 is awarded to the AC.

Dated: 24 MARCH 2022

(HAYATUL AKMAL ABDUL AZIZ)
Judge
High Court of Malaya
Wilayah Persekutuan Kuala Lumpur

COUNSEL:

For the plaintiffs - Gavin Jay Anand Jayapal & Tanusha Sharma; M/s Gavin Jayapal

For the 1st defendant/alleged contemnor - V Muniandy & Fiona Aurelia Culas; M/s Andy & Co

Case(s) referred to:

Lee Nyan Hon v. Metro Charm [2009] 6 MLJ 1, CA

Wee Choo Keong; Houng Hai Hong & Anor v. Mbf Holdings Bhd. & Anor. & Other Appeals [1995] 4 CLJ 427

Foo Khoon Long v. Foo Khoon Wong [2009] 9 MLJ 441, HC

Lee Chang Yong v. Teng Wai Yee [2019] 7 MLJ 576, HC

Tan Sri Dato' (Dr) Rozali Ismail &Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849

Subramaniam a/l P. Govindasamy v. Susila a/p S. Sankaran [2017] MLJ 975, CA