

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

[2024] SGHC 62

Originating Application No 13 of 2023 (Summons No 190 of 2024)

In the matter of Sections 189, 199, and 396A
of the Companies Act 1967

And

In the matter of Good Year Contractor Pte
Ltd

Between

Neo Chin Heng

... Claimant/Committal Applicant

And

Good Year Contractor Pte Ltd

... Defendant/Committal Respondent

EX TEMPORE JUDGMENT

[Contempt of Court — Civil Contempt — Whether breach of court order
intentional]

[Contempt of Court — Civil Contempt — Appropriate quantum of fine]

[Contempt of Court — Civil Contempt — Whether custodial sentence warranted]

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Neo Chin Heng
v
Good Year Contractor Pte Ltd

[2024] SGHC 62

General Division of the High Court — Originating Application No 13 of 2023
(Summons No 190 of 2024)

Goh Yihan J

19 February 2024, 7 March 2024

7 March 2024

Goh Yihan J:

1 In HC/SUM 190/2024 (“SUM 190”), the committal applicant (the “applicant”) is applying for committal orders to be made against the first committal respondent, Good Year Contractor Pte Ltd (“Good Year”), and the second committal respondent, Mr Peh Eng San (“Mr Peh”) (collectively, the “respondents”). SUM 190 is based on the respondents’ alleged continuing refusal to obey an Order of Court dated 6 April 2023 (the “Court Order”), which required Good Year to produce its company documents for the applicant’s inspection by 24 April 2023. SUM 190 also follows from the applicant’s successful application in HC/SUM 3626/2023 (“SUM 3626”) for permission pursuant to O 23 r 3(1) of the Rules of Court 2021 (“ROC 2021”) to apply for these committal orders.

2 After hearing the parties first on 19 February 2024 and today on 7 March 2024, I find the respondents guilty of contempt of court and fine them each \$20,000. These are the reasons for my decision, which I may expand on, if necessary.

Background facts

3 I turn first to the background facts. This application arose against the backdrop of HC/OA 13/2023 (“OA 13”), which the applicant filed on 6 January 2023. The applicant is the claimant in OA 13, whereas Good Year is the defendant there. The applicant had been a director of Good Year until he was removed sometime before 15 December 2023. In OA 13, the applicant applied for him to, among other things, be allowed to inspect and make copies, and/or take extracts of certain documents from Good Year (the “Company Documents”). The Company Documents are as follows:

- (a) Good Year’s audited financial statements since its incorporation;
- (b) Good Year’s management or unaudited financial statements from the date after the last available audited financial statements till 2022;
- (c) bank statement records of all of Good Year’s bank accounts since its incorporation;
- (d) the general ledger or any other record of Good Year’s account balances since its incorporation and such underlying documents which include but are not limited to Good Year’s contracts and agreements, invoices, receipts, and payment vouchers;
- (e) any and all accounting and other records that relate to Good Year’s financial position since its incorporation;

- (f) all of Good Year’s minutes of shareholder and directors’ meetings since its incorporation; and
- (g) all of Good Year’s member’s resolutions since its incorporation.

4 The applicant had made the application in OA 13 because Good Year had not made the Company Documents available for his inspection for more than half a year since his first request at the time. He asserted that he was entitled to the Company Documents by virtue of s 189 and s 199 of the Companies Act 1967 (2020 Rev Ed) (the “Companies Act”).

5 On 6 April 2023, the General Division of the High Court ordered in the Court Order that, among other things, the applicant shall be allowed to inspect and make copies, and/or take extracts of the Company Documents.

6 Against these background facts, I come to the parties’ respective positions for SUM 190.

The applicant’s position

7 The applicant’s position for SUM 190, as contained in the affidavits filed in support of SUM 3626 (“NCH-3” and “NCH-4”, respectively),¹ is that the respondents have not complied with the Court Order and refused to allow him to inspect and make copies, and/or take extracts of the Company Documents.

¹ 3rd Affidavit of Neo Chin Heng dated 22 November 2023 (“NCH-3”), and 4th Affidavit of Neo Chin Heng dated 4 January 2024 (“NCH-4”).

8 In NCH-3, the applicant stated that he e-served the Court Order on Good Year’s lawyers, Manicka & Co (“Manicka”) on 17 April 2023.² This means that the date for compliance, being 7 days later, would have been 24 April 2023. Since Mr Peh is the director instructing Manicka on behalf of Good Year, the applicant’s position is that Mr Peh had effective notice of the Court Order.³

9 The applicant’s solicitors then wrote to Manicka on 11 April 2023 and 25 April 2023 to arrange for an inspection of the Company Documents. Manicka did not respond.⁴

10 Subsequently, on 5 September 2023, the applicant’s solicitors wrote to Manicka and Mr Peh by email and registered post, respectively, to note Good Year’s continued failure to comply with the Court Order. In the premises, the applicant’s solicitors provided the respondents with one final chance to comply with the Court Order by 15 September 2023.⁵ However, even by that date, the respondents had still not allowed the applicant to inspect and make copies, and/or take extracts of the Company Documents.

11 In addition, not only have the respondents not complied with the Court Order, but the applicant was also sent draft resignation documents on 23 November 2023.⁶ On 11 December 2023, Mr Peh convened an extraordinary general meeting at Good Year to remove the applicant as a director.⁷

² NCH-3 at para 11.

³ NCH-3 at para 11.

⁴ NCH-3 at para 12.

⁵ NCH-3 at para 12(2).

⁶ NCH-4 at para 7.

⁷ NCH-4 at para 12.

12 In view of the above facts, the applicant submits that the respondents are in contempt of court. The applicant therefore asks that Good Year be fined \$20,000, and for Mr Peh to be sentenced to an imprisonment term of 7 days that should not be suspended.

The respondents’ position

13 Mr Peh originally did not file any reply affidavit in SUM 190. Instead, Mr K R Manickavasagam (“Mr Manickavasagam”) tendered written submissions on behalf of Mr Peh and referred to Mr Peh’s affidavit filed on 30 January 2023 in response to OA 13. As I told Mr Manickavasagam during the hearing on 19 February 2024, this affidavit is inadmissible for this committal hearing because O 23 r 7(4) of the ROC 2021 exhaustively provides that the respondents can *only* rely on (a) the matters stated in their affidavits, if any; and (b) with the permission of the court, their oral evidence to the court. While O 23 r 7(4)(a) does not specify that the “affidavit” which the respondent must rely on is the affidavit filed in response to an applicant’s affidavit for committal, I think it is clear within the context of O 23 r 7 that this “affidavit” can only refer to the respondent’s reply affidavit for the committal hearing, and not any affidavit it had filed in other proceedings, even if those other proceedings are related.

14 I therefore allowed Mr Peh to file a reply affidavit by 26 February 2024 (“PES-2”) and for an additional hearing to take place today on 7 March 2024. Mr Peh’s evidence in PES-2 essentially explains that he does not have any of the “documents” as he has “employed an accountant firm to do my accounts and the accounting documents to be filed with the ACRA, IRAS and all relevant

authorities”.⁸ Mr Peh elaborates that his staff “will hand over all the documents to the accountant”, which includes “normal documents such as petty cash receipts, sales and purchase receipts, invoices, sundry purchases and all other documents”, so that “the accountant and his accounts clerk will handle [his] accounts”.⁹ Mr Peh then explains that he has made multiple attempts through Manicka to obtain the “documents” from as early as January 2023 to 17 February 2024, by which Desmond Sim & Consultant Pte Ltd (“DSC”) finally gave him “some documents”.¹⁰ Mr Peh therefore asserts that he has done his level best to get the “documents”.

15 I make two observations about Mr Peh’s evidence in PES-2 at this point. First, I have referred to “documents” in quotation marks because it is not clear to me that Mr Peh is referring to the “Company Documents” in PES-2; rather, he appears to be referring only to the accounting documents, whereas the Company Documents in the Court Order includes documents other than accounting documents. Second, while Mr Peh says that he has made multiple attempts through Manicka to obtain the “documents”, he has only exhibited one email from Mr Manickavasagam dated 6 September 2023 sent to DSC, and one letter from Manicka dated 3 October 2023 sent to DSC. Out of these two correspondences, the email dated 6 September 2023 is evidently Mr Manickavasagam’s response to DSC’s numerous emails asking for an extension of time to hand over the required “documents”. In that email, Mr Manickavasagam threatened to “file a POHA (Protection of Harassment Act) [*sic*] against you” and that “[o]ne more letter from you asking for

⁸ PES-2 at para 4.

⁹ PES-2 at para 5.

¹⁰ PES-2 at paras 9–23.

extension, I will take out criminal action against you for harassment”.¹¹ That is hardly an attempt by either Mr Peh or Manicka to obtain the documents. Instead, the only attempt through Manicka is in the letter dated 3 October 2023, wherein Manicka threatened to sue DSC for specific performance “to produce the accounts” if DSC did not do so by 9 October 2023.¹² There is no evidence of Mr Peh or Manicka following up on this letter despite DSC not producing the “documents” until February 2024. Indeed, there is also no evidence of Mr Peh or Manicka otherwise following up on DSC’s multiple requests for more time to produce the “documents” between 22 February 2023 and 5 September 2023.

16 To be fair to Mr Peh, I gave him an opportunity to respond to my concerns about his evidence in PES-2 during the hearing today. First, on whether the “documents” referred to in PES-2 coincided with all of the “Company Documents” referred to in the Court Order, Mr Peh explained that Good Year does not hold any annual general meetings and therefore does not possess any minutes of meetings or member’s resolutions required by the Court Order. Second, on whether he or Manicka chased DSC for the “documents” beyond the correspondences exhibited in PES-2, Mr Peh explained that he had made multiple calls to one “Christine” from DSC to chase for the “documents”. However, Mr Peh could not point me to any record of such calls until 21 November 2023 in the WhatsApp correspondence exhibited in PES-2. When I pointed this to Mr Peh, he said that he had either used his office phone to call Christine, or asked his colleague, one “Priscillia” to call Christine before 21 November 2023. Beyond this, Mr Peh agreed with me that his affidavit does

¹¹ PES-2 at p 23.

¹² PES-2 at p 24.

not show any attempt to contact DSC between 27 May 2023 and 9 September 2023.

17 I turn now to consider Mr Manickavasagam’s written submissions. While Mr Manickavasagam does not refer to the Administration of Justice (Protection) Act 2016 (“AJPA”) at all, his submissions appear to make a few points. First, Mr Peh “has pleaded with [Desmond Sim & Consultants Pte Ltd] to give him the accounts but they have failed” and that Mr Peh is therefore “helpless in this matter”.¹³ When I asked Mr Manickavasagam on 19 February 2024 whether he was relying on any specified defence in the AJPA, he replied to say that he was not and that the respondents were relying on the mercy of the court. After Mr Manickavasagam’s further clarifications today, I understand his case to be that the respondents are contesting their liability for contempt, given that their inability to obtain the Court Documents was caused by DSC’s alleged failure to provide them.

18 Second, Mr Manickavasagam submits that because the applicant is “asking the Defendant for \$ 4 million dollars)\$4,000,000 [*sic*] to withdraw his application”, Mr Peh “had of [*sic*] last, begged [DSC] to give him the accounts”.¹⁴ This account of how Mr Peh needed to “beg” DSC to give him the accounting documents is not supported by any document exhibited in PES-2, nor was it even mentioned within. As to Mr Manickavasagam’s account of how the applicant had allegedly asked the respondents for \$4,000,000 to withdraw SUM 190, I would observe that this is an especially serious allegation that ought not to be lightly advanced without any evidence (of which there was none in

¹³ Defendants’ Written Submissions dated 13 February 2024 (“DWS”) at paras 9–10.

¹⁴ DWS at paras 13 and 15.

PES-1 or PES-2), least of all by a lawyer in written submissions filed on behalf of a client.

19 Third, and similar to Mr Peh in PES-2, I note that Mr Manickavasagam in his written submissions only refers to “accounting documents”. However, the Company Documents referred to in the Court Order includes other documents, such as Good Year’s minutes of various meetings and member’s resolutions, that are not “accounting documents”. Thus, even in Mr Manickavasagam’s written submissions (and PES-2), the respondents have provided no explanation whatsoever of their non-response in relation to the Company Documents that are not “accounting documents”. Mr Manickavasagam explained today that he had been unaware until Mr Peh gave oral evidence in court that Good Year does not possess meeting minutes or member’s resolutions as required by the Court Order.

My decision: the respondents are in contempt of court and should be suitably punished for their contempt

20 After considering the parties’ submissions and the evidence, I find that the respondents are in contempt of court and should be suitably punished for their contempt. I turn first to explain my conclusion that the respondents are in contempt of court.

The respondents are in contempt of court

The applicable law

21 I begin with the applicable law, which is not in dispute. Section 4(1)(a) of the AJPA provides that any person who intentionally disobeys or breaches any judgment, decree, direction, order, writ, or any process of a court, commits a contempt of court. Further, s 4(8) of the AJPA provides that any person who

is not a party to an action and causes or abets the breach of any judgment, decree, direction, order, writ, or other process of a court, with the intention of causing such breach or knowing that it would cause such breach, commits contempt.

22 In so far as a corporation is concerned, s 6(2) read with s 6(7) of the AJPA provides that where a corporation is guilty of contempt, its director can be guilty of the same contempt, provided that he: (a) had consented or connived to effect the commission of the breach; (b) is knowingly concerned in or is party to the commission of the breach; and/or (c) knew or ought to reasonably have known that the breach would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of the breach.

23 In the premises, I will need to consider two broad issues:

(a) First, what the Court Order expects of the respondents. In this regard, the court is guided by the order’s plain meaning and resolves any ambiguity in the alleged contemnor’s favour.

(b) Second, whether the Court Order’s requirements have been fulfilled by the respondents. In this regard, the applicant must show that the alleged contemnor had the requisite *mens rea* when failing to comply with the order, and it suffices for this purpose if the relevant conduct was intentional and that the contemnor knew of all the facts that rendered such conduct a breach of the order (see the High Court decision of *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 4 SLR 828 (“*PT Sandipala Arthaputra*”) at [47]).

The Court Order clearly requires Good Year to produce the Company Documents

24 Turning to the first broad issue, I find that the Court Order plainly requires Good Year to allow the applicant to inspect and make copies, and/or take extracts of the Company Documents within 7 days of the said Order. Since the Court Order was e-served on Good Year’s solicitors, Manicka, on 17 April 2023, the deadline for Good Year to comply with the Court Order was 24 April 2023.

25 Indeed, Good Year has not appealed against the Court Order, nor has it sought further clarifications on its meaning and terms. In the circumstances, it cannot challenge – and has not challenged – the clear meaning of the Court Order, which is that it must allow the applicant to inspect and make copies, and/or take extracts of the Company Documents by 24 April 2023.

26 It is not disputed that the respondents have not allowed the applicant to inspect and make copies, and/or take extracts of the Company Documents by 24 April 2023. The question is whether they had the requisite *mens rea* in failing to comply with the Court Order so as to have committed contempt under s 4(1)(a), s 4(8) and/or s 6(2) of the AJPA.

The respondents had the requisite mens rea when failing to comply with the Court Order

27 With this clear meaning of the Court Order in mind, I find that the respondents had the requisite *mens rea* when failing to comply with the Court Order. In so deciding, I bear in mind the High Court’s statement of law in *PT Sandipala Arthaputra* that the threshold to establish the requisite *mens rea* is a “low one” (at [47]) and that it is “only necessary for the complainant to

show that the relevant conduct of the party alleged to be in breach of the order was *intentional* and that it *knew* of all the facts which made such conduct a breach of the order” [emphasis in original] (at [47]). As such, as the High Court also stated in *PT Sandipala Arthaputra*, “it is not necessary for the complainant to show that the alleged contemnor appreciated that he was breaching the order”; the alleged contemnor’s motive or intention and the reasons for his disobedience are “irrelevant to the issue of liability and are only relevant to the question of mitigation” (at [48]). Therefore, liability is “strict” in that all that needs to be proved is that the court was order was served on the party concerned, and that that party failed to comply with the order (at [48]).

28 First, as for Good Year, it is not disputed that the Court Order was served on Good Year. Indeed, Good Year has complied with the costs order under the *same* Court Order, albeit not without enforcement proceedings brought against it in this respect. Further, the applicant had sent three correspondences to Good Year on 11 April 2023, 25 April 2023, and 5 September 2023 seeking compliance with the Court Order. Good Year therefore knew of the Court Order and that it needed to comply with the order by 24 April 2023. Despite this, Good Year has failed to comply with the Court Order. In the circumstances, I find that this disobedience is intentional. It is irrelevant that Good Year failed to comply with the Court Order because DSC allegedly failed to provide the accounting documents. In any event, because the “Company Documents” as defined in the Court Order go beyond accounting documents, DSC’s failure to provide the accounting documents cannot explain why Good Year has not provided the Company Documents that are not such. Further, even if Good Year was facing difficulty in obtaining the accounting documents from DSC, it has not explained why it did not respond to the correspondence that the applicant’s solicitors had sent to Manicka. There was no explanation whatsoever until the applicant took

out the present contempt proceedings against Good Year. I therefore conclude that Good Year has the requisite *mens rea* under s 4(1)(a) of the AJPA sufficient to establish that it is guilty of contempt of court pursuant to the same section.

29 Second, as for Mr Peh, it is similarly not disputed that the Court Order was served on him. It is also clear that Mr Peh knew of the Court Order and that it obliged Good Year to allow the applicant to inspect and make copies, and/or take extracts of the Company Documents by 24 April 2023. This is because, while Mr Peh is not a party to OA 13, it is clear, from Manicka’s email to the applicant’s solicitors dated 21 August 2023, that Mr Peh has been conducting Good Year’s defence in OA 13. It is also clear from that same email that Mr Peh was responsible for instructing Manicka to seek an extension of time to satisfy the costs order in the Court Order. Indeed, Mr Manickavasagam in the said email identifies Mr Peh as making certain requests of the applicant with regard to the costs order.¹⁵ Therefore, if Mr Peh could give instructions on the costs order contained in the Court Order, then it must follow that he knew of the Court Order and its terms. Indeed, Mr Manickavasagam confirmed before me that Mr Peh was not contesting that he had been served with and knows about the Court Order. Mr Peh has likewise confirmed that he knew of the Court Order.

30 While Mr Peh has now explained in PES-2 that he was unable to obtain the “documents” from DSC because the latter consistently did not provide them, I find that this does not negate Mr Peh’s liability for contempt. To begin with, Mr Peh knew about the Court Order. He also knew that Good Year was obliged to comply with the Court Order. He then knew or ought reasonably to have known that if Good Year did not provide the Company Documents, it would be

¹⁵ NCH-3 at pp 56–57.

in breach of the Court Order. Yet, apart from the letter dated 3 October 2023 that Manicka sent to DSC, there is no evidence that he went further beyond sending some WhatsApp messages to chase for the accounting documents held by DSC.

31 In this regard, I note that the letter dated 3 October 2023 threatened to sue DSC for specific performance to produce the “accounts” if they were not provided by 9 October 2023. However, there is no evidence of any further correspondence between DSC and Manicka after 3 October 2023 until 13 February 2024. Thus, it appears that Mr Peh stopped chasing DSC for the documents after October 2023 despite threatening legal action. While he maintained WhatsApp contact with Christine, the messages he sent in November 2023 were about “documents fir [sic] resignation of director”.¹⁶ It appears that while Mr Peh wanted DSC to prepare the documents to remove the applicant as a director of Good Year, he did not bother to follow up with Christine over WhatsApp about the production of the Company Documents until 17 February 2024, which was two days before the first hearing of this matter. Mr Peh also did not respond to any of the correspondence from the applicant’s solicitors asking for the Company Documents. In any event, even if I were to accept that DSC had failed to provide the accounting documents to Good Year, that still does not explain why Good Year has not produced the Company Documents which are not accounting documents. If Mr Peh’s explanation is that Good Year does not possess those other documents, it is inexplicable that neither he nor Manicka informed the applicant of this until today.

¹⁶ PES-2 at p 5.

32 Further, as Mr Chua Shi Jie (“Mr Chua”), who appeared on behalf of the applicant together with Mr Choo Zheng Xi, pointed out, the respondents produced on 24 February 2024 Good Year’s DBS Bank statements for the periods from January to December 2018, January to December 2019, and January to December 2020. Leaving aside the fact that this is still an incomplete production of the required bank statements, this shows that the respondents could have produced the bank statements by retrieving them from the bank directly. Yet, Mr Peh has not explained why he did not cause Good Year to do so until after the first hearing on 19 February 2024. Moreover, as Mr Chua also points out, Mr Peh could have obtained the relevant financial statements from Accounting and Corporate Regulatory Authority (“ACRA”) BizFile, without the need to go through DSC.

33 Accordingly, I find that Mr Peh, in his capacity as a director of Good Year, knew or ought reasonably to have known that Good Year was in breach of the Court Order by failing to permit the applicant access to the Company Documents. Yet, Mr Peh has not taken all reasonable steps to enable Good Year to provide such access to the applicant. I therefore find that Mr Peh had, at the very least, in his capacity as a director of Good Year, and in view of Good Year’s contempt of court, knew or ought reasonably to have known that Good Year’s contempt of court would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that contempt of court. Mr Peh is therefore guilty of contempt of court under s 4(1)(a) of the AJPA by virtue of s 6(2) of the same Act.

The respondents have not advanced any viable defence under Part 4 of the AJPA

34 For completeness, the respondents have not advanced any viable defence under Part 4 of the AJPA, which, subject to s 8(2), are exhaustive of the defences to contempt. As I mentioned above, Mr Manickavasagam did not identify any relevant defence under Part 4 in his written submissions.

35 To be fair to the respondents, I consider whether the defence under s 21 of the AJPA, which is the defence that is the most likely to apply to them, is made out. Section 21 provides that a person is not guilty of contempt of court under, among others, s 4(1) of the AJPA 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.

36 However, I do not see any evidence from the respondents by which this defence can be made out. Instead, their only “defence”, if it could even be called that, is that Mr Peh had to “beg” DSC for the “accounting documents” because DSC refused to turn them over. However, the fact that Mr Peh even “beg[ged]” DSC for the said documents shows that he must have understood that the Court Order imposed on Good Year an obligation to provide the Company Documents. Therefore, even if the defence in s 21 of the AJPA had been advanced by the respondents, it would have failed.

The appropriate punishment

37 Having decided that the respondents are both guilty of contempt of court, I turn to decide the appropriate punishment.

The applicable law

38 Section 12(1)(a) of the AJPA provides that contempt of court is punishable by the General Division of the High Court with a fine not exceeding \$100,000 and/or imprisonment for a term not exceeding three years. In addition, there are cases that have decided on the relevant sentencing factors, which I will refer to below.

Good Year

39 For Good Year, I impose a fine of \$20,000 for the following reasons.

40 First, Good Year's breach is considerably less egregious than that of the corporate respondents in the Singapore International Commercial Court decision of *Baker, Michael A (executor of the estate of Chantal Burnison (deceased)) v BCS Business Consulting Services Pte Ltd and others* [2024] SGHC(I) 2 ("*Baker*") and in the High Court decision of *WestBridge Ventures II Investment Holdings v Anupam Mittal* [2022] SGHC 270 ("*WestBridge*"), who were fined \$80,000 and \$70,000, respectively, for their breaches of anti-suit injunctions. As such, the appropriate fine should not be as high as \$80,000 or \$70,000 as in these cases.

41 Second, and however, the appropriate fine also cannot be the symbolic value of \$10,000 that was imposed on the corporate respondent in the High Court decision of *Maruti Shipping Pte Ltd v Tay Sien Djim and others*

[2014] SGHC 227 (“*Maruti*”). In that case, the court had imposed a fine of \$10,000 on the corporate respondent for failing to comply with disclosure requirements in an Anton Piller Order and a Mareva Injunction. However, the court observed that this fine was more symbolic than substantive because the corporation was a dormant company and had no assets (at [140]). In the present case, Good Year is not dormant. It also has assets, as seen from the items that the Sheriff had ceased in enforcement proceedings with respect to the costs order under the Court Order. As such, the appropriate fine should not be as low as \$10,000, as in *Maruti*.

42 Accordingly, taking \$10,000 as the base value and calibrating Good Year’s breach in relation to the breaches in *Baker* and *WestBridge*, I impose a fine of \$20,000 on Good Year.

Mr Peh

43 As for Mr Peh, I impose a \$20,000 fine.

44 To begin with, I do not think that a term of imprisonment is appropriate. In deciding thus, I am guided by the factors that Quentin Loh J set out in the High Court decision of *Sembcorp Marine Ltd v Aurol Anthony Sabastian* [2013] 1 SLR 245 (at [68]), which overlap to some extent with the factors that the Court of Appeal identified as being relevant in *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 at (at [104]–[110]) in relation to cases of contempt by disobedience in the context of matrimonial proceedings.

45 First, as to Mr Peh’s attitude behind the contemptuous behaviour, I find that while he has disregarded the Court Order, it is not possible to say on the basis of the evidence that he has done so deliberately or cynically. Indeed, there

is evidence that Mr Peh made limited attempts to chase for some (but not all) of the Company Documents from DSC. While it is true that this does not absolve Mr Peh of the requisite *mens rea* to make out liability for contempt of court, this does mean his attitude does not rise to the extent of warranting a term of imprisonment.

46 Second, as to Mr Peh's motive for committing the contemptuous act, there is no evidence that he had done so for specific pecuniary or non-pecuniary motives. Indeed, there is no evidence that Mr Peh had breached the Court Order out of spite for either the court or the applicant. While the applicant points to Mr Peh's forcible removal of the applicant as a director of Good Year, there is no evidence to show that Mr Peh had done so with a view to defeating the Court Order. As such, this factor does not weigh in favour of imposing a term of imprisonment.

47 Third, the breach of the Court Order can be easily reversed by the respondents providing the Company Documents forthwith to the applicant. Indeed, the respondents had, on 17 and 24 February 2024, provided some of the accounting documents to the applicant. This factor therefore leans in favour of imposing a fine as opposed to a term of imprisonment.

48 Fourth, regarding the standard of care expected of Mr Peh, it is crucial that he is not an officer of the court. He is therefore not held to a higher standard so as not to bring the legal profession into disrepute.

49 Fifth, as for the nature of the contemptuous act, I consider that the prejudice to the applicant is not high. Indeed, the applicant has not adduced any evidence in the present application as to why he needs the Company Documents, beyond asserting his rightful entitlement to them pursuant to the Companies

Act. In particular, the applicant has not explained on affidavit that he needs the Company Documents to pursue any action against the respondents, even if his lawyers submit that the respondents' failure to produce the Company Documents "had deprived the [applicant's] ability to initiate proceedings as a director and/or shareholder against [Good Year] and/or Mr Peh for illegitimate payments made by [Good Year] and illegitimate use of [Good Year's] funds".¹⁷ As such, when considered against the contemptuous acts in other cases, I do not consider Mr Peh's breach of the Court Order, while serious in and of itself, to be so egregious as to warrant a term of imprisonment.

50 Sixth, I think Mr Peh is remorseful only to a limited extent. Indeed, he has provided no explanation even to this court as to why he has not complied with the Court Order until I gave him permission to file a reply affidavit. Indeed, while Mr Peh did chase DSC for the Company Documents, the WhatsApp messages exhibited show that he displayed considerably less enthusiasm chasing for the Company Documents compared to when he was asking for the document to remove Mr Neo as a director of Good Year. This shows that he did not take the Court Order as seriously as when contempt proceedings were started against him. Further, Mr Peh's breach of the Court Order, albeit of a single order, has been ongoing since 24 April 2023. While these factors might have warranted a term of imprisonment, their impact is diminished when considered with all the other factors above. Therefore, in totality, I do not consider that a term of imprisonment would be appropriate for Mr Peh.

¹⁷ Applicant's Written Submissions dated 13 February 2024 at para 55.

51 However, given that Mr Peh's culpability is at least aligned to that of Good Year, I impose a fine of \$20,000 on him. In deciding on this sum, I considered the following precedents.

52 First, the Singapore International Commercial Court in *Baker* decided to impose the maximum fine of \$100,000 on one of the non-corporate respondents. In that case, the said respondent had disobeyed an anti-suit injunction by intentionally taking steps to maintain foreign proceedings, which was in turn motivated by financial gain. In the end, the court decided not to impose a term of imprisonment because the respondent had failed to obtain a foreign decision in its favour. Compared to the present case, Mr Peh's conduct is not as serious as that of the respondent in *Baker*. The evidence does not show that Mr Peh had taken active steps to prevent the applicant from accessing the Company Documents, such as physically destroying them. Instead, Mr Peh had simply taken some action to comply with the Court Order though these were neither reasonable nor adequate. The evidence also does not show that Mr Peh was motivated by or indeed benefited from any financial gain by not complying with the Court Order. As such, I do not consider that any fine imposed on Mr Peh should be anywhere close to \$100,000.

53 Second, the High Court in *Maruti* imposed a fine of \$10,000 on one of the non-corporate respondents who was found to be in contempt by procuring a company's breaches of an Anton Pillar order and an Mareva injunction order. The court found that this respondent's culpability was low because, among other things, he had agreed to produce documents and information at the plaintiff's request and had done so within a reasonable period of time. He had also stated that he had nothing but high respect for the court and the full consciousness and diligence to carry out what is required of him by the court. Compared to the

present case, Mr Peh's culpability is not as low because Mr Peh only made limited attempts to procure some of the Company Documents. However, Mr Peh did not breach or procure the breach of an Anton Pillar order or an Mareva injunction order. In sum, I do not consider that any fine imposed on Mr Peh should be as low as \$10,000.

54 Accordingly, considering these precedents, the facts of this case, as well as the \$20,000 fine imposed on Good Year, I consider it appropriate to impose a fine of \$20,000 on Mr Peh.

Conclusion

55 For all these reasons, I find Good Year guilty of contempt of court under s 4(1)(a) of the AJPA in that it has intentionally disobeyed the Court Order by not providing the applicant with access to the Company Documents. Good Year is fined \$20,000, to be paid within 14 days of today.

56 I also find Mr Peh guilty of contempt of court, under s 4(1)(a) of the AJPA by virtue of s 6(2) of the same Act, in his capacity as a director of Good Year, and in view of Good Year's contempt of court, knew or ought reasonably to have known that Good Year's contempt of court would have been or was being committed, and had failed to take all reasonable steps to prevent or stop the commission of that contempt of court. Mr Peh is fined \$20,000, to be paid within 14 days of today, in default of which there be 5 days' imprisonment.

57 I will now hear the parties on costs.

Goh Yihan
Judge of the High Court

Choo Zheng Xi and Chua Shi Jie (RCL Chambers Law Corporation)
(instructed) and Kertar Singh s/o Guljar Singh
(Kertar & Sandhu LLC) for the applicant;
Manickavasagam s/o R M Karuppiah Pillai (Manicka & Co)
for the respondent.
