

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

[2024] SGHC 8

Originating Application No 13 of 2023 (Summons No 3626 of 2023)

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

GROUND OF DECISION

[Contempt of Court — Civil Contempt — Leave to commence committal proceedings]

TABLE OF CONTENTS

BACKGROUND FACTS	2
THE APPLICABLE LAW	3
MY DECISION: THE APPLICATION WAS ALLOWED.....	5
CONCLUSION.....	7

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Neo Chin Heng
v
Good Year Contractor Pte Ltd

[2024] SGHC 8

General Division of the High Court — Originating Application No 13 of 2023
(Summons No 3626 of 2023)

Goh Yihan J

11 January 2024

12 January 2024

Goh Yihan J:

1 This was the committal applicant's (the "applicant") application for him to be granted permission to apply for committal orders against Good Year Contractor Pte Ltd ("Good Year"), as well as its director, Mr Peh Eng San ("Mr Peh"). For convenience, I shall refer to Good Year and Mr Peh, who are properly the committal respondents, as the "respondents". This application was made pursuant to O 23 r 3(1) of the Rules of Court 2021 ("ROC 2021").

2 At the end of the hearing before me on 11 January 2024, I granted the applicant's application and made the orders sought. In short, I was satisfied that the applicant had established a *prima facie* case of contempt against the respondents for disobeying the Order of Court made on 6 April 2023 (HC/ORC 1720/2023 or "ORC 1720"). Because there has not been a local decision on O 23 r 3 of the ROC 2021, I provide these brief grounds of decision

to clarify that the principles which applied to O 52 r 2 of the Rules of Court (2014 Rev Ed) (“ROC 2014”) continue to apply to O 23 r 3 of the ROC 2021.

Background facts

3 I turn first to the background facts. This application arose against the backdrop of HC/OA 13/2023 (“OA 13”). The applicant is the claimant in OA 13, whereas Good Year is the defendant there. On 6 April 2023, the General Division of the High Court ordered in ORC 1720 that the applicant be allowed, among other things, to inspect and make copies, and/or take extracts of certain documents from Good Year (the “Company Documents”).

4 The applicant’s position for the application was that the respondents have not complied with ORC 1720 and refused to allow him to inspect and make copies, and/or take extracts of the Company Documents. In his supporting affidavit, the applicant stated that he e-served ORC 1720 on Good Year’s lawyers, Manicka & Co (“Manicka”) on 17 April 2023. 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.

5 Subsequently, on 5 September 2023, the applicant’s solicitors wrote to Manicka and Mr Peh, to note Good Year’s continued failure to comply with ORC 1720. In the premises, the applicant’s solicitors provided the respondents with one final chance to comply with ORC 1720 by 15 September 2023. However, even by the date on which this application was heard, the respondents have still not allowed the applicant to inspect and make copies, and/or take extracts of the Company Documents.

The applicable law

6 As the learned authors of an important local textbook explain, where a committal applicant seeks to invoke the court’s power to punish for contempt through a committal order, a two-stage process is involved (see *Singapore Rules of Court: A Practice Guide* (Chua Lee Ming editor-in-chief) (Academy Publishing, 2023) (“*Singapore Rules of Court*”) at p 726). First, as set out in O 23 r 3(1), a committal applicant must apply to the court for permission to make an application for a committal order. Second, if such permission is obtained, the committal applicant then applies for a committal order. This application, as is obvious, concerned the first stage.

7 The first stage serves as a procedural safeguard so as to ensure that the alleged contemnor’s liberty is not compromised because of the summary and quasi-criminal nature of the court’s contempt jurisdiction. In particular, the committal applicant must make full and frank disclosure of the background facts before he will be permitted to apply for a committal order (see *Singapore Rules of Court* at pp 727–728, citing the Court of Appeal decision of *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 (“*Mok Kah Hong*”) at [57]). To ensure that the committal applicant provides such disclosure, O 23 rr 3(2) and 3(3) of the ROC 2021 provide that an application for permission must, among other things, be supported by an affidavit setting out (a) the committal applicant’s name, description, and address; (b) the committal respondent’s name, description, and address; and (c) the grounds on which the committal order is sought.

8 For present purposes, O 23 rr 3(2) and 3(3) of the ROC 2021 differ slightly from O 52 r 2(2) of the ROC 2014. O 52 r 2(2) required the committal applicant to file a statement setting out the particulars of the committal applicant and the committal respondent with the grounds for committal, *along with* an

affidavit verifying the facts relied on. O 23 rr 3(2) and 3(3) simplifies what the committal applicant is required to do by dispensing with the need for him to file such a statement when applying for permission. Instead, the committal applicant only needs to file a supporting affidavit which contains the grounds for committal and the facts relied on. Seen in this light, the differences between the relevant provisions in the ROC 2021 and the ROC 2014 are procedural rather than substantive in nature. In essence, the statement referred to in O 52 r 2(2) is now collapsed into the supporting affidavit referred to in O 23 r 3(3). I therefore agree with the view that the existing case law concerning the requirements of the statement referred to in O 52 r 2(2) continues to be relevant to the supporting affidavit now required by O 23 r 3(3) of the ROC 2021 (see *Singapore Civil Procedure 2022* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2022) (at para 23/3/2)).

9 Turning to such existing case law, the Court of Appeal in *Mok Kah Hong* held that the committal applicant had to show, at the permission stage, that (a) there is a *prima facie* case of contempt, and (b) there are sufficient particulars in the statement referred to in O 52 r 2(2) for the committal respondent to know the precise case that he has to meet. Following O 23 r 3(3) of the ROC 2021, the second principle must now be read as referring to the supporting affidavit in the said rule. Two short points can be made about the application of these principles.

10 First, in deciding whether there is a *prima facie* case of contempt, the court must be careful not to venture into or purport to decide the substantive merits of the committal application. That is rightly the subject matter for determination at the second stage, which concerns the application for the committal order proper. Thus, in the recent High Court decision of *ILC Co, Ltd*

v Saitama Hiroshi and others [2023] SGHC 206, Choo Han Teck J held (at [4]) that permission may be granted if the court is satisfied that, on the assumption that the breach is proved, there is no reasonable excuse for the breach.

11 Second, in deciding whether there are sufficient particulars in the supporting affidavit, a court must be satisfied that there is sufficient information to enable the committal respondent to meet the charges against him, from the perspective of a reasonable person in his position (see *Mok Kah Hong* at [62]). This will necessarily depend on the particular facts of each case.

My decision: the application was allowed

12 With these applicable principles in mind, I allowed the application because I was satisfied that there was a *prima facie* case of contempt against the respondents, and that there were sufficient particulars in the supporting affidavit to enable the respondents to meet the charges against them.

13 First, it was clear that the deadline for complying with ORC 1720 was 24 April 2023. Yet, by the applicant’s account, Good Year has failed to do so. Indeed, by the time I heard this application, more than eight months had passed since the deadline. There did not appear to be any reasonable excuse for the breach since the respondents have ignored all of the committal applicant’s correspondence on 11 April 2023, 25 April 2023, and 5 September 2023 without any response or explanation.

14 More particularly, during the hearing before me, I asked Mr Chua Shi Jie (“Mr Chua”), who addressed me together with lead counsel, Mr Choo Zheng Xi, whether it was appropriate to make the present application against Mr Peh since he was not a party to OA 13. As such, could it be said that Mr Peh breached

ORC 1720? In the end, I agreed with Mr Chua that, while Mr Peh is not a party to OA 13, it was likely, as the applicant believes, that he, being a director of Good Year, consented to Good Year's apparent breach of ORC 1720. Indeed, it is trite that a company can only act through, among other persons, its directors. As such, I was satisfied that there also exists a *prima facie* case of contempt against Mr Peh. In any event, if and when the applicant applies for the committal orders against Good Year and Mr Peh, Mr Peh would be duly informed of the case against him and therefore know the case that he has to meet.

15 For completeness, while the applicant had made further allegations about how the respondents had removed the applicant as a director of Good Year so as to circumvent ORC 1720, I did not need to rely on that allegation to find that there was a *prima facie* case of contempt against the respondents.

16 Second, I was also satisfied that the supporting affidavit contained sufficient particulars for the respondents to meet the charges against them. In this regard, the supporting affidavit contains the applicant's and the respondents' details (that is, their names, descriptions, and addresses). Further, the supporting affidavit also details the grounds on which the committal orders are sought. The respondents have sufficient information to understand the facts which the applicant will rely on in his application for committal orders against them. In this regard, I would reiterate that the existing case law concerning the requirements of the statement referred to in O 52 r 2(2) continues to be relevant to the supporting affidavit now required by O 23 r 3(3) of the ROC 2021. It was in light of those principles that I considered that the supporting affidavit contained sufficient particulars.

Conclusion

17 For all these reasons, I allowed the applicant's application and made the orders sought, with costs of this application to be reserved.

Goh Yihan
Judge of the High Court

Choo Zheng Xi and Chua Shi Jie (RCL Chambers Law Corporation)
for the applicant.
