

**Cigar Affair v Pacific Cigar Company**  
**[2005] SGHC 108**

**Case Number** : Cr M 23/2004

**Decision Date** : 01 July 2005

**Tribunal/Court** : High Court

**Coram** : Woo Bih Li J

**Counsel Name(s)** : Kirpal Singh (Kirpal and Associates) for the applicant; Sharmilee Shanmugam (Citilegal LLC) for the respondent

**Parties** : Cigar Affair — Pacific Cigar Company

*Trade Marks and Trade Names – Offences – Whether mens rea element required for establishing guilt under s 49 Trade Marks Act – Section 49 Trade Marks Act (Cap 332, 1999 Rev Ed), s 136(1) Copyright Act (Cap 63, 1999 Rev Ed)*

*Trade Marks and Trade Names – Search warrant – Applicant seeking to set aside search warrants issued and executed against it on grounds that seizure of items and documents on applicant's premises exceeding scope of warrants – Section 53A Trade Marks Act (Cap 332, 1999 Rev Ed), s 62 Criminal Procedure Code (Cap 68, 1985 Rev Ed)*

## **Introduction**

1 The applicant, Cigar Affair, applied under Criminal Motion No 23 of 2004 (“No 23”) and No 24 of 2004 (“No 24”) to set aside two search warrants which were issued against it on two complaints made by The Pacific Cigar Company (Singapore) Pte Ltd (“PCC Singapore”) which was the respondent in each of the motions. As can be seen, the name of the respondent used in the heading of the motions was not its complete name. As both motions were identical in nature and the background facts were similar, although involving different trade marks, the parties agreed that submissions would be made in respect of No 23 only and the outcome thereof would apply to both No 23 and No 24.

## **Background**

2 PCC Singapore was the exclusive distributor in Singapore of Cuban cigars manufactured by Corporacion Habanos SA (“Habanos”), a corporation organised under the laws of Cuba. PCC Singapore said it had been given a power of attorney from Habanos to take all necessary steps to protect and enforce the rights of Habanos in respect of Habanos’ trade marks registered in Singapore. Habanos is the registered proprietor of two trade marks in Singapore. One was a mark with words and a device. The words were “cohiba habana cuba totalmente a mano” with the first word in bold capital letters. The description of the device was “girl’s face profile grid”. The other mark was for the words “COHIBA”. I will refer to them as “the Marks”. The Marks were in respect of various goods including cigars.

3 Due to certain emails sent by Cigar Affair to third parties, PCC Singapore engaged the services of private investigators to look into the possible sale of counterfeit cigars by Cigar Affair at its place of business at Novotel Apollo Hotel, Lobby #01-05, 405 Havelock Road, Singapore 169633 (“the Shop”).

4 The complaint was made by Nestor Juan Valera Callaba who was the business development manager of The Pacific Cigar Company Limited in Hong Kong, the parent company of PCC Singapore. On 10 August 2004, two operatives of the private investigators visited the Shop. They found a sign depicting “CIGAR AFFAIR” on the glass door of the Shop. They noticed four boxes of Cohiba cigars with limited edition labels on display. One of the persons manning the Shop, by the name of Esther,

asked another person there, by the name of Jacob, to bring cigars from one of the wooden shelves at the rear of the premises. Jacob returned with three boxes of cigars in different sizes. Esther opened and showed one of the boxes which contained 25 sticks of Cohiba cigars. Upon further inquiry by the operatives, Esther showed a second box of Cohiba cigars to them. These were of a limited edition. Esther also later opened the third box and informed the operatives that the cigars therein were of a special edition and contained different mixes and sizes of Cohiba cigars. Eventually the operatives purchased a box of Cohiba cigars with the label "Edicion Limitada 2001". This phrase means "Limited Edition 2001". There was also another label on the box with the trade mark which had a device. Each cigar also had the COHIBA mark on it. The cigars in the box were of the "Robustos" size.

5 Mr Callaba set out various reasons in his Affidavit as to why he concluded that the cigars were counterfeit goods. He had been advised by solicitors that an offence had been committed under s 49 of the Trade Marks Act (Cap 332, 1999 Rev Ed) ("TMA"). Based on the complaint, a search warrant, No 133 of 2004, was issued on 18 August 2004 authorising the police to enter the Shop and to seize and take possession of goods and documents as set out in the schedule of the search warrant.

6 The search warrant was executed on the same day, *ie*, 18 August 2004. Following this, counsel for Cigar Affair and for PCC Singapore attended at the return hearing on 23 August 2004. Thereafter, No 23 was filed on 13 September 2004 to quash the search warrant. After hearing submissions, I dismissed No 23, as well as No 24, with costs. I now set out my reasons.

### **The court's reasons**

7 Before I deal with the main arguments, I should mention that counsel for PCC Singapore, Ms Sharmilee Shanmugam, had taken an objection to the form of the application before me. She submitted that the application should have been made by way of a petition and not a motion, relying on *Heng Lee Handbags Co Pte Ltd v PP* [1994] 2 SLR 760 ("*Heng Lee*"). In that case, Rubin J said that an application to quash a search warrant should have been made by way of petition and not by motion but nevertheless proceeded to hear the substantive application. Notwithstanding Ms Shanmugam's attempt to distinguish the facts in that case and the facts before me, I allowed counsel for Cigar Affair, Mr Kirpal Singh, to proceed to argue the substantive application as Rubin J did in *Heng Lee*. I would add that, unfortunately, that was not the first time such an objection had been raised before me. I hope solicitors are not blindly adopting the mode of application filed by others without realising that objection has been taken against the mode.

8 Mr Singh raised three main arguments in support of the motion:

- (a) that the complaint was defective in law;
- (b) that the seizure included items which had not been set out and cited in Mr Callaba's complaint; and
- (c) that the seizure included documents which had not been set out and cited in Mr Callaba's complaint as well as documents which ought not to come within the ambit of the power of seizure.

9 For the first main argument, what Mr Singh meant was that the complaint did not refer to the *mens rea* of Cigar Affair. Mr Singh relied on the judgment of Kan Ting Chiu JC (as he then was) in *Lance Court Furnishings Pte Ltd v PP* [1993] 3 SLR 969 ("*Lance Court*") where Kan JC said at 975 and 976, [26]–[32]:

Section 136(9) empowers a magistrate to issue search warrants to seize infringing copies of works or other matter in which copyright subsists by means of or in relation to which any offence under s 136(1), (2), (3) or (4) has been committed.

Section 136(1), (2), (3) and (4) create offences for different dealings with infringing material, eg making, hiring, selling, exhibiting, importing, and distributing. None of the offences are absolute offences. For each offence, a person dealing with infringing material is guilty only if he 'knows, or ought reasonably to know' of the infringement.

I asked counsel whether the 'knows, or ought reasonably to know' element is one for the prosecution to allege and prove, or whether it is a matter whose absence affords the defendant a defence. After reading their submissions, it appeared that this question has not been considered before.

A careful reading of s 136(1), (2), (3) and (4) where the words appear shows that for each offence, dealing with infringing material does not constitute an offence unless the person knows or ought reasonably to know that the material are infringing copies. Without this element, no offence is made out, and no defence is necessary.

This reflects more than a drafting preference. It means that a copyright owner cannot complain or prosecute under s 136 on the ground that someone is infringing his copyrights unless he can show that the other party knew or ought reasonably to know of the infringement. If he does not know if the other party knew or ought reasonably to know of the infringement, he can cure that by informing that party of it before taking action under the section.

Chua Soon Chye in his complaint said that:

I verily believe that Lance Court is infringing s 136 of the Copyright Act by possessing, distributing, selling and/or importing fabrics bearing artwork which infringe Anju/Woodridge Inc's copyright.

without saying whether Lance Court knew or ought reasonably to know of the infringements. That did not establish any offence under s 136(1), (2), (3) or (4) and did not justify the issuance of the search warrants under s 136(9). The search warrants issued must therefore be set aside on this ground.

10            However, *Lance Court* was not dealing with the TMA but the Copyright Act (Cap 63, 1999 Rev Ed). The relevant provisions of the latter were materially different from those of the TMA.

11            For present purposes, I need only cite s 136(1) of the Copyright Act which states:

136. —(1)            A person who at a time when copyright subsists in a work —

- (a)            makes for sale or hire;
- (b)            sells or lets for hire, or by way of trade offers or exposes for sale or hire; or
- (c)            by way of trade exhibits in public,

any article which he knows, or ought reasonably to know, to be an infringing copy of the work shall be guilty of an offence ...

Sections 136(2), (3) and (4) have the same requirements of "know, or ought reasonably to know" as s 136(1).

12 On the other hand, s 49 TMA states:

**49.** Any person who —

(a) ...

(b) sells or offers or exposes for sale; or

(c) has in his possession for the purpose of trade or manufacture,

any goods to which a registered trade mark is falsely applied shall, unless he proves that —

(i) having taken all reasonable precautions against committing an offence under this section, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark and on demand made by or on behalf of the prosecution, he gave all the information in his power with respect to the persons from whom he obtained the goods; or

(ii) he had acted innocently,

be guilty of an offence ...

13 As can be seen, a person is guilty of an offence under s 136(1) of the Copyright Act if he has the requisite knowledge or ought to have such knowledge. Neither of these requirements apply to s 49 TMA where the offence is established without the *mens rea* and it is for the accused person to satisfy either of the provisos stated in s 49 TMA. It was clear to me that Mr Singh was applying *Lance Court* out of context. Accordingly, his submission about the defective complaint was not valid.

14 As for the second main argument of Mr Singh, his point was that other Cohiba cigars were seized although the complaint was based on the purchase of Cohiba cigars of a limited edition series only. Mr Singh relied again on *Lance Court* where Kan JC said at 976, [33]:

Other complaints were made over the manner in which the warrants were issued, to which I now refer for the purpose of completeness.

(a) It was pointed out that the complainant asserted ownership to the copyrights in seven fabric designs, and complained of the infringements of five of those designs. Nothing was said about the infringement of the other two designs. I appreciate that there are situations where it is difficult to assert every infringement. This was the situation when pirated music tapes were rife, involving great numbers of tapes each containing a dozen or so musical works. In such situations, an applicant should state the known infringements and the basis for suspecting other infringements. If the magistrate is satisfied with the evidence, there is no reason why the warrant to be issued should not cover the suspected infringements as well. If, however, the applicant does not state or justify his suspicions, the warrant should be confined to the known infringed copyrights only. In this case, the search warrants should have been restricted to the five copyrights alleged to be infringed.

15 I was of the view that Mr Singh had again applied *Lance Court* out of context. As it is clear, there was no complaint there about infringement of two of the seven designs. In the case before me,

there was a complaint about infringement of both the Marks. The box had the mark with the device and the cigars themselves had the COHIBA mark on them.

16 In my view, Mr Singh's submission was not valid. While it was true that only Cohiba cigars of a limited edition were purchased, the complaint was that the Shop was being used for the sale of counterfeit Cohiba cigars generally. The relevant question was whether there was "reasonable cause for suspecting" that there was in the Shop any goods which were the subject of an offence under s 49, read with s 53A(3) TMA.

17 In *SM Summit Holdings Ltd v PP* [1997] 3 SLR 922 ("*SM Summit*"), Yong Pung How CJ said at [27] and [28]:

27 Under s 136(9) of the Copyright Act, there must be reasonable cause for suspecting that there are in the premises infringing copies of CDs in which copyright subsists by means of or in relation to which an offence under s 136(1), (2), (3) or (4) has been committed. In the case of s 62 CPC, the requirement is that the magistrate has upon information after inquiry and reason to *believe* that a place is used for the sale or storage of goods in respect of which a trade mark offence has been committed. The question is whether on the basis of the information before the magistrate, she was entitled to grant the two search warrants.

28 There is a distinction between the two tests: one under s 136(9) Copyright Act and one under s 62 CPC. Suspicion is of a lower order than belief. It is curious why the standards for trade mark and copyright offences differ since, in every case of an alleged intellectual property offence, both provisions will inevitably be called into play. There is no reason why one should receive more extensive protection than the other. However, on the facts, this may not be a significant point since the same facts usually disclose whether there are offences committed together under the Trade Marks Act or Copyright Act.

18 I would add that from 1 July 2004, s 62 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") no longer applies to trade mark offences in view of a new s 53A in the TMA which has the same requirement of "reasonable cause for suspecting". As s 53A TMA is effective from 1 July 2004, it was applicable to the search warrant in question.

19 The evidence from the report of the private investigators was that Cohiba cigars of different mixes and sizes had been shown to the operatives at the Shop. Secondly, Cigar Affair had itself offered for sale different series and sizes of cigars under the Cohiba name in emails sent on 18 and 20 May 2004 to different third parties. Each email contained a product and price list and it was the emails which aroused suspicions of illegal activity and led to the investigation.

20 Accordingly, I was of the view that the court issuing the search warrant was not confined to the one limited edition of Cohiba cigars which had been purchased. Otherwise it would have been necessary to purchase all the different Cohiba cigars being sold at the Shop before a search warrant for various Cohiba cigars would be issued. Indeed, as Ms Shanmugam submitted, the suspicions of the staff at the Shop might have been aroused if the operatives were to attempt to buy all the different Cohiba cigars which were sold there.

21 The first paragraph of the schedule of the search warrant referred to "any cigars, and any boxes or packages of cigars, to which the "Cohiba" trade mark and device and/or the "COHIBA" trade mark have been falsely applied". It was not disputed that the court had the power to issue a search warrant for such a general category of goods if the complaint justified the same. Indeed, s 53A(3) TMA allows the issuance of a search warrant specifically or for any general category of goods. In the

circumstances, I was of the view that the complaint did justify the issuance of such a search warrant.

22 I come now to the third main ground of argument in support of the motion. As mentioned (see [8] above), the first part of this third main ground was that the documents seized had not been set out and cited in the complaint. However, Mr Singh's submission focussed on the second part, *ie*, that the writ of seizure extended to documents which ought not to have been included.

23 Mr Singh relied on *SM Summit* where Yong Pung How CJ said at [68] and [69]:

68 It was not in doubt that the five CD-ROMs which allegedly infringed the copyright of the members of BSA fell within the copyright warrant. There was also no doubt that the stamper and master were covered by the trade mark and copyright warrants since they were alleged to be items used for the purposes of manufacturing counterfeit CDs. What was more difficult was all the documents seized pursuant to both the trade mark and the copyright warrants. These included the log books, work orders, sales orders and invoices. In *Lance Court Furnishings v PP* [1993] 3 SLR 969, Kan Ting Chiu JC held, in relation to a s 139(6) [*sic*] Copyright Act warrant:

The scope of the warrants also comes under criticism. The warrants authorised the seizure of not only the infringing fabrics, but also 'documents relating to the infringement of Anju / Woodridge Inc's copyright'. Section 136(9) empowers a magistrate to order the seizure of infringing copies of any matter in which copyright subsists and the plates and contrivances used or intended to be used in the making of such infringing copies but not documents. Documents may be seized if they are in themselves the copyright infringement, eg pirated copies of literary works. Documents evidencing infringement without forming part of the infringement, eg production, sale or stock records, do not come under the ambit of s 136(9) and should not be seizeable under a warrant issued under that provision.

69 Counsel for the prosecution conceded that the reasoning in *Lance Court* would apply to the trade mark warrant as well. Section 62 does not provide for the seizure of documents evidencing trade mark infringement which do not form part of the infringement. Instead counsel for the prosecution argued that *Lance Court* should be reconsidered by this court, and s 136(9) Copyright Act and s 62 CPC should be interpreted in such a way that they allow for the seizure of documents which are directly connected with the infringing copies.

24 Yong CJ then considered some English cases and said at [77] and [80]–[82]:

77 Hence it can be seen that the English case law has been willing to extend the powers under the search warrants, to include seizure of items or documents which were reasonably thought to be evidence of the crimes of the same offence. *Frank Truman Export v Metropolitan Police Commissioner* goes as far as to hold that the implied powers cover documents which are evidence of a different offence, but this is not the case in the present proceedings.

80 Nevertheless I had some reservation in applying the English cases. The reason was that our CPC does make a distinction between the provisions on seizure of documents (s 61 CPC) and seizure of articles (s 62 CPC), unlike the English legislation...

81 Taking the respondents' argument to its logical conclusion, viz that all documents evidencing the petitioners' contravention of the trade mark offences would fall within the ambit of s 62, it effectively rendered s 61 CPC redundant. Great care must to be taken to see that this result was in fact Parliament's intention. In fact, a close examination would indicate that it could

not be Parliament's intention. Section 62 provides, inter alia, for additional powers in connection with the search of places suspected of being used for containing counterfeited trade marks. Section 62 also allows the taking into custody of any person found in such a place and suspected to have been privy to the deposit, sale of such property. This power is not in s 61. Section 61 only covers documents. As it can be shown, it is a more difficult task to convince the court under s 61 that a search is necessary for the purposes of any inquiry, trial or other proceeding. The burden under s 61 is higher than showing that the search is necessary for investigation. The upshot of the matter is that under the legislative scheme, it is incumbent on the applicants to adduce evidence why the general search warrant is required under s 61 for the purposes of the trial or other proceeding. On this reading, the English decisions on the implied powers of search and seizure are not relevant.

82 As such, the dicta of Kan JC in *Lance Court* was correct. The same must apply in the case of s 139(6) [*sic*] of the Copyright Act which covers only the infringing copies of the work or subject-matter in which copyright subsists. Any search warrant for documents in relation to the copyright offence can only be sought for under s 61 CPC, which requires a higher burden to be placed on the applicants.

25 It seemed to me that s 61 CPC is not confined to documents as it refers to "document or other thing". Be that as it may, *Lance Court* and *SM Summit* were authorities for the proposition that s 62 CPC did not allow seizure of documents if the documents did not themselves infringe a trade mark.

26 However, with effect from 1 July 2004, various amendments were made to the TMA with consequential amendments to the CPC. The consequential amendments deleted references in s 62 CPC to trade marks and to various provisions of the TMA although, it seems to me, the amendments inadvertently omitted to delete also the reference in s 62(a) CPC to various provisions of the TMA. The explanatory statement to the Trade Marks (Amendment) Bill states that consequential amendments were made to s 62 CPC "to remove references to trade mark offences that are made redundant by the introduction of the new section 53A". Accordingly, s 62 CPC post-amendment still does not extend to the seizure of documents which are themselves merely evidence of trade mark offences.

27 However, s 53A TMA is a different kettle of fish. Section 53A(3)© TMA states:

**53A.—(3)** If information is given upon oath to a court that there is reasonable cause for suspecting that there is in any premises or conveyance —

(c) any document which is evidence that an offence under section 46, 47, 48, 49 or 52 has been committed,

the court may issue, either unconditionally or subject to such conditions as the court thinks fit, a warrant authorising a police officer to enter and search the premises or conveyance for any ... document referred to in the warrant, whether specifically or in any general category, and to seize any such ... document found at the premises or conveyance.

According to the explanatory statement of the Trade Marks (Amendment) Bill, s 53A TMA was to give effect to Arts 16.9.19 and 16.9.21(a)(ii) and (iv) of the United States-Singapore Free Trade Agreement concluded in 2003.

28 As I have mentioned, it was because of the introduction of s 53A TMA that the same

amending legislation deleted references in s 62 CPC to trade marks and various provisions of the TMA. Henceforth, search warrants to be issued for offences under s 49 TMA would come under s 53A TMA and no longer under s 62 CPC.

29 In view of s 53A TMA, the case law prior to this provision was no longer applicable to trade mark offences. Hence, it was not open to Mr Singh to argue that seizure must be confined to documents which are the subject of such an offence.

30 There is one other point in respect of s 53A(3)© TMA that I would like to mention. This provision requires information given upon oath that there is reasonable cause for suspecting that there is in any premises any document which is evidence that an offence under certain sections of the TMA has been committed before the court issues the appropriate search warrant. In oral submission, Mr Singh merely said that there was no material in the complaint to say that documents in the Shop must be seized without elaborating on his argument. His prior written submission also did not elaborate. As for Ms Shanmugam, she submitted that the complaint had referred to the seizure of documents in relation to the offence. She seemed to assume that that was sufficient once there was reasonable cause for suspecting that an offence under s 49 TMA had been committed. It seems to me that it is arguable whether that alone would have been sufficient or whether it would have been necessary to assert specifically that there was also reasonable cause to suspect that the Shop had documents which were evidence of the offence and to elaborate on the reason for suspicion. As the point was not argued before me, I will say no more about it.

31 Mr Singh, however, raised another point. He stressed that Cigar Affair and PCC Singapore were competitors. He submitted that the information contained in the documents seized was highly sensitive as it included information on customers' names, purchases, addresses, contact numbers and price lists of items supplied to Cigar Affair and from Cigar Affair to its customers and an inventory list. Mr Singh relied on *Mobil Oil Australia Ltd v Guina Developments Pty Ltd* 33 IPR 82 ("*Mobil*") which was a civil case on discovery of documents and not on seizure of documents. Hayne JA delivered the judgment of the Supreme Court of Victoria. He said at 87 and 88–89:

Where it is said that the documents are confidential, it may be accepted that the fact that the documents are confidential will not ordinarily be a sufficient reason to deny inspection by the opposite party. In most cases, the fact that the documents may not be used except for the purposes of the litigation concerned will be sufficient protection to the party producing them. But where, as here, the party obtaining discovery is a trade rival of the person whose secrets it is proposed should be revealed by discovery and inspection, other considerations arise.

Once the documents are inspected by the principals of the trade rival the information which is revealed is known to the trade rival and cannot be forgotten. ...

...

Hitherto, I have spoken generally of "the plaintiff" without seeking to distinguish between its officers, its legal advisers or experts that it may retain for the purposes of the litigation. Where, as here, the problem is one of balancing the needs of a party to the litigation and the legitimate concern of a trade rival to retain secrecy of commercially sensitive information, it may well be necessary to mould orders that will distinguish between the plaintiff, its officers, its legal advisers and experts. Again it may be accepted that generally a party is entitled to inspect the documents of an opposite party by itself its servants or its agents. But in the present kind of case, is it necessary to destroy the legitimate claim to confidentiality from trade rivals by permitting the principal of that rival to look at the documents? Is it sufficient to permit counsel

and solicitors (and nominated experts) to do so? It is now commonplace in the courts for material to be made available only to the legal advisers of the parties and nominated experts. Of course such arrangements bring with them their own difficulties and are arrangements that should be adopted only where there is a need to do so; of course they are arrangements that may need to be reviewed as the matter progresses towards trial or as the trial itself proceeds. But they are arrangements that are made and should be made when doing so would strike a fair balance between the competing interests of the party seeking inspection and the party claiming confidentiality. No more specific rule can be laid down — each case will fall for determination, according to its own facts. In particular the nature and the content of the disputed documents is a matter that will usually, if not invariably, be of great importance in forming a conclusion and, if that is so, it will be appropriate for the judge to inspect the documents concerned. ...

32 I was of the view that the relevant question was whether the documents seized constituted evidence of an offence under s 49 TMA. If so, then it was irrelevant that the information contained therein was highly sensitive. Indeed, that is the nature of such information. If the documents seized were not evidence of such an offence, then they would have been seized wrongly, whether or not they contained highly sensitive information. In the latter scenario, it was for Cigar Affair's counsel to inform the magistrate accordingly on the return date of 23 August 2004. The affidavits filed in respect of No 23 and the written submissions did not elaborate as to what transpired on the return date. In Mr Singh's oral submission before me, all he said was that he had advanced similar arguments, without specifying the arguments, before the magistrate who said he was *functus officio* and asked Mr Singh to apply to the High Court.

33 If the documents seized contained both information wholly unconnected to the offence and information which was evidence of the offence, solicitors of Cigar Affair and of PCC Singapore should try to sort out the situation first. For example, if there were a record book of sales by Cigar Affair, PCC Singapore's solicitors should be allowed to have access to the entire record book to see if it did contain evidence of an offence. If only a few pages of the record book related to the sale of Cohiba cigars, the pages could not just be torn off during the seizure. Perhaps photocopies of the relevant pages would have to be given to or made by PCC Singapore's solicitors for use in further action with an agreement that no objection would be taken to such evidence. Similar problems can arise in the case of electronic documents. These were details which solicitors for each side should try and work out as soon as possible since often during the raid to seize goods and documents, there is not much time to carry out this exercise. If the respective solicitors could not agree, then they could refer the matter to the court for resolution.

34 Accordingly, although Mr Singh suggested that I should look at the documents, I was of the view that that suggestion was premature as PCC Singapore's solicitors had not yet considered the contents of the documents pending the outcome of the motion before me. It seemed to me that Cigar Affair and/or Mr Singh did not even want PCC Singapore's solicitors to review the contents of the documents seized and that this was so even if the documents were to be reviewed by me. Even the case of *Mobil* did not suggest that whenever there is an allegation of sensitivity, the solicitors for the other side should *prima facie* be disallowed access to the documents. If that were so, it would mean that the court would in the first instance always be involved in reviewing the documents whenever such an allegation is made. Worse still, the solicitors for the complaining party will not even be able to participate in the review whereas solicitors for the party whose documents were seized will be participating. In my view, solicitors for each side should, in the first instance, be involved in the review unless there is some basis for saying that the nature of the information is such that even the solicitor for the other side should not be allowed to review the documents. Mr Singh did not elaborate as to why the solicitors of PCC Singapore should be denied that opportunity except to say that the documents contained highly sensitive information.

35 In the circumstances, I dismissed No 23 as well as No 24. On the question of costs, Yong CJ said in *Microsoft Corporation v SM Summit Holdings Ltd* [2000] 1 SLR 343, at [53] and [54]:

53 Finally, as for costs, in the criminal motions, the orders prayed for were a variation of the order of court made by the High Court in the criminal revision and a release of the implied undertaking in respect of documents and information pursuant to the execution of the search warrants. Section 262(1) CPC provides that:

The High Court shall have full power in all proceedings under Part VII [of the CPC] to award such costs to be paid by or to the parties thereto as the Court thinks fit.

54 Given that the applications were quasi-civil in nature and arose as a result of the civil proceedings in Suit 1323/98, and that the applicants had substantially failed in their applications in the two criminal motions, I awarded costs in favour of the respondents, the successful parties, against the applicants, pursuant to s 262 CPC, to be agreed or taxed.

36 No 23 was also quasi-civil in nature although it did not arise from civil proceedings. I was of the view that an order for costs was appropriate and, accordingly, I granted costs in favour of PCC Singapore.

*Application dismissed.*

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