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

[2023] SGHC 40

Suit No 349 of 2020 (Summons No 5179 of 2021)

Between

SpaceSATS Pte Ltd

… *Plaintiff*

And

(1) Chan Chia Sern
(2) Plasma Innovation Labs Pte Ltd
(3) Xu Luxiang
(4) Oleksii Cherkun (Alex)
(5) Wei Deyuan
(6) Huang Shiyong

… *Defendants*

And Between

(1) Chan Chia Sern
(2) Plasma Innovation Labs Pte Ltd

… *Plaintiffs in Counterclaim*

And

(1) SpaceSATS Pte Ltd
(2) Black Diamond Capital Pte Ltd
(3) Goh Wei Jie

… *Defendants in Counterclaim*

And Between

Huang Shiyong

… *Plaintiff in Counterclaim*

And

SpaceSATS Pte Ltd

… *Defendant in Counterclaim*

And Between

Black Diamond Capital Pte Ltd

… *Plaintiff in Counterclaim*

And

(1) Chan Chia Sern
(2) Plasma Innovation Labs Pte Ltd

… *Defendants in Counterclaim*

JUDGMENT

[Contempt of court — Disobedience of order of court]
[Contempt of court — Sentencing]

TABLE OF CONTENTS

SpaceSATS Pte Ltd
v
Chan Chia Sern and others

[2023] SGHC 40

General Division of the High Court — Suit No 349 of 2020 (Summons No 5179 of 2021)
S Mohan J
17 January, 5 August, 17 October, 21 December 2022

21 February 2023 Judgment reserved.

S Mohan J:

Introduction

1 HC/SUM 5179/2021 ("SUM 5179") is the plaintiff's application for the first defendant, Dr Chan Chia Sern ("Dr Chan"), to be committed to prison and/or fined for breaching an order of court, namely HC/ORC 4159/2021 (the "Order"). The application is brought against Dr Chan both in his personal capacity as the first defendant, and in his capacity as the second defendant's sole director.

Background facts

Background to the dispute

2 The plaintiff is a joint venture between the second defendant, Plasma Innovation Labs Pte Ltd ("PILS"), and the second defendant-in-counterclaim,

Black Diamond Capital Pte Ltd. The plaintiff was established to develop and exploit proprietary technology relating to the development and production of micro plasma thrusters for use in small satellites.[1]

3 The first defendant, Dr Chan, was the plaintiff's erstwhile Chief Executive Officer. He is also the sole director and shareholder of PILS. The third to sixth defendants were scientists who worked for the plaintiff (either on secondment or as its employees): Mr Xu Luxiang, Mr Oleksii Cherkun (Alex), Dr Wei Deyuan, and Dr Huang Shiyong.[2]

4 In early 2020, the plaintiff suspected that its intellectual property rights ("IPRs") were not being properly secured from the scientists. It requested for the scientists' work product to be handed over, but the request went ignored by Dr Chan and the third to sixth defendants.[3]

5 Consequently, on 15 April 2020, the plaintiff commenced this action against the defendants for (among other wrongs) breaches of various agreements to maintain confidentiality and surrender IPRs and work product.[4] In turn, it sought (among other reliefs) the delivery up of the defendants' personal laptops and of external storage devices that had been connected to the plaintiff's laptops.[5]

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1 Statement pursuant to Order 52 Rule 2(2) of the Rules of Court ("Statement of Committal") at para 7.

2 Statement of Committal at para 8.

3 Statement of Committal at para 9.

4 Statement of Committal at para 9; Statement of Claim (Amendment No 1) amended on 22 September 2020.

5 Statement of Claim (Amendment No 1) at pages 42 to 47.

6 After writing to the defendants on 23 June 2020, the plaintiff managed to recover the SpaceSATS laptops that had been issued to Dr Chan and the other defendants on 4 July 2020.[6] It sent those laptops to a firm of computer forensic investigators, Infinity Forensics Pte Ltd ("Infinity"). Infinity's investigations showed that data had been copied from the laptops onto external storage devices, before being deleted from the laptops.[7] Two of the laptops had also been reset to factory settings, which had the effect of permanently deleting all the files contained therein.[8]

7 Apart from the laptops, the plaintiff also sought access to its "Vodien account", which had been held in Dr Chan's name. Vodien is a service provider which hosted the plaintiff's e-mail and web hosting accounts.[9] Further, the plaintiff sought to have Mr Goh Wei Jie ("Mr Goh"), its other director, appointed as an administrator of the plaintiff's CorpPass account. This was so that the plaintiff could comply with its statutory obligations, for instance, its obligation to lodge the plaintiff's annual returns with the Accounting and Corporate Regulatory Authority ("ACRA").[10]

The Order

8 On 6 July 2020, the plaintiff applied for summary judgment on its claim in HC/S 349/2020 (the "Suit"), *vide* HC/SUM 2664/2020 ("SUM 2664").[11] The

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6 Statement of Committal at para 10.

7 Statement of Committal at para 12; 1st Affidavit of Mr Alireza Fazelinasab dated 25 August 2020 ("Mr Fazelinasab's 1st Affidavit") at paras 14 to 15, 19 to 20, 25 to 30.

8 Mr Fazelinasab's 1st Affidavit at paras 32 and 36.

9 Statement of Committal at para 38.

10 Plaintiff's written submissions for SUM 5179 at para 10.

11 Statement of Committal at para 11.

reliefs sought in SUM 2664 were amended by the plaintiff on 28 October 2020.[12] The application was heard and eventually, most of the reliefs in the amended application were granted by Chan Seng Onn J (as he then was) on 12 July 2021, and the Order was extracted accordingly.

9 For the purposes of the present application, only the following orders are relevant.

10 First, the *first defendant* (Dr Chan) was required to take the following steps within seven days of the date of the Order (*ie*, by 19 July 2021):

(a) deliver up his personal laptop(s) and specified external storage devices that had been connected to his SpaceSATS laptop (paragraph 1 of the Order);

(b) transfer the administration of the Vodien account to Mr Goh (paragraph 9 of the Order); and

(c) add Mr Goh and the plaintiff's company secretary as CorpPass administrators for the plaintiff with ACRA (paragraph 10 of the Order).

11 Further, the Order required the *second defendant* (PILS) to deliver up the personal laptops and external storage devices which the first, third, fourth and sixth defendants had been ordered to deliver up under the Order (paragraph 2 of the Order). This was also to be done within seven days of the date of the Order, *ie*, by 19 July 2021.

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12 Statement of Committal at paras 13 and 14.

12 All of the personal laptops and external storage devices described in [10] and [11] above were to be delivered to Millennium Law LLC ("Millennium Law"), Dr Chan's solicitors. Millennium Law was to then deliver the personal laptops and external storage devices to a firm of computer forensic investigators engaged by the plaintiff.

13 The Order also provided that:

(a) the first and second defendants were to pay the plaintiff $21,000.00 forthwith, as the cost incurred for Infinity's computer forensic investigations (paragraph 11 of the Order);

(b) interest at 5.33% per annum was to be payable on the sum of $21,000.00 from the date of the Order to the date of full payment (paragraph 16 of the Order); and

(c) the first, second, third, fourth and sixth defendants were to pay the plaintiff costs fixed at $10,000 and disbursements fixed at $3,000 (paragraph 17 of the Order).

14 The plaintiff filed SUM 5179 on the basis that Dr Chan had failed to comply with all the foregoing orders, *ie*, paragraphs 1, 2, 9, 10, 11, 16, and 17 of the Order, either in his personal capacity as the first defendant or in his capacity as the second defendant's director.

15 At the hearing of SUM 5179 on 5 August 2022, the plaintiff's solicitors confirmed that the sums due under paragraphs 11, 16 and 17 of the Order (see [13] above) had since been satisfied. Mr Goh's affidavit dated 7 June 2022

similarly confirmed that the plaintiff had garnished the remaining sums in February 2022, such that no outstanding costs orders remained unsatisfied.[13]

16 The committal proceedings thus focused on Dr Chan's compliance with the remaining three sets of orders, which may be conveniently grouped as follows:

(a) the delivery up of personal laptops and external storage devices (paragraphs 1 and 2 of the Order);

(b) the transfer of the administration of the Vodien account (paragraph 9 of the Order); and

(c) the adding of CorpPass administrators (paragraph 10 of the Order).

Procedural history

17 The Order was extracted on 27 July 2021. It was served personally on Dr Chan on 28 July 2021, endorsed with a penal notice.[14]

18 On 7 October 2021, the plaintiff filed HC/SUM 4653/2021 ("SUM 4653"), seeking leave to commence committal proceedings against Dr Chan. Accompanying SUM 4653 were the Statement of Committal and Mr Goh's verifying affidavit, filed pursuant to O 52 r 2(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). Leave was granted by me *ex parte* on 2 November 2021, and the leave order (HC/ORC 6141/2021 or "ORC 6141") was extracted on 3 November 2021.

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13 12th Affidavit of Mr Goh Wei Jie dated 7 June 2022 ("Mr Goh's 12th Affidavit") at paras 18 and 19. See also Affidavit of Dr Chan Chia Sern dated 4 May 2022 ("Dr Chan's May 2022 Affidavit") in Exhibit CCS-2, pages 16 and 17.

14 Statement of Committal at para 16 and Tab 4.

19 On 9 November 2021, the plaintiff filed SUM 5179. On 19 November 2021, Dr Chan was served with the following documents at his residential address: SUM 4653, the Statement of Committal, the verifying affidavit, ORC 6141, and SUM 5179.[15]

20 I then heard parties on three occasions: 17 January, 5 August and 17 October 2022.

21 On 17 January 2022, Dr Chan appeared in person. After hearing the parties' brief submissions, I decided to adjourn the hearing, primarily to allow Dr Chan time to take such steps as he thought necessary to regularise matters, including steps to purge his contempt and comply with the Order. Given the serious nature of the application, I adjourned the hearing also to allow Dr Chan the opportunity to appoint solicitors to represent him at the committal hearing, if he so desired.

22 At the resumed hearing on 5 August 2022, Dr Chan was represented by his former solicitors, Millennium Law. I first heard and dismissed HC/SUM 1697/2022 ("SUM 1697") with costs, giving brief oral grounds. SUM 1697 was an application by the first and second defendants for the Order to be varied by *removing* paragraphs 1, 2 and 11 from the Order. In brief, I found that a court of co-ordinate jurisdiction to the court that granted the Order lacked the power to do what Dr Chan sought in SUM 1697, which was to effectively *reverse* the Order, which itself was a final order granted pursuant to the plaintiff's summary judgment application. In any event, there were also no grounds justifying a setting aside or variation of the Order, even assuming the court had the power to do so.

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15 Plaintiff's written submissions for SUM 5179 at para 12.

23 I then continued to hear SUM 5179. Substantive arguments were ventilated, and in the course of the hearing, counsel for Dr Chan, Ms Debbie Lee ("Ms Lee"), claimed that there were other devices that they had handed over to Dr Chan's expert for identification. However, this was not set out in any affidavit, including that of Dr Chan's forensic expert. Following Ms Lee's request, I adjourned the hearing again and allowed the first and second defendants to file a further affidavit to clarify what devices had been received by their expert, when, and from whom, and to explain the conclusions reached by the expert on whether those devices fell within the list of devices enumerated in the Order. The plaintiff was allowed to respond to the further affidavit.

24 The further affidavits were duly filed, and the matter came before me for the third time on 17 October 2022. At that hearing, Ms Lee fairly acknowledged that even as of 17 October 2022, full compliance had *not* been achieved. Instead, Ms Lee's core argument was that Dr Chan's efforts to-date ought to carry a mitigating effect on *sentencing*.

25 After hearing arguments on 17 October 2022, I reserved judgment. Subsequently, and in the course of my deliberations, it emerged that there was a potential issue on whether the requirements for service of the Order under O 45 r 7(2)(*b*) of the ROC had been complied with. I therefore directed that further submissions be tendered by the parties to address the point, which they did on 7 and 21 December 2022. I discuss this issue further from [36] below.

Issues and parties' positions

26 The two primary issues that arise for my consideration in SUM 5179 are:

(a) whether an order of committal ought to be made against Dr Chan, in his capacity as the first defendant and as the second defendant's officer; and

(b) if so, what sentence ought to be imposed on Dr Chan.

27 The first issue revolves around the defendants' compliance with three sets of obligations, as summarised above at [16]:

(a) the delivery up of personal laptops and external storage devices;

(b) the transfer of the administration of the Vodien account; and

(c) the adding of CorpPass administrators.

I will address the parties' positions on the state of compliance with each set of obligations in greater depth below.

28 As for the second issue, it suffices to note that the plaintiff's solicitors sought a substantial term of imprisonment,[16] while counsel for Dr Chan submitted (at the hearing on 17 October 2022) that a fine would be appropriate in this case.

My decision

Applicable legal principles

29 The applicable legal principles for a committal application are well established.

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16 Plaintiff's written submissions for SUM 5179 at para 30.

30 Pursuant to s 4(1) of the Administration of Justice (Protection) Act 2016 (Act 19 of 2016) ("AJPA"), an intentional breach of an order of court amounts to a contempt of court:

> **Contempt by disobedience of court order or undertaking, etc.**
>
> **4.**—(1) Any person who —
>
> (*a*) *intentionally disobeys or breaches* any judgment, decree, direction, *order*, writ or other process of a court; or
>
> (*b*) intentionally breaches any undertaking given to a court,
>
> commits a contempt of court.
>
> [emphasis added]

31 The *mens rea* requirement that the contemnor has "intentionally disobey[ed] or breache[d]" an order of court is set to a low threshold. It suffices that the relevant conduct was intentional, and that the contemnor knew of all the facts that rendered such conduct a breach of the order (such as the order's existence and its terms). The contemnor need not appreciate that he was breaching the order, and his motives and reasons for disobedience are relevant only to the question of mitigation. It is thus said that "liability is strict in the sense that all that is required to be proved is service of the order and the subsequent omission by the party to comply with the order": *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 4 SLR 828 ("*PT Sandipala*") at [47]–[48].

32 Procedurally, committal proceedings proceed in two steps: *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 ("*Mok Kah Hong*") at [56]. Leave is first sought to commence committal proceedings, followed by the application for an order of committal proper. As explained in *PT Sandipala* at [46], the latter application calls on the court to:

(a) First, ascertain what the order of court in question expected of the alleged contemnor. The court is guided by the order's plain meaning, and resolves any ambiguities in the alleged contemnor's favour.

(b) Second, ascertain if the order's requirements have in fact been fulfilled. The plaintiff must moreover show that the alleged contemnor had the requisite *mens rea* when failing to comply with the order.

33 In the application for the committal order proper, the criminal standard of proof (*ie*, beyond a reasonable doubt) applies: see s 28 of the AJPA and *Mok Kah Hong* at [85].

34 As to the persons who can be found guilty of contempt of court, where a corporation is guilty of contempt, its director can be guilty of the same contempt, provided the conditions in s 6(2) of the AJPA are met:

> **Contempt by corporations**
>
> **6.**—
>
> …
>
> (2) Where a corporation commits contempt of court under this Act, a person —
>
> (*a*) who is —
>
> (i) *an officer of the corporation*, or a member of a corporation whose affairs are managed by its members; or
>
> (ii) an individual who is involved in the management of the corporation and is in a position to influence the conduct of the corporation in relation to the commission of the contempt of court; and
>
> (*b*) who —
>
> (i) consented or connived, or conspired with others, to effect the commission of the contempt of court;

> (ii) is in any other way, *whether by act or omission, knowingly concerned in, or is party to, the commission* of the contempt of court by the corporation; or
>
> (iii) *knew or ought reasonably to have known that the contempt of court by the corporation* (or contempt of court of the same type) *would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission* of that contempt of court,
>
> shall be guilty of the same contempt of court as is the corporation, and shall be liable on being found guilty of contempt of court to be punished accordingly.
>
> …
>
> (7) In this section —
>
> …
>
> "officer", in relation to a corporation, *means any director*, partner, chief executive, manager, secretary or other similar officer of the corporation, and includes —
>
> (*a*) any person purporting to act in any such capacity; and
>
> (*b*) for a corporation whose affairs are managed by its members, any of those members as if the member was a director of the corporation;
>
> [emphasis added]

35 Ms Lee does not seriously dispute that s 6(2) would apply to Dr Chan as an officer of the second defendant, such that he can be found guilty of the same contempt as the second defendant. In my judgment, it is beyond dispute that this must be so. Dr Chan's role and involvement in the second defendant (as its sole director), as well as his knowledge of the Order and the second defendant's non-compliance, must mean that he was "by act or omission, knowingly concerned in, or … party to, the commission of [the second defendant's] contempt" (s 6(2)(*b*)(ii)) and that he "knew or ought reasonably to have known that the contempt of court by the [second defendant] … would be or is being committed,

and failed to take all reasonable steps to prevent or stop the commission of that contempt of court" (s 6(2)(*b*)(iii)). I am therefore satisfied that if the second defendant had failed to comply with paragraph 2 of the Order, Dr Chan would be guilty of the same contempt of court as the second defendant, and would be liable to be punished accordingly on that basis (in addition to his *personal* breaches as the first defendant).

Preliminary issue on service

36 Before analysing the alleged breaches, I address a preliminary procedural point as to whether the plaintiff has complied with O 45 r 7(2)(*b*) of the ROC.

*Plaintiff's non-compliance with O 45 r 7(2)(*b*) of the ROC*

37 O 45 r 7(2)(*b*) requires, "in the case of an order requiring a person to do an act," that the order is "served before the expiration of the time within which he was required to do the act". Only then can the order "be enforced under Rule 5" – which for the purposes of this case includes enforcement by way of an order of committal (O 45 r 5(1)(i)). O 45 r 7 must be complied with prior to a committal application under O 52 r 2 (*Singapore Court Practice 2017* (Jeffrey Pinsler gen ed) (LexisNexis Singapore, 2017) at para 52/2/1C). As the Court of Appeal stressed in *Tan Teck Kee v Ratan Kumar Rai* [2022] SGCA 62, service in the context of contempt proceedings is not a mere formality, and a failure to comply with O 45 r 7(2)(*b*) would ordinarily not only be prejudicial to an alleged contemnor, but also "simply contradict good order and common sense" (at [123]).

38 The Order was made by Chan J on 12 July 2021. Compliance was due "within seven (7) days of th[e] Order", *ie*, by 19 July 2021. As such, for the

plaintiff to comply with O 45 r 7(2)(*b*), the Order needed to be served *before 19 July 2021*. However, the Order was only extracted on 27 July 2021 and served personally on Dr Chan on *28 July 2021*.

39 The reason for this delay appears to be that parties needed some time to finalise the wording of the Order:

(a) On 14 July 2021, the plaintiff's solicitors sent Millennium Law a letter containing the plaintiff's "proposed terms of the draft order of court".[17] That letter consolidated a number of orders common to the defendants, and invited comments and amendments from Dr Chan's solicitors by 16 July 2021.

(b) However, Millennium Law only replied via e-mail on 19 July 2021 at 5.04pm – the date by which compliance was required under the Order. Even then, its reply was not a substantive one. Instead, it asked the plaintiff's solicitors to "hold [their] hands while [Millennium Law made] some clarifications on the … external storage devices with [Dr Chan]". Further, they arranged for a meeting on 21 July 2021 "to discuss [the defendants'] proposed amendments".[18]

(c) Further correspondence was exchanged on the proposed wording of the orders until 22 July 2021, when Millennium Law sent a letter attaching "the duly executed draft Order of Court for [the plaintiff's solicitors'] necessary action".[19]

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17 Affidavit of Dr Chan Chia Sern dated 13 January 2022 ("Dr Chan's Jan 2022 Affidavit") at p 9.

18 Dr Chan's Jan 2022 Affidavit at pp 19 and 20.

19 Dr Chan's Jan 2022 Affidavit at pp 62 to 67.

40 In light of these circumstances, I called for further submissions on two issues:

> (i) Has O 45 r 7(2)(*b*) of the Rules of Court (Cap 332, R 5, 2014 Rev Ed) ('ROC') been complied with?
>
> (ii) If the answer to issue (i) above is in the negative, what consequences follow? In particular, can and if so, should the court dispense with service of the order pursuant to O 45 r 7(7) of the ROC? Further, can and if so should the court cure any non-compliance with the said rule? In this regard, parties are to also submit on the date on or by which the 1st Defendant had knowledge of what he was required to do to comply timeously with the order.

41 On issue (i), the plaintiff accepted that O 45 r 7(2)(*b*) of the ROC has not been complied with. It also accepted that it did not seek to regularise matters by applying for an extension of time for the defendants to comply with the Order.[20] Given my observation at [38] above that the plaintiff's service of the Order was not timeous, it is clear that O 45 r 7(2)(*b*) has not been complied with.

Dispensation with the requirement of service pursuant to O 45 r 7(7) of the ROC

42 Turning to issue (ii), the plaintiff urged me to cure its non-compliance by exercising my discretion under O 45 r 7(7) of the ROC to dispense with the requirement of service.[21] Order 45 rule 7(7) empowers the court to "dispense with service of a copy of an order under [O 45] if it thinks it just to do so". For the following reasons, I agree that this is a proper case for service to be dispensed with, and I so order.

43 The law is clear that a court can exercise its powers under O 45 r 7(7) retrospectively: *OCM Opportunities Fund II, LP and others v Burhan Uray*

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20 Plaintiff's further submissions dated 7 December 2022 at para 8.

21 Plaintiff's further submissions dated 7 December 2022 at paras 12 and 16 to 34.

(alias Wong Ming Kiong) and others [2005] 3 SLR(R) 60 ("*OCM Opportunities*") at [20]. In deciding whether to dispense with service, the court has a wide and unfettered discretion: *OCM Opportunities* at [23]. It will consider all circumstances, including in particular whether the defendant was already aware of or ought to have been aware of the order's terms at the time of non-compliance: *Ho Seow Wan v Ho Poey Wee and others* [2015] SGHC 235 ("*Ho Seow Wan*") at [13]. *Ho Seow Wan* moreover suggests that the circumstances identified under O 45 r 7(6) may be "useful but not exhaustive circumstances" for the court's consideration, notwithstanding that r 7(6) is on its face concerned with prohibitory orders. The circumstances referred to in r 7(6) concern whether the contemnor already had notice of the order pending service, either by being present when the order was made, or by being notified of its terms.

44 In my view, these principles are all designed to give effect to the central inquiry under O 45 r 7(7), namely, whether the court thinks it *just* to dispense with the requirement of service. The following three cases provide an illustration of when dispensation with the requirement of service would be just.

45 In *OCM Opportunities*, the applicant had failed to effect personal service and to serve penal notices (see [15] and [25]). The court nevertheless dispensed with the requirement of service as the contemnors were "undoubtedly aware" of the orders' terms and alive to the consequences of non-compliance (at [25]). This was evidenced by the fact that the contemnors made various applications to forestall compliance with the disclosure orders and cross-examination. Further, the contemnors affirmed holding affidavits of assets, suggesting that they knew what was required of them under the Mareva injunction and the consequences of non-compliance.

46 *Maruti Shipping Pte Ltd v Tay Sien Djim and others* [2014] SGHC 227 ("*Maruti Shipping*") was another case involving a failure to effect personal service altogether (see [112]). Similar to *OCM Opportunities*, the court dispensed with the requirement of service as the contemnor was aware of the orders' terms and alive to the consequences of non-compliance (at [113]). The contemnor admitted on cross-examination to having read the orders' terms and the penal notices. The court found that the latest date on which the contemnor would have obtained notice of the orders was 8 September 2010 as he was already involved in preparing the third defendant's defence by then. On 8 September 2010, the company (of which he was a director) was still in continuing breach of the Anton Piller order and Mareva injunction (at [113] and [120]).

47 The facts in *Ho Seow Wan* come closer to the present case, being another case involving delayed service. The relevant order had been made on 1 August 2012 and ordered the contemnors to take certain steps by 24 September 2012. However, the order was only extracted on 19 September 2012 and served on the contemnors on 20 September 2012 (at [7]). Nevertheless, the court dispensed with the requirement of service as the contemnors admitted that their solicitors had explained the scope and substance of the order to them on 2 August 2012, one day after the order was made (at [18]). The delay in extracting and serving the order arose as parties needed to clarify its effect, which they did at a hearing on 3 September 2012 (at [6]). However, those clarifications did not pertain to the terms that were the subject of the breaches (at [16]–[17]). In other words, the contemnors already knew what was required of them just one day after the order was made.

48 On one view, the present case is somewhat trickier than *Ho Seow Wan* because the Order was served *after* the period for compliance had already fully

elapsed. On another view, it pales in contrast to *OCM Opportunities* and *Maruti Shipping*, where parties had omitted to serve the relevant orders at all. In my judgment, however, the pertinent question is not when (if at all) the relevant order was served; rather, the pertinent question is whether and when the contemnor gained knowledge of the order's terms and the consequences of non-compliance. If a contemnor is in possession of such knowledge in time to comply with the relevant order, it would not be just for him or her to rely on a technical objection based on O 45 r 7(6) of the ROC to effectively evade his or her obligations under an order of court.

49 Ms Lee appeared to frame the relevant inquiry differently, as whether the contemnor had deliberately disobeyed or defied the court's order. Her submissions rely on this this proposition from *Ho Seow Wan* at [22]: "[i]n particular, whether the defendant was already aware of or ought to be aware of the terms of the court's order at the time he failed to comply with it *so as to determine whether he had deliberately disobeyed or defied the court's order* (beyond reasonable doubt) and whether enforcement by way of committal should be allowed to follow" [emphasis added].[22] On the basis that Dr Chan had tried his best to comply with the Order, Ms Lee contended that there had been no deliberate disobedience, and it would be unjust to dispense with the requirement of service. In my judgment, this argument misunderstands the notion of "deliberate" disobedience in the context of contempt of court, which focuses on the contemnor's *knowledge* of the relevant order's existence and terms, and of all the acts which make the relevant conduct a breach of the order (see [31] above). It is therefore no answer for Dr Chan to say that he had always acted *bona fide* with best endeavours, or that it was never his intention to breach the Order. Instead, the focus ought to be on whether the defendant "was already

22 Dr Chan's further submissions dated 7 December 2022 at para 4.

aware of or ought to be aware of the terms of the court's order at the time he failed to comply with it" (*Ho Seow Wan* at [22]).

50 On the present facts, I am satisfied that Dr Chan knew of the Order's terms and knew and/or was advised of the consequences of non-compliance on or around 12 July 2021 (*ie*, the date of the Order).

51 To begin with, as early as 5 April 2021, Chan J had made it clear that he would be making an order for delivery up, once certain issues as to the proper plaintiff in the Suit had been resolved:[23]

> Court: … And for those orders of delivery up, as I said, [Millennium Law], get [the defendants] to deliver up to you as soon as possible. I will most likely, I tell you, order the delivery up because there's enough evidence to justify these sort of injunctions. …
>
> …
>
> PC: No issue, Your Honour. You were saying that once we clear the [hurdle under s 216A of the Companies Act], the hearing before you, you will ask for the devices to be delivered up.
>
> Court: Yes.

As to what the devices in question were, these had already been set out in SUM 2664 (Amendment No 1) as amended on 7 September 2020 by the plaintiff.

52 Moreover, Chan J was emphatic that Dr Chan ought to take steps to secure the devices from the other defendants, and that this was a "warning" to Dr Chan:[24]

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23 Transcript for 5 April 2021, p 55 lines 28 to 32, and p 62 lines 17 to 20.

24 Transcript for 5 April 2021, p 62 lines 24 to 30.

> Court: Just tell him, … defendants' counsel, 'You better go and collect.' Because this is time-sensitive. I don't want another issue of them deleting. Alright. He had been warned.
>
> PC: That's right.
>
> Court: Because I'm giving them a warning through the defendants' counsel.

53 Earlier in the hearing, a similar direction had been made, which Millennium Law confirmed it would implement and communicate to the defendants:[25]

> Court: Would it be possible for you to go and ask them to surrender to you first?
>
> DC: Okay, I think---
>
> Court: That would be the best.
>
> DC: I think that would---
>
> Court: There is a list---yes, there is a list of all those thumb drives with names and all that … Go through the list and ask them to surrender to you first, so that when the delivery up is made, there is no issue to say, 'I took it from this day to day and therefore'---because they will … have forensics tell them when they deleted, okay, so they can't run. They better don't delete, don't add in, don't use them, don't copy anything. Bring them to your possession, so you freeze it.
>
> DC: *Yes, Your Honour.*
>
> Court: Because I cannot make all these orders until the delivery action date apply.
>
> DC: Your Honour---
>
> Court: So, you do this.
>
> DC: Yes, we will try to communicate that with the clients. But I think the problem is that some of the defendants are overseas, so---
>
> Court: Okay, you just tell them, later on, they surrender to you---

[25] Transcript for 5 April 2021, p 44 line 16 to p 45 line 13.

> DC: Yes.
>
> Court: ---but don't go and do anything them [*sic*], delete or do anything. Just keep them and don't throw them away.
>
> DC: Yes.
>
> Court: Okay?
>
> DC: *We will communicate it to them.*
>
> Court: So, that is protection which I am very careful of – protection of the evidence. …
>
> [emphasis added]

54 Given these express warnings and directions from the court, it was unsurprising that in Dr Chan's further written submissions, there was never any disavowal of Dr Chan's knowledge of the Order and its terms. To the contrary, the further written submissions expressly acknowledged that "[Dr Chan] knows what needed to be done under the Order of Court".[26] The defence was instead that Dr Chan faced practical challenges despite making best efforts to comply. Counsel's submissions then proceeded (somewhat tangentially to my directions for further submissions) to rehash earlier arguments on the efforts that Dr Chan had made to comply with the Order. Be that as it may, there is sufficiently cogent evidence demonstrating that Dr Chan was, prior to 19 July 2021, aware of the Order and its terms, what he was required to do, and the consequences of non-compliance.

55 There is also no reason to doubt that Millennium Law would have duly communicated the court's directions to Dr Chan, both from the 5 April 2021 hearing and following the 12 July 2021 hearing when the Order was made. Ms Lee had agreed to do so at the 5 April 2021 hearing. Millennium Law had every reason to do so, both as Dr Chan's legal advisors, and as persons named

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[26] Dr Chan's further submissions dated 7 December 2022 at para 5.

in the Order who were required by the court to ensure that the devices were duly delivered up. The urgency of this task would have certainly been reinforced on 16 July 2021, when the plaintiff's solicitors sent Millennium Law a letter reminding it of its clients' obligations in respect of the personal laptops, external storage devices, Vodien account and CorpPass access. In each case, the letter expressly stated that the defendants had "until 19 July 2021 to deliver up the said laptops and external storage devices to [the defendant's solicitors]", that the plaintiff "await[ed] confirmation on 19 July 2021 that [the defendant's solicitors] have received [the same]" and made Mr Goh and the company secretary CorpPass administrators, and that the plaintiff "expects to have access to the Vodien account on 19 July 2021".[27]

56 In view of all these circumstances, I find that Dr Chan must have been informed of the relevant orders made on 12 July 2021 on or around 12 July 2021, and been advised on the consequences of non-compliance. There is in any case no suggestion by Dr Chan that he was not so informed or was not so aware. I therefore consider that he would have had sufficient time to comply by 19 July 2021. Indeed, it is material that it was Millennium Law who proposed a timeline of seven days for compliance at the 12 July 2021 hearing;[28] the reasonable inference is that his solicitors considered this to be a sufficient period of time for Dr Chan to be informed of the terms of the Order and to comply with it.

57 Dr Chan's knowledge supplies one critical reason for why dispensing with the requirement of service would be just in this case. A further reason is that the delay in serving the Order on Dr Chan could hardly be attributable to the plaintiff's solicitors. As described above at [39], the plaintiff's solicitors had

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27 Dr Chan's Jan 2022 Affidavit at p 84.

28 Plaintiff's further submissions dated 7 December 2022 at para 8.

provided their proposed draft terms on 14 July 2021, just two days following the 12 July 2021 hearing, and sought comments and amendments by 16 July 2021. Millennium Law, however, only replied on 19 July 2021 – the final day for compliance with the Order. Even then, their response was not to confirm the draft terms, but to seek the plaintiff's forbearance on the delivery up of devices and to seek further discussions as to the other terms. Having created the circumstances that led to the delay in the finalisation and service of the Order, it would, in my judgment, be most unjust for Dr Chan to now rely on that delay to avoid facing committal for non-compliance.

58 Having dispensed with the requirement of service, I turn now to analyse the substance of the plaintiff's allegations of non-compliance with the Order.

Liability in relation to the delivery up of personal laptops and external storage devices

Personal laptops

59 Under paragraph 1 of the Order, the first, third, fourth and sixth defendants were to deliver up their personal laptops. The plaintiff says that these were either not delivered or delivered late.[29]

60 In its letter dated 28 July 2021, Millennium Law confirmed that it had received the first and fourth defendants' personal laptops.[30] However, that letter does not confirm *when* these were received. Apart from this letter, there has been no evidence of the personal laptops having been received by 19 July 2021 (*ie*, seven days from the date of the Order), and there is no factual basis to

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29 Statement of Committal at paras 17 to 22.

30 10th Affidavit of Mr Goh Wei Jie dated 7 October 2021 ("Mr Goh's 10th Affidavit") at Tab 6, pages 49 and 50 (letter from Millennium Law to plaintiff's solicitors dated 28 July 2021).

assume that there was timely compliance. Since the personal laptops were to be produced by the defendants to Millennium Law, the date on which the laptops were actually delivered up is a matter exclusively within the knowledge of the defendants and their solicitors. Moreover, this is a simple matter that could have been easily stated whether in contemporaneous correspondence, or in the subsequent affidavits and/or submissions filed in these proceedings. Yet, this was never done.

61 The delay is even clearer in respect of the third defendant's personal laptop. Dr Chan appears to have only asked the third defendant (who is now based in China) to send his laptop back to Singapore sometime after the hearing before me on 17 January 2022.[31] The exact date this laptop reached Millennium Law is also not entirely clear, but the evidence suggests that it was sometime after 10 March 2022,[32] and possibly only after 7 June 2022.[33] The latter date would have been almost a year after compliance was due.

62 As for the sixth defendant, he claims not to have a personal laptop. This position was however only taken belatedly in the defendants' solicitors' letter dated 28 July 2021, *after* the Order had already been made,[34] and without this assertion ever being surfaced during the summary judgment proceedings (when an order for the sixth defendant to deliver up his personal laptop was also being sought by the plaintiff).

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31 Millennium Law's letter to court dated 14 February 2022 at para 8(a).

32 Millennium Law's letter to court dated 10 March 2022 at para 2(b).

33 Mr Goh's 12th Affidavit at para 12.

34 Plaintiff's written submissions for SUM 5179 at para 20; Mr Goh's 10th Affidavit at Tab 6, page 49.

63 On 8 August 2022, the sixth defendant was granted leave to file a further affidavit on this point. He did so on 26 August 2022, "confirm[ing] that throughout [his] employment with the [p]laintiff, [he] did not use a personal laptop as [he] do[es] not own a personal laptop" and stating that he would use his plaintiff-issued work laptop and "a notebook to write down the data [he] recorded".[35]

64 The plaintiff takes the position that the sixth defendant's explanation is both belated and unbelievable. I am inclined to agree. If the sixth defendant never had a personal laptop, and there was soon to be an order of court for delivery up of that allegedly non-existent laptop (with the prospect that committal proceedings may follow in the event of non-compliance), it would have been an obvious and natural response for the sixth defendant to simply say so. And he could have said so – when the summary judgment proceedings were afoot, Millennium Law also represented the sixth defendant. It therefore stands to reason that Millennium Law would have also been taking instructions from the sixth defendant prior to the 12 July 2021 orders being made or confirmed. Even after the sixth defendant had been granted leave to file a further affidavit, there was no explanation in the affidavit for his earlier silence.

65 I therefore find that paragraph 1 of the Order has been breached in respect of all four personal laptops. Further, since the second defendant (PILS) is, by paragraph 2 of the Order, liable for the delivery up of the personal laptops of the first, third, fourth and sixth defendants, the second defendant is likewise in breach of the Order.[36]

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35 6th Affidavit of Dr Huang Shiyong dated 26 August 2022 at paras 3 and 4.

36 Statement of Committal at para 22.

External storage devices

66 The picture in relation to the external storage devices is slightly less clear and was the subject of much evidence and argument. However, after the dust had settled, the upshot is that Ms Lee accepts that there is non-compliance on the part of Dr Chan. The *extent* of non-compliance, however, was also initially less clear. I elaborate below.

67 The extent of non-compliance depended on two factors. The first was the number of devices listed in the Order. There were 23 items in the list, but parties accepted that some may have been duplicates. This is a logical inference given how the list was constituted: it reflected the different devices that were believed to have been connected to the different work laptops. It may well be that the same external storage device (for example, a thumb drive) was used more than once across more than one laptop. However, this could not be verified without further investigation, as the same external storage device might show up under a different name when connected to a different laptop.

68 The other factor was the number of external storage devices from the list that were *in fact* delivered up. This was a shifting figure throughout the proceedings, for the span of *over a year* after compliance fell due on 19 July 2021. For example:

(a) In a letter dated 21 July 2021 to the plaintiff's solicitors, Millennium Law confirmed that it had received five external storage devices from the defendants.[37] However, it was unclear if all five matched devices in the Order's list of external storage devices. As such,

[37] Mr Goh's 10th Affidavit at Tab 5, pages 46 and 47.

the plaintiff's position in the Statement of Committal was that *at least* 18 external storage devices remained unaccounted for.[38]

(b) In a letter dated 10 March 2022 from Millennium Law to the court, it appeared that Dr Chan had received two USB devices from the fourth defendant (sent from Ukraine) on or around 3 March 2022.[39] It was again unclear from the letter whether these devices had been identified as falling within the Order's list of external storage devices.

(c) In an affidavit dated 5 May 2022 filed by Dr Chan's expert, Mr Adrian Choo, Mr Choo stated that he had been handed various devices by the sixth defendant. At the 5 August 2022 hearing, Ms Lee clarified that Mr Choo's reference to the sixth defendant was an error, and ought to have been a reference to the first defendant.[40] Of these devices, four were identified as matching those in the plaintiff's expert reports, *ie*, they had been connected to the inspected laptops at some point in time. Even then, however, it was unclear whether all four devices matched the external storage devices listed in the Order (and if so, to which items in the list), or if one or more fell outside the list. For example, while counsel for the plaintiff, Ms See Tow Soo Ling ("Ms See Tow"), made attempts to match three of the devices, she concluded that the Alcor Micro Corp device (bearing serial number 14877176) did not appear to be named in the Order.[41]

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38 Statement of Committal at paras 23 to 26.

39 Millennium Law's letter to court dated 10 March 2022 at para 2(a).

40 1st Affidavit of Mr Choo Kah Leong Adrian dated 5 May 2022 ("Mr Choo's 1st Affidavit") in Exhibit CLKA-2, para 10.

41 Notes of Argument from hearing on 5 August 2022 at p 5.

(d) At the hearing on 5 August 2022, the plaintiff's solicitors made the point that they were unsure if the five external storage devices described in Millennium Law's letter dated 21 July 2021 were separate from and in addition to the four devices identified by Dr Chan's expert in his 5 May 2022 affidavit.

(e) In his affidavit filed on 26 August 2022, Dr Chan's expert, Mr Choo, then clarified that *five* devices handed over to him matched *six* of the external storage devices in the Order's list. This included one duplicate: the Seagate External USB (bearing serial number NA9TADXP) which matched both items (xvi) and (xxii).

69 Finally, at the hearing on 17 October, Ms See Tow stated that she had attempted to correlate the list of devices in the Order with the latest report from Dr Chan's expert. With the confirmation from Dr Chan's expert that five devices handed to him correlated with the Order's list, Ms See Tow concluded that there still remained nine more external storage devices that had not been delivered up. From the Order's list of external storage devices, these were:[42]

(a) S/N (i) – the first defendant's Toshiba External USB 3.0 (bearing serial number 20170529000035&0) together with the case;

(b) S/N (ii) – the first defendant's WD MyPassport 25E1 Disk (bearing serial numbers 575852314141383453353346&0 and WXR1AA84S53F);

(c) S/N (viii) – the third defendant's USB SanDisk Ultra (bearing serial number 4C530000160421120582&0);

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42 Exhibit P1.

(d) S/N (x) – the third defendant's USB SanDisk Ultra USB 3.0 (bearing serial number 4C530000140426106071&0);

(e) S/N (xi) – the third defendant's USB Toshiba External USB 3.0 (bearing serial number 20171007001179C&0);

(f) S/N (xii) – the third defendant's WD Element s25A2 External Hard Disk (bearing serial number 5758333141423748343145 54&0);

(g) S/N (xiii) – the third defendant's WD Element s25A2 External Hard Disk (bearing serial number 57583731453637333255 4E31&0);

(h) S/N (xx) – the fourth defendant's Toshiba External Hard Disk (bearing serial number 4EF15362); and

(i) S/N (xxiii) – the sixth defendant's USB Hitachi (bearing serial number 1107171B).

70 Ms Lee does not dispute the latest list of outstanding external storage devices. There is therefore a compelling case of incomplete or imperfect compliance by Dr Chan. Moreover, inasmuch as nine external storage devices remain outstanding as of August 2022, it must be the case that *even more* external storage devices had not been delivered up at the material time on 19 July 2021, which was the last date for compliance permitted under the Order. Indeed, while it may not be the case that at least 18 devices remained undelivered (in so far as the Order's list of external storage devices may contain duplicates), it is an established fact that *only five* external storage devices had been delivered up as of 21 July 2021 (see [68(a)] above).

71 Regrettably, this unsatisfactory state of fluidity and imprecision was symptomatic of Dr Chan's manner of non-compliance. It may be that

coordinating efforts to locate and transfer external storage devices across multiple defendants presents logistical difficulties. It may also be that not all the external storage devices can be delivered up and sent for identification at one go. Yet, what was most lacking here was Dr Chan's failure to even track and account for what *was* in his control – most pertinently a record of the steps that he had taken to comply with the delivery up order. There was limited clarity, for example, over when requests were made of the other defendants, on which dates, and inviting what replies. Neither was there a movement record of the devices that were received and that detailed when these were received by Dr Chan, when these were handed over to his solicitors, and when they were handed to the expert for identification. Instead, the court has been left to pull together and make sense of a stream of disparate information drip-fed sporadically across many months, well after compliance fell due in July 2021. This is a far cry from proper compliance with the Order, which was for delivery up to be effected within seven days.

72 Dr Chan says that he faced "tremendous difficulties" complying with the orders to deliver up.[43] But this is not an argument I can or should take cognisance of as far as his *liability* for contempt is concerned. The orders for delivery up are in a sense strict, and are not couched in the language of best or reasonable endeavours. With the dismissal of SUM 1697 (see [22] above) and the Order remaining intact, the difficulties faced by Dr Chan do not provide a legal excuse for his non-compliance.

73 In any event, even if cognisance could be taken of these difficulties, I consider that little weight should be given to Dr Chan's claims. Prior to 21 July

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[43] Dr Chan's Jan 2022 Affidavit at paras 36 to 38; Dr Chan's May 2022 Affidavit at paras 4, 14 and 17; Affidavit of Dr Chan Chia Sern dated 24 June 2022 ("Dr Chan's Jun 2022 Affidavit") at para 5.

2021, the defendants never indicated that they would have difficulties delivering up the laptops or external storage devices within the seven days ordered.[44] This is striking considering that it was *the defendants' solicitors* who in the first place proposed a timeline of seven days for compliance.[45] Further, Chan J had indicated as early as 5 April 2021 that the devices ought already to be set aside and preserved.

74 If Dr Chan faces issues with complying with the Order *now* – more than a year after he was expected to comply – this predicament would be partly, if not largely, of his own making. For instance, in his affidavit dated 4 May 2022, he claimed to have no control over the third to sixth defendants, some of whom have relocated to countries like Ukraine and China.[46] This allegedly caused delays in the storage devices being sent back to Singapore, in part as the war in Ukraine had begun by that time. Yet, Dr Chan did not say whether he would have faced these same difficulties *in July 2021* – the time when compliance was expected. For one, the war in Ukraine only began in or about February 2022. More importantly, Dr Chan did not say in July 2021 (when the Order was granted) that he would require more than seven days – despite being well-aware of the orders being sought against him then and the prospect of him having "no control over the [d]efendants".[47] To the extent that he did surface general concerns with compliance, these ultimately did not prevent his solicitors from proposing and committing to a specific timeline of seven days.

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44 Statement of Committal at para 30.

45 Plaintiff's further submissions dated 7 December 2022 at para 8.

46 Dr Chan's May 2022 Affidavit at paras 19 to 23.

47 Dr Chan's May 2022 Affidavit at para 22.

75 In short, many of the arguments now being raised by Dr Chan should properly have been raised in the summary judgment proceedings and if Dr Chan was dissatisfied with the orders made, in an appeal against the grant of the Order. To the extent that they were raised before Chan J, and then rejected, it is not for this court to rehear or redetermine these matters now. To the extent that they were not raised, it is far too late in the day for them to be raised now.

76 Therefore, as with the laptops, in respect of the external storage devices, I also find that the first and second defendants are in breach of paragraphs 1 and 2 of the Order respectively.

Liability in relation to the Vodien account

77 Paragraph 9 of the Order required Dr Chan to transfer the administration of the Vodien account to Mr Goh within seven days of the Order, *ie*, by 19 July 2021. It is undisputed that the account was never transferred, much less transferred in time.

78 Dr Chan appears to have only contacted Vodien on 21 July 2021 to inquire about transferring the account, when the Order required him to *complete* the transfer by 19 July 2021.[48]

79 Millennium Law then wrote to the plaintiff's solicitors on 28 July 2021 informing them about its query with Vodien on 21 July 2021. That letter attached Vodien's response to the query, which outlined the available hosting plans for a transferred account, and requested information on "how [the

[48] Mr Goh's 10th Affidavit at Tab 9, pages 66 to 68.

plaintiff] intends to move forward".[49] The plaintiff's solicitors confirmed the next day, on 29 July 2021, that the plaintiff wished to opt for a one-year plan.

80 Millennium Law's next reply only came on 5 August 2021, where it stated that it was "taking instructions from [its] clients regarding the [plaintiff's] confirmation". The plaintiff sent a chaser on 17 August 2021.[50] This appears to have gone unanswered. From the record, it was only on 14 October 2021 that Millennium Law wrote back to the plaintiff's solicitors, asking whom its client ought to contact "to obtain the necessary information for the transfer".[51]

81 More problematically and somewhat troublingly, a transfer of the account now appears impossible. The account expired sometime between July and August 2021 without being successfully transferred. The plaintiff only learnt of its expiration in or around January 2022.[52] According to the plaintiff (and this has not been disputed by Dr Chan), the data contained in Vodien's servers pertaining to the plaintiff's account can no longer be retrieved and is now permanently lost.[53]

82 In my view, this subsequent impossibility does not excuse Dr Chan's non-compliance. Rather, it arose entirely out of his own conduct.

83 The plaintiff submits, and I agree, that Dr Chan would have known that the account was expiring. If he had not, and fault lay instead with Vodien (for instance, for not informing him timeously that the account was expiring), one

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49 Mr Goh's 10th Affidavit at Tab 9, page 66.

50 Mr Goh's 10th Affidavit at Tab 8, page 63.

51 Dr Chan's Jun 2022 Affidavit in Exhibit CCS-6, page 51.

52 Mr Goh's 12th Affidavit at para 15.

53 Mr Goh's 12th Affidavit at paras 13 and 15.

would have expected to see subsequent correspondence from Dr Chan to restore the account and/or to seek an explanation for Vodien's omission. This is only natural since he was at risk of breaching the Order. Yet, no such evidence was adduced.

84 Dr Chan could and should have taken steps to renew the account by paying the renewal fee or arranging for the same. This was a necessary step to comply with the Order. The renewal fee was less than $1,000.[54] His claim that he could not afford this was at least open to doubt, since he managed to transfer $34,080 to the plaintiff on 31 August 2021 in response to its statutory demand.[55] I nevertheless accept that having to pay $1,000 may have caused Dr Chan some difficulty, and am also prepared to accept Dr Chan's evidence that it is "not a small amount to [him]".[56] I also have no reason to doubt Dr Chan's claim that he had to borrow money from others at the material time, to pay off the sum of $34,080.[57] Even so, this does not mean that there was no viable way for the renewal fee to be paid. In my view, Dr Chan could and should have at the very least informed the plaintiff forthwith of the account's pending expiry and his financial difficulties, and attempted to work out how the renewal ought to be paid for. Renewal remained possible within 30 days of the account expiring, but no steps were taken to bring about the renewal within that period.

85 In his affidavit filed on 13 January 2022, Dr Chan sought to lay blame elsewhere, claiming that delays in transferring the account occurred only

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54 Mr Goh's 10th Affidavit at Tab 9, pages 66 to 68.

55 Mr Goh's 10th Affidavit at Tab 13, pages 87 to 88.

56 Dr Chan's Jun 2022 Affidavit at para 31.

57 Dr Chan's Jun 2022 Affidavit at paras 28 and 30.

"because the information [was] being communicated through lawyers".[58] He added that if Mr Goh had contacted him directly, "the whole issue can be settled within one day." I reject this outright. It is an unsubstantiated excuse that seeks to cast oblique aspersions on both sets of lawyers. It is also fundamentally misleading: the onus was never on Mr Goh, and instead always on Dr Chan, to take steps to bring about compliance with the Order.

86 Dr Chan's other defence, put forward in oral submissions by Ms Lee, is that Dr Chan still has some e-mails retained in his laptop, so the Vodien data is not all lost. I find this contention wholly unsatisfactory. For one, there is simply no way for anyone to compare and verify what fraction of the Vodien data the retained e-mails represent. Secondly, it does not afford any justification for Dr Chan's failure to comply with the Order. Paragraph 9 of the Order was clear in its terms and did not allow Dr Chan an alternative method of compliance. It is therefore simply no answer for Dr Chan to now assert that some of the emails that could have been accessed from the Vodien account may be retrieved from his laptop.

87 Ultimately, Ms Lee had to accept that there *was* non-compliance on the face of the Order, but submitted that the court ought to take Dr Chan's efforts into account in mitigation. While I address the question of sentencing more fully below (from [97] onwards), I find even this attenuated submission difficult to accept. Dr Chan's efforts to comply (as I have detailed above) were, in my judgment, perfunctory at best. In the circumstances, and on the available evidence, there is a case to infer that his inaction was deliberate – to allow the account to lapse and permanently deprive the plaintiff and the court of any visibility over the data contained in the Vodien account.

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58 Dr Chan's Jan 2022 Affidavit at para 30.

88 I therefore find that Dr Chan *qua* first defendant failed to comply with paragraph 9 of the Order.

Liability in relation to the CorpPass account

89 Finally, paragraph 10 of the Order required Dr Chan to add Mr Goh and the plaintiff's company secretary as CorpPass administrators within seven days of the Order.

90 Dr Chan only requested for Mr Goh's details on 5 August 2021, in reply to the plaintiff's solicitors' letter dated 29 July 2021.[59] Those details were duly provided the next day, on 6 August 2021.[60] All of this took place after 19 July 2021, the latest date for complying with paragraph 10.

91 Mr Goh was eventually added as an administrator but only on 28 January 2022.[61] According to the plaintiff's solicitors, this was effected at their office, and only after the 17 January 2022 hearing took place (see [21] above).

92 Ms Lee, however, stresses that Mr Goh had already been granted *sub*-administrator status on 12 August 2021. Yet, as at the 17 January 2022 hearing, the plaintiff's solicitors submitted that the account still could not be accessed by the plaintiff. Further, they could not even tell whether Mr Goh had been made a sub-administrator, and were not aware of what steps Dr Chan had taken and what else Mr Goh needed to do.

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59 Statement of Committal at para 40.

60 Mr Goh's 10th Affidavit at Tab 11, page 72.

61 Mr Goh's 12th Affidavit at para 17.

93 On the available evidence, I find the plaintiff's submission to be a fair one. In his 13 January 2022 affidavit, Dr Chan made several points: that he believed the sub-administrator role to be the same as the administrator role, save that it caters specially to foreigners without a SingPass account; that Mr Goh as sub-administrator would have been in a position to appoint himself and the corporate secretary as administrators; and that Dr Chan was in a position to approve new administrator accounts but had not seen any pending applications.[62] In my view, none of these points (even if true) meant anything if they were never communicated to the plaintiff in a clear and timely fashion. In its letter dated 16 July 2021 to Millennium Law, the plaintiff's solicitors had already indicated that they would be "await[ing] confirmation on 19 July 2021 that [Dr Chan] has taken steps to ensure that" the account has been transferred.[63] The ball was squarely back in Dr Chan's court. However, there is no evidence of Dr Chan thereafter communicating what steps had been taken, or clarifying what steps Mr Goh needed to take, to complete the appointment of administrators. It does not lie in Dr Chan's mouth to say that the plaintiff's Ms Vivian Chen Wei An could have "easily solved" this issue and so she should have, on the basis that she had previously assisted with CorpPass and Vodien matters and would have had knowledge of them.[64] That is beside the point. Under the Order, the obligation was always Dr Chan's to perform.

94 It is also not enough for Dr Chan to make a bare assertion that his attempts to speak to Mr Goh had been "shut down by [Mr Goh] himself", with

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62 Dr Chan's Jan 2022 Affidavit at paras 32 to 34.

63 Dr Chan's Jan 2022 Affidavit in Exhibit CCS-3, at page 177, para 4 (letter from plaintiff's solicitors to Millennium Law dated 16 July 2021).

64 Dr Chan's Jun 2022 Affidavit at para 34(f).

the latter responding that there was "nothing to discuss".[65] To the extent that Dr Chan was referring to an exchange of WhatsApp messages between himself and Mr Goh and which exchange was exhibited in Dr Chan's affidavit filed on 24 June 2022, the vagueness of Dr Chan's request to speak to Mr Goh, without any proper evidence or explanation of the context in which this exchange took place, cannot reasonably be construed as a meaningful attempt to address the specific issue with regard to the CorpPass account:

	Fri, 26 Nov
Dr Chan (2.07pm):	are u free, can talk?
Mr Goh (9.22pm):	What is this about?
	Sat, 27 Nov
Dr Chan (10.30am):	abt the standard chartered email and others
Mr Goh (12.11pm):	For scb, it's about updating their records. With regards to others, I don't think there is anything else for us to discuss.

95 I therefore find that although Mr Goh was eventually added as an administrator of the CorpPass account, as this was not performed by 19 July 2021, Dr Chan failed to comply with paragraph 10 of the Order.

Conclusion on liability

96 Given my findings above at [65], [76], [88] and [95], I am satisfied, beyond a reasonable doubt, that the first defendant had intentionally breached paragraphs 1, 9 and 10 of the Order, and that the second defendant had intentionally breached paragraph 2 of the Order. There is, in my view, no doubt that Dr Chan's breaches were all intentional, especially having regard to my findings as to his knowledge of the order's existence and terms (see, for

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65 Dr Chan's Jun 2022 Affidavit at paras 22 and 27.

example, [54] and [56] above). I therefore find Dr Chan liable for contempt of court.

Sentencing

97 I turn now to consider the appropriate sentence to be imposed on Dr Chan. I note first that there may be a further question as to whether paragraphs 11, 16 and 17 of the Order have also been breached (in that the required payments were only made sometime in 2022), and if so, whether this has any impact on sentencing. However, the plaintiff has not continued to pursue these breaches, nor argued that they ought to also be factored into sentencing. I thus do not impose any separate sentence in respect of those breaches but focus on the breaches of paragraphs 1, 2, 9 and 10 of the Order.

Parties' positions

98 The plaintiff seeks a term of imprisonment for Dr Chan. Its position as to the *length* of imprisonment appears to have shifted: from a period upwards of six months in its written submissions for SUM 5179,[66] to a period of four months in its oral submissions on 17 October 2022.[67] By contrast, Dr Chan has not filed written submissions on sentencing. In her oral submissions on 17 October 2022, Ms Lee argued that imposing a fine on Dr Chan would be appropriate.[68]

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66 Plaintiff's written submissions for SUM 5179 at para 30.

67 Notes of Argument for 17 October 2022 at p 4.

68 Notes of Argument for 17 October 2022 at p 5.

99 Ms See Tow argues that several aggravating factors in this case justify a substantial custodial sentence, one that builds into it both a coercive and a punitive element. The aggravating factors include the following:[69]

(a) Dr Chan's breaches have caused substantial prejudice to the plaintiff. The plaintiff is a joint venture whose value lies in exploiting the IPRs, and its continued viability rests on its recovery of work product and the IPRs. Its main cause of action in the parent action is breach of confidence; without the devices, it is now impossible for it to determine the extent of the defendants' breaches and the consequential damage caused to the plaintiff.

(b) Dr Chan's breaches were deliberate and contumelious. Several personal laptops and external storage devices have still not been delivered up, and few attempts have been made to remedy this. This is notwithstanding the defendants being put on notice of the list of personal laptops and external storage devices as early as 25 August 2020, when the computer forensic report identifying the external storage devices was filed and served on Dr Chan and the second defendant (PILS). There is a high degree of culpability in stonewalling the court's ability to determine the extent of the defendants' breaches in the Suit. As to the transfer of the Vodien account and administrative rights over the CorpPass account, these were fairly straightforward processes, such that the failure to comply likewise marks a high degree of culpability.

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69 Plaintiff's written submissions for SUM 5179 at paras 30 to 35 and 39; Notes of Argument for 17 October 2022 at pp 3 to 5.

(c) Dr Chan's continued refusal to comply with the Order enables the second defendant (PILS) and him to continue to use the IPRs at the plaintiff's expense.

100 As to the length of sentence, Ms See Tow submits that Dr Chan was more culpable than the contemnors in:[70]

(a) *Brightex Paints (S) Pte Ltd v Tan Ongg Seng (in his personal capacity and trading as Starlit(S) Trading) and others* [2019] SGHC 116 ("*Brightex*"), where the contemnor was sentenced (following an appeal to the Court of Appeal) to three months' imprisonment; and

(b) *Technigroup Far East Pte Ltd and another v Jaswinderpal Singh s/o Bachint Singh and others* [2018] 3 SLR 1391 ("*Technigroup*"), where the first and second defendants in particular were each sentenced to four months' imprisonment.

101 Ms See Tow argued that a lengthier sentence than that imposed in *Brightex* was justified, as the plaintiff in *Brightex* managed to mitigate some of its potential losses, which was a significant mitigating factor. By contrast, there was greater prejudice to the plaintiff's business and claims in the present Suit. A lengthier sentence than that imposed in *Technigroup* was also justified, as Dr Chan's non-compliance in this case handicaps not only the assessment of damages, but also the determination of liability in the Suit.[71]

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70 Plaintiff's written submissions for SUM 5179 at para 36.

71 Plaintiff's written submissions for SUM 5179 at paras 36 and 37.

Applicable legal principles

102 Contempt of court is punishable with a fine not exceeding $100,000 and/or imprisonment for a term not exceeding three years (s 12(1)(*a*) of the AJPA):

> **Punishment for contempt of court**
>
> **12.**—(1) Except as otherwise provided in any other written law, a person who commits contempt of court shall be liable to be punished —
>
> (*a*) subject to paragraph (*b*), where the power to punish for contempt is exercised by the General Division of the High Court, by the Appellate Division of the High Court or by the Court of Appeal, with a fine not exceeding $100,000 or with imprisonment for a term not exceeding 3 years or with both[.]

103 In *Sembcorp Marine Ltd v Aurol Anthony Sabastian* [2013] 1 SLR 245 ("*Sembcorp*"), the court identified several factors at [57]–[68] which weigh in favour of imprisonment. Substantial emphasis was placed on the contemnor's conduct and what the conduct showed about the contemnor's motives and attitudes towards complying with the order of court. For present purposes, I note that there is a stronger case for imprisonment where there is:

(a) a continuing, deliberate and persistent course of conduct (*Sembcorp* at [57]);

(b) a failure to resolve the situation and continued lack of cooperation (*Sembcorp* at [57] and [64]);

(c) egregious behaviour and motive (*Sembcorp* at [59]); and/or

(d) a series of repeated breaches of the court order evincing flagrant disregard for the court's authority (*Sembcorp* at [62]).

104 On the other hand, where a contemnor's main motive is to seek a financial advantage, a fine may be most appropriate. It would serve to nullify the profits sought and achieve proportionality with the contempt committed (*Sembcorp* at [56]).

105 The consequences of a contemnor's conduct, particularly to the innocent party, are also relevant. In my view, this is captured by the following two factors in *Sembcorp*:

(a) the reversibility of the breach – whether harm caused can be remedied by a fine and costs, or if there is substantial prejudice which cannot be remedied by costs (*Sembcorp* at [68(d)]); and

(b) the purpose of the order breached and the impact of the breach on that purpose – for instance, a Mareva injunction exists to prevent the dissipation of assets, but a breach thereof may be ameliorated by paying back the equivalent sum (*Sembcorp* at [68(f)]).

106 More generally, the Court of Appeal has endorsed the following sentencing considerations for cases of contempt by disobedience in *Mok Kah Hong* at [104], which overlap to some extent with the *Sembcorp* factors discussed above:

(a) whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

(b) the extent to which the contemnor has acted under pressure;

(c) whether the breach of the order was deliberate or unintentional;

(d) the contemnor's degree of culpability;

(e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;

(f) whether the contemnor appreciates the seriousness of the deliberate breach; and

(g) whether the contemnor has co-operated.

107 I apply these factors as may be relevant to this case around two broad themes: (a) Dr Chan's conduct and reasons for non-compliance, and (b) the consequences of Dr Chan's conduct.

Dr Chan's conduct and reasons for non-compliance

108 In my view, the essence of the factors I have summarised at [103]–[104] above can be distilled to two related inquiries:

(a) the steps that Dr Chan took (or did not take) to comply with the orders; and

(b) his reasons for these acts and omissions.

109 I examine these questions compendiously, in respect of the personal laptops and external storage devices (paragraphs 1 and 2 of the Order), the Vodien account (paragraph 9 of the Order), and CorpPass account (paragraph 10 of the Order), *seriatim*. As will become clear below, I agree with the plaintiff that there were numerous aggravating factors at play.

110 In relation to the personal laptops and external storage devices, Dr Chan's non-compliance continues to-date. By the time of the 17 October 2022 hearing (*ie*, when the plaintiff's solicitors provided final confirmation that there remained nine items in the Order's list of external storage devices that had

not been produced), nearly 1 year and 3 months had elapsed since the date on which compliance fell due (*ie*, 19 July 2021). Moreover, this was over 1 year and 6 months from the 5 April 2021 hearing, when Chan J had directed Millennium Law to forewarn its clients to prepare their devices for delivery up. The earliest confirmation that some devices had been delivered up came only on 21 July 2021,[72] in a letter from Millennium Law to the plaintiff's solicitors. Yet, even that letter only referred to at most five external storage devices from the Order's list of devices, and was sent past the deadline of 19 July 2021. Subsequent updates only came months later, and even then, only resulted in confusion as to the precise extent of compliance (see [68] above). On the whole, these lengthy periods of time are especially problematic when one notes that the defendants had ongoing opportunities, every single day starting from 12 July 2021 (and even before that), to deliver up the devices.

111 Another aggravating factor is Dr Chan's pattern of compliance, which has been patchy and incomplete, as I described at [71] above. Even now, there is still no explanation for why nine external storage devices remain unaccounted for. Further, there has been no explanation accompanying each update of new devices as to why those devices could not have been produced earlier (save perhaps in respect of the devices sent from abroad).

112 While there may be some merit in Dr Chan's explanation that, as laypersons, it would be "impossible for the [defendants] to track every single storage drive plugged into the respective laptops",[73] that failure of *outcome* (of successfully locating all devices) does not explain the failure of *process* (of documenting the steps and efforts made to locate the devices). If Dr Chan's

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72 Mr Goh's 10th Affidavit at Tab 5, pages 46 and 47.

73 Dr Chan's Jun 2022 Affidavit at para 10.

argument in mitigation is that he has done his utmost to locate the devices in good faith, then, in my view, there must at least be evidence of those efforts (even if they produced no results).

113 Dr Chan's conduct in relation to the Vodien account is as aggravating, if not more so.

114 Charitably, Dr Chan's attitude could be described as lackadaisical. For instance, Dr Chan's position in his 24 June 2022 affidavit was, rather curiously, that "no one knows the exact procedure of transferring the Vodien Server to the control of [Mr Goh]".[74] This is a confusing statement, considering the earlier correspondence between both sets of solicitors making arrangements for the transfer (see [78]–[80] above). The "procedure of transferring the Vodien Server" would have simply been to continue with the arrangements already set in motion before the account expired. Dr Chan's claim to innocence or ignorance as to the steps required to be taken is, in my view, exaggerated, and reflects his somewhat nonchalant attitude to complying with the Order. This is all the more troubling given that (from the available evidence) the transfer of the Vodien account should have been a relatively straightforward process.

115 Less charitably, Dr Chan's attitude could be described as going beyond nonchalance, to a deliberate attempt to prejudice the plaintiff. As I found above at [83], [84] and [87], Dr Chan would have known that the account was expiring. What one would have expected him to do is to make arrangements for the renewal fee to be paid. Short of a plausible explanation to the contrary, his omission to renew the account raises, in my judgment, an inference that his inaction was deliberate, *ie*, to allow the account to lapse, and thereby deprive

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74 Dr Chan's Jun 2022 Affidavit at para 23.

the plaintiff and the court of any real visibility over the data and information contained in the Vodien account.

116 Ms Lee submitted that there was no sinister intention to allow the account to lapse, and that the lapse arose because Dr Chan had "limited resources and as an individual he could not handle so many issues at the same time".[75] This contention is factually doubtful. In or around July and August 2021, when the relevant enquiries were being made with Vodien, Dr Chan was legally represented. As to his limited financial resources, for the reasons set out above at [84], I do not accept this to be a legitimate excuse for his inaction.

117 As to the CorpPass account, Dr Chan's attitude to compliance can be described as nonchalant at best.

118 Even though steps were taken to grant Mr Goh sub-administrator status on around 12 August 2021, it was only months later in January 2022 that further steps were taken that enabled Mr Goh to be made an administrator. The Order was clear on its face that Mr Goh had to be made an administrator (and nothing less), but that was only accomplished in January 2022. On the available evidence, and as I described above at [93] and [94], the reason for these delays stems materially from Dr Chan's conduct.

119 Ms Lee submitted that making Mr Goh a sub-administrator amounts to at least partial compliance. In my view, it is unclear if this is in fact so in substance, and Dr Chan bears the burden of demonstrating that it is. It is unclear if a sub-administrator has substantially the same rights as an administrator, and in turn, whether that act (of making Mr Goh a sub-administrator) substantially

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[75] Notes of Argument for 17 October 2022 at p 4.

gave effect to the reasons for which the Order was made. There is simply no evidence before the court to substantiate what are in effect bare assertions by Dr Chan.

120 Against the backdrop of all these considerations, I also note that Dr Chan has not expressed any sincere remorse for his conduct. Instead, Dr Chan made efforts at almost every turn to excuse his inadequacies and/or pin the blame on other persons. That being said, I acknowledge that the *absence* of remorse is not normally aggravating; rather, it is aggravating only where the lack of remorse points to a contumacious breach which the contemnor has no intention to remedy (*Sembcorp* at [68(g)]). In my judgment, the present case does not go that far. Some of the breaches may have been continuing and even now not substantially purged, but the fact that a patchwork of efforts has been taken indicates that this is not a case where there is plainly *no* intention to remedy the breach.

121 In summary, the picture that emerges from my foregoing analysis is one of nonchalance and/or disregard for the need to comply with an order of court, and in respect of the Vodien account in particular, a deliberate attempt to put evidence out of the plaintiff's reach. It also calls to mind the observation at [68(f)] of *Sembcorp* that "[a] breach that had been planned, taking into account the cost of the fine, and which had been conducted over a period of time when there had been numerous opportunities to stop the contemptuous behaviour would be serious enough to ground a custodial sentence". This punitive angle is also matched by coercive considerations. As explained above, Dr Chan's breaches of paragraphs 1 and 2 of the Order are continuing breaches, with some nine external storage devices still unaccounted for. As the Court of Appeal held at [103] of *Mok Kah Hong*, where a contemnor is ordered to do an act but continuously refuses to comply, "the objective of compelling the contemnor to

effect compliance with the order is likely to be given a significant degree of weight".

122 In combination, all of these considerations are aggravating, and in my judgment, justify the imposition of a prison term.

The consequences of Dr Chan's conduct

123 Ms Lee accepts that there has been some prejudice caused to the plaintiff.[76] In my assessment, the prejudice was not insubstantial. This too is aggravating. As before, I proceed to examine the consequences of Dr Chan's conduct in relation to the personal laptops and external storage devices, the Vodien account, and the CorpPass account, in that order.

124 In relation to the personal laptops and external storage devices, there remains till this day incomplete delivery up. It bears emphasising that the remedy granted in the delivery up order is a *final* one. There has been a final determination, by way of summary judgment proceedings, of the plaintiff's substantive rights to delivery up of the personal laptops and external storage devices. This was not a discovery order that only affects the plaintiff's prosecution of its claims; it goes directly to its business and a vindication of its substantive rights that had been determined finally in its favour.

125 With the purpose of the Order in mind, I agree with the plaintiff's submission that Dr Chan's breaches operated "with a view to deprive the [plaintiff] of the fruits of the litigation [that it had successfully obtained through]

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[76] Notes of Argument for 17 October 2022 at p 5.

summary judgment".[77] It is also relevant that the plaintiff has no other recourse to obtain the remaining devices.[78]

126 This also has broader implications for the Suit. The extent of the copying of the IPRs would factor into the analysis of the other claims advanced by the plaintiff against, *inter alia*, Dr Chan, which have yet to be heard and determined, such as the claims for breach of fiduciary duties.[79]

127 Further, I agree that the implications of Dr Chan's conduct also extend *beyond* the Suit – the recovery of work product and the IPRs is critical to the continued viability of the plaintiff, whose value lies in exploiting the said work product and IPRs.[80]

128 In addition, prejudice arises not only from the incomplete extent of delivery up, but also from the manner of compliance – I refer here to the incremental drip-feeding of updates given to the plaintiff. Given how paragraph 3 of the Order was structured, forensic investigations would only commence after Millennium Law delivered up the personal laptops and external storage devices to the forensic expert appointed by the plaintiff. The pace at which delivery up took place also conceivably hampered the plaintiff's ability to vigorously pursue investigations. In my view, the plaintiff makes a fair submission that it was "not able to move on with the trial process because of the

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77 Notes of Argument for 17 October 2022 at p 3.

78 Notes of Argument for 17 October 2022 at p 5.

79 Statement of Committal at paras 32 and 33; Statement of Claim (Amendment No 1) at pp 42 to 47 (reliefs sought).

80 Plaintiff's written submissions for SUM 5179 at para 31.

committal proceedings [as it was] waiting for the devices to be handed to the forensic experts for analysis so that [it knew] what data [was] in them".[81]

129 As for the Vodien account, the fact that the data on the Vodien server can no longer be accessed or retrieved is, as I have found, aggravating. The plaintiff's claim that the data has been irreversibly lost has not been contradicted by Dr Chan. This means that the plaintiff and the court will have no visibility over what e-mails or data existed in the account.[82]

130 While it may be slightly mitigating that some of the e-mails are said to remain in Dr Chan's personal laptop, which has been delivered up,[83] this does not ameliorate the forensic challenge posed to the plaintiff and the court. As I mentioned above at [86], there ultimately remains no way for anyone to verify what fraction of the original Vodien data the retained e-mails represent. It also does not address the prejudice caused to the plaintiff in respect of another plank of its case: that Dr Chan had wrongfully refused Mr Goh access to the Vodien server, despite requests for the same to be granted. In the plaintiff's amended Statement of Claim, this refusal is couched as a breach of the Service Agreement and of Dr Chan's fiduciary duties to protect the plaintiff's interests.[84] Dr Chan's defence appears, in part, to be that access to the server was not necessary for Mr Goh because all the relevant work product and information had already been handed to the plaintiff by other means. The permanent loss of access to the data

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81 Notes of Argument for 17 October 2022 at p 3.

82 Mr Goh's 12th Affidavit at paras 13 and 15.

83 Dr Chan's Jun 2022 Affidavit at para 27.

84 Statement of Claim (Amendment No 1) dated 22 September 2020 at para 47.

in the Vodien account would, in my view, pose an obstacle to the plaintiff and the court, in testing the veracity of this defence.[85]

131 As to the CorpPass account, I accept that the type and extent of prejudice caused is less clear. To the extent that this access was sought before and granted by Chan J for the purposes of regulatory compliance, one would expect any prejudice to be measured in terms of the consequences arising from regulatory non-compliance, such as administrative penalties. The plaintiff has, however, not adduced any evidence of having suffered any such consequences. In my view, the consequences of Dr Chan's delay in complying with this part of the Order operate as a neutral factor.

132 In sum, in respect of the devices and Vodien accounts at least, the serious consequences visited upon the plaintiff by Dr Chan's breaches should be considered aggravating. In my judgment, these add further justification to the imposition of a prison term.

The appropriate sentence

133 Given the aggravating factors I have identified, it is clear to me that both punitive and coercive considerations warrant the imposition of a term of imprisonment, at least in relation to the orders for delivery up and the transfer of the Vodien account (*ie*, paragraphs 1, 2 and 9 of the Order). As to the CorpPass account (*ie*, paragraph 10 of the Order), having regard to the absence of any demonstrable prejudice and the fact that the account was fully transferred by January 2022, I am prepared to impose a fine for non-compliance with paragraph 10 of the Order (see [142] below).

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[85] Defence and Counterclaim (Amendment No 1) dated 15 February 2021 at paras 59 and 65.

134 As for the length of imprisonment, I find the case of *Brightex* to be instructive. As in the present case, the first defendant in *Brightex* gained access to confidential and business sensitive information in the course of his work, and prior to his resignation from the plaintiff company, copied copious amounts of data into his personal storage. He had moreover sent confidential data to the second and third defendants. The plaintiff sought and obtained an injunction to prevent the further unauthorised use and dissemination of its confidential information, and this included an order for delivery up of the confidential information and an order for disclosure of all prior unauthorised usage and/or disclosure of the information. Delivery up was due by 13 July 2018, but the data submitted on 12 and 13 July 2018 was incomplete, and remained so even across subsequent meetings and hearings. The disclosure order was also breached: forensic examinations showed that multiple communications between the defendants had not been disclosed.

135 The High Court found that the first defendant's behaviour exhibited several aggravating factors, including a deliberate and persistent failure to comply over the course of several months. The first defendant's explanations for non-compliance were unconvincing. He would have known of his conduct's serious impact on the plaintiff's business. Nevertheless, the court was minded to impose a prison sentence of 14 days, having regard to the first defendant's attempts to cooperate and purge his contempt, and the plaintiff's ability to ameliorate some of the prejudice caused (*Brightex* at [62]–[64] and [68]).

136 On appeal, the Court of Appeal dismissed the contemnor's appeal against his conviction, but allowed the plaintiff's cross-appeal on sentence. It substituted the 14 days' imprisonment term with a sentence of three months' imprisonment. The Court of Appeal noted that the first defendant, in deliberately breaching the court orders, had been motivated by financial gain.

Further, the plaintiff had suffered prejudice as a result, and no remorse was demonstrated by the first defendant.

137 On my reading of *Brightex*, emphasis was placed on the contemnor's continued pattern of deliberate non-compliance, and the prejudice this caused to the plaintiff's business interests. These aspects bear a strong similarity to the present case, save perhaps that the contemnor's financial motivations (through his disclosure of the confidential information to the other defendants) appeared to be clearer in *Brightex.* In addition, in *Brightex*, the further breach of the disclosure order would have also been factored in by the court.

138 The plaintiff also referred to *Technigroup*, but the circumstances in that case were, in my view, more aggravated. In *Technigroup*, the first and second defendants each faced a four month prison term for repeated breaches of specific discovery orders (which sentences were suspended for them to attempt to purge the contempt). What is striking from the judgment (at [1], [6], [7] and [99]) are the deliberate and persistent efforts by the first and second defendants to perpetuate falsehoods, in denying the existence of certain related entities and the documents thereof. At [109], the court highlighted in the context of sentencing the need to consider not only the extent of non-disclosure, but also whether any positively misleading disclosure had been made, such as a pretence that complete disclosure had been given. This could impact the court's assessment of the nature of the breach and/or the prejudice to the other party.

139 Viewed in this light, Dr Chan's culpability is, in my judgment, less severe than that of the contemnors in *Technigroup*. Granted, the failure to transfer rights over the Vodien account appears (as I have found) to have been a deliberate and strategic attempt to take the Vodien data out of the plaintiff's hands. However, in relation to the delivery up of devices, Dr Chan's failures

reflect nonchalance and neglect, not outright falsification or deception as was the case in *Technigroup*.

140 Having regard to the circumstances of this case and the precedents referred to above, in my judgment, a sentence of two months' imprisonment would be appropriate for the failure to deliver up the personal laptops and external storage devices and the failure to transfer the Vodien account. This sentence takes appropriate account, on the one hand, of the continuing nature of Dr Chan's breaches and the serious prejudice they have caused, and on the other, of the fact that some attempts have been made in the months since to comply with the Order and purge the contempt.

Conclusion

141 For the reasons above, I order that the requirement of service of the Order under O 45 of the ROC is dispensed with pursuant to O 45 r 7(7) of the ROC. On the breaches alleged (see [27] above), I find Dr Chan liable for contempt in intentionally disobeying paragraphs 1, 2, 9 and 10 of the Order, both in his personal capacity (in relation to paragraphs 1, 9 and 10 of the Order) and as the sole director of the second defendant, PILS (in relation to paragraph 2 of the Order).

142 As regards prayer 1 of SUM 5179, I sentence Dr Chan to imprisonment for a term of two months for the breaches of paragraphs 1, 2 and 9 of the Order. As for the breach of paragraph 10 of the Order, I impose a fine on Dr Chan of $2,000.

143 I further order Dr Chan to surrender his passport to the Sheriff of the Supreme Court forthwith and to present himself to the Sheriff at 10am on 7 March 2023 to begin his term of imprisonment.

144 Finally, the plaintiff also sought an order that Dr Chan pay the plaintiff costs of and incidental to the application. Following the hearing of SUM 4653 (the *ex parte* application for leave to commence committal proceedings), I reserved the question of costs of SUM 4653 to the hearing of SUM 5179. With regard to both applications, Ms See Tow argued for costs at the top end of the range in Appendix G of the Supreme Court Practice Directions, the range being $4,000–$16,000 for committal applications. The figure of $16,000 sought was in addition to $1,100 for disbursements. Ms Lee on the other hand submitted that costs should be fixed at the lowest end of that range, *ie*, at $4,000, but ultimately left it to the court to determine the appropriate quantum of costs. Having heard the parties, I fix costs of both applications in the sum of $15,000 (inclusive of disbursements) to be paid by Dr Chan to the plaintiff.

S Mohan
Judge of the High Court

See Tow Soo Ling and Sambhavi Rajangam (CNPLaw LLP) for the plaintiff;
Lee Mei Yong Debbie (Millennium Law LLC) for the 1st and 2nd defendants.