STX Corp *v* Jason Surjana Tanuwidjaja and others
[2014] SGHC 45

Case Number	: Suit No 960 of 2012 (Summonses No 2776 of 2013, 2777 of 2013 & 2778 of 2013)
Decision Date	: 13 March 2014
Tribunal/Court	: High Court
Coram	: Judith Prakash J
Counsel Name(s)	: Christopher Anand s/o Daniel, Ganga d/o Avadiar & Foo Li Chuan Arlene (Advocatus Law LLP) for the plaintiff; Suresh s/o Damodara (Damodara Hazra LLP) for the first defendant; Subashini d/o Narayanasamy & Yogarajah Yoga Sharmini (Haridass Ho & Partners) for the second and third defendants.
Parties	: STX Corp — Jason Surjana Tanuwidjaja and others

Contempt of court – Civil contempt – Scope of disclosure – Meaning of "all of their assets"

13 March 2014 Judgment reserved.

Judith Prakash J:

Introduction: Contempt proceedings against the defendants

1 This judgment contains my reasons for conclusions I have come to in respect of seven applications for committal filed in three sets of proceedings.

2 STX Corporation, the plaintiff in each of the proceedings, is a Korean corporation which became involved in a coal mining operation in Indonesia. In that connection, it dealt with Jason Surjana Tanuwidjaja ("JST") and Tan Beng Phiau Dick ("Dick Tan"). The plaintiff alleges that it was wrongfully dispossessed of the coal mine. This dispute is being dealt with in arbitration proceedings. At the same time, litigation was started in the Singapore courts primarily against JST and Dick Tan. However, JST"s daughter Bella Novitia Kartika ("BNK") and his son Yan Pratama Adisaputra ("YPA") have also been sued. In this judgment, I shall sometimes call JST, BNK and YPA "the defendants".

3 The various actions are as follows: Suit No 960/2012 ("Suit 960") against JST, Dick Tan, BNK and YPA, Suit No 961/2012 ("Suit 961") against JST and Dick Tan and Originating Summons No 1066/2012 ("OS 1066") against JST, BNK, YPA and two others. OS 1066 was brought as an ancillary proceeding to obtain the court's assistance with regard to the arbitration proceedings.

4 On 9 November 2012, the plaintiff obtained freezing orders against JST in all three actions and against BNK and YPA in Suit 960 and OS 1066. Besides preventing the defendants from dealing with their assets, the orders required the defendants to file affidavits disclosing all their assets within a specified period. The applications for committal assert that each of the defendants failed to comply with those orders and were therefore in contempt of court.

5 The defendants admit that they breached the specified deadlines for filing of their Affidavits of Assets. They deny the further assertion that they did not give full disclosure of all their assets. If they were ever in contempt, they say this contempt has been purged.

6 Given that the case involves three defendants, I will discuss the law on civil contempt before considering the individual complaints.

Civil contempt in Singapore

7 An action for civil contempt is directed at a party who is bound by an order of court but is alleged to have breached the terms of that order. It is directed at securing compliance with the said order and typically falls under one of the following categories:

(a) Disobedience of an order requiring an act to be done;

(b) Disobedience of an order prohibiting the doing of an act; or

(c) Breach of an undertaking given to court.

The acts of contempt allegedly committed in Suits 960 and 961 and OS 1066 all fall within the first category.

8 The standard of proof for finding contempt of court is the criminal standard of proof beyond a reasonable doubt. The threshold to establish the guilty intention necessary for a finding of civil contempt is, however, a low one – the alleged contempnor just needs to intend to do acts which are in breach of a coercive court order. His specific intention need not be shown (see *Tan Beow Hiong v Tan Boon Aik* [2010] 4 SLR(R) 870 at [47]).

9 Further, it has been held that as long as there is a deliberate breach of the order, the reasons for disobedience are irrelevant in establishing liability – they are only relevant at sentencing (see *Global Distressed Alpha Fund I Ltd Partnership v PT Bakrie Investindo* [2013] SGHC 105 at [33]).

10 In *Monex Group (Singapore) Pte Ltd v E Clearing Singapore Pte Ltd* [2012] 4 SLR 1169 ("*Monex*"), I had to deal with an allegation of contempt that was very similar to the allegations here. There, the respondent had been ordered to disclose certain information within eight days of the court order being served. The order required the respondent, who was a director of the defendant company, to inform the plaintiff's solicitors in writing of all the defendant's assets, giving the nature, precise location and sufficient details of such assets (see *Monex* at [12]).

11 To comply with the order, the respondent had filed statements for two Development Bank of Singapore ("DBS") accounts, cheque stubs and selected payment vouchers. It was contended by the plaintiff that these were inadequate as there were several categories of documents which the respondent had failed to produce. The respondent submitted that he was in full compliance with the disclosure order since he had given details of all the bank accounts in which the defendant was interested.

12 I held that the finding of contempt involves a two-step approach (see *Monex* at [31]):

(a) Decide what exactly the disclosure order requires the respondent to do; and

(b) Determine whether such requirements had been fulfilled.

13 In determining what the disclosure order required, the order had to be interpreted according to the plain meaning of the language used and any ambiguity should be resolved in favour of the person who had to comply with the order (see *Monex* at [34]). In the present case, I will follow the same

approach. Thus, my first task is to determine what the orders required the defendants to disclose and I will then consider whether they met the disclosure requirements.

What assets did the contempt orders require the defendants to disclose?

14 For present purposes, the material portion of each freezing order reads:

> The Defendants must each inform the Plaintiff in writing at once of **all their assets whether in or outside Singapore and whether in their own name or not and whether solely or jointly owned**, giving the value, location and details of all such assets. The information must be confirmed in an affidavit which must be served on the Plaintiff's solicitors within 7 days after this Order has been served on each of the defendants. [Emphasis added]

15 The issue that has arisen here is exactly what is meant by the phrase "all their assets". The defendants JST and BNK contend that it does not include assets apparently in their names but which they hold on trust for Madam Julianne Feng-Lian Xiao @ Yanny Djelita Santosa ("Mdm Santosa"), the wife of JST and the mother of BNK.

16 The meaning of the phrase "all their assets" has come under consideration in several English cases. I need refer to only two.

17 In *Federal Bank of the Middle East Ltd v Hadkinson and others* [2000] 1 WLR 1695 ("*Federal Bank*"), the defendants were ordered to make disclosure of "all their assets and/or funds, whether in their own name or not and whether solely or jointly owned, giving value, location and details of the assets and funds and information …". It was held by the English Court of Appeal that, having regard to the context and object of the order, the expression "his assets and/or funds" referred to assets belonging to the defendant and which he could use to satisfy a claim made against him. Assets in his name but belonging beneficially to someone else would not be available for this purpose. This standard form of freezing order obtained by the plaintiff referring to "his assets and/or funds" was not apt, without the addition of words clearly extending its effect, to cover assets held in the defendant's name and under his control but which were not his beneficially.

18 Mummery LJ said that even though a freezing order is a precautionary measure to protect a claimant against a risk of dissipation of assets, it is not a sufficient reason for giving the expression a meaning which it cannot reasonably bear (see *Federal Bank* at p 1079). In the same case, Nourse LJ commented that for the freezing order to cover assets which a defendant holds as trustee, it would have to include words like "and whether held for his own benefit or for the benefit of others".

19 The respondent accused of contempt in *Federal Bank* had not disclosed several bank deposits in his name and under his control. He explained that he was holding them as trustee for his wife and children. He was held not to be in contempt because the beneficial interests in those deposits did not belong to him.

20 A second case, *JSC BTA Bank v Solodchenko and others* [2010] EWCA Civ 1436, shows the type of wording required to cover assets which are legally but not beneficially owned. In that case, the expression "all the freezing respondent's assets whether or not they are in its own name and whether they are solely or jointly owned *and whether the respondent is interested in them legally, beneficially or otherwise*" [emphasis added] was held to have the effect of covering assets held by the respondent as a trustee or nominee for a third party.

21 The holding in *Federal Bank* was arrived at on the basis of the plain meaning of the words "all

their assets", viewed in the context of an order that sought to prevent a defendant from dissipating assets that could otherwise be available to satisfy a judgment obtained by the plaintiff. This approach is in line with the Court of Appeal's observation in *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 that the purpose of a court order depends on the precise terms of the order.

22 Given that the wording in the freezing orders before me does not make it clear that it is intended to cover ownership in name only as well as beneficial ownership, I adopt the position in *Federal Bank* and hold that the obligation imposed on the defendants by the phrase "all their assets" is to disclose all assets beneficially held by them. Thus it does not cover assets which are legally owned by them but which they hold as trustees for third parties.

Contempt proceedings against JST

23 JST is the only defendant who is involved in all three actions. He is therefore subject to all three freezing orders. He accepts that he was served with the orders by email on 16 November 2012 and thereafter by courier service to his office.

24 JST is a businessman who was about 64 years old at the time the orders were obtained. Originally an Indonesian, he has been a Singapore citizen for many years. However, he still spends a great deal of time in Indonesia, principally in Jakarta. He has homes there as well as in Singapore. JST works for various companies but his main employment appears to be for a company called PT Adiperkasa Buana ("PTAB") which deals in diesel engines. In court, he stated that PTAB belongs to his wife, Mdm Santosa, but that he manages and controls it because his wife is a housewife and not good in business. He gave her PTAB more than 20 years ago.

First complaint: Delay in complying with the order

25 The plaintiff complained that JST did not file his affidavit within seven days of being served with the freezing order. Instead on 20 December 2012, JST filed an application for an extension of time to file his Affidavit of Assets but only in OS 1066. This application was heard and dismissed on 21 January 2013. Despite the dismissal, JST only filed his Affidavit of Assets in OS 1066 on 4 February 2013. He did not file or serve any Affidavit of Assets in Suits 960 and 961. He subsequently explained (on or about 12 July 2013) that he did not file any Affidavit of Assets in the latter two actions because he thought his affidavit in OS 1066 would stand for all three actions.

26 JST gave the following reasons for his late submission of the Affidavit of Assets and submitted that the court should take a minimalist approach to this issue:

(a) He was travelling extensively during the period; and

(b) He had made a formal application to the court for an extension of time to file his Affidavit of Assets.

27 Having regard to the evidence, I find that JST committed a deliberate breach of court in relation to the filing of the affidavits required by the orders in Suits 960, 961 and OS 1066.

28 JST has submitted that he filed the affidavits late due to his extensive travels and had made a formal application to court for an extension of time. However, JST is an experienced and sophisticated businessman who had the benefit of legal advice. His lawyers had informed him of the court order and his disclosure obligations. Although he was travelling extensively between China, Indonesia and

Singapore during the period between 20 November 2012 and 21 January 2013, he did not travel overseas for a sustained period of time. Instead he returned to Singapore several times during that period. Therefore I consider that his extensive business travels were not a valid reason for his late filing of the Affidavits of Assets. Litigants are expected to take court orders seriously.

29 In truth, JST's reasons are not truly reasons – rather they are excuses which he conjured up at the last minute. If he had been serious about his disclosure obligations, he would have contacted his Singapore solicitors over the telephone or the Internet. The affidavit could have been prepared while he was away and filed on his return. He could also have filed his application for extension of time much earlier than 20 December 2012.

30 It was also submitted that JST had since complied with the order and that his breach should be treated as minimal. In doing so, counsel cited the case of *Shadrake Alan v Attorney-General* [2011] 3 SLR 778 for the general proposition that contempt proceedings are to ensure that the public confidence of the administration of justice is preserved. Thus since compliance had been obtained, the purpose of the law of contempt had been achieved.

31 I cannot accept JST's position. His delay was not a short one. It stretched for more than eight weeks from the date of service. When an affidavit was finally filed for one out of three proceedings, it was inadequate. On these facts, I find that JST's lateness was not minimal nor accidental but lengthy and wilful. As such, I cannot disregard it. That JST finally complied with his disclosure obligations goes towards mitigation. It does not excuse liability for contempt. JST was clearly in contempt in regard to time of filing.

32 I also consider he was in contempt for not filing affidavits in the other two actions. It is not an excuse that their contents would have been identical to that filed in OS 1066. The court ordered him to file affidavits in those actions as well and he should have obeyed the orders.

Second complaint: Did JST disclose all his assets?

33 In relation to the contents of the Affidavit of Assets, the plaintiff complained that JST had not given full disclosure of all his assets. This was despite having been put on notice by the plaintiff's solicitors in March 2013 that if he did not file a further affidavit to provide full disclosure, the plaintiff would initiate contempt proceedings. The plaintiff listed various assets which it contended JST should have disclosed.

34 Before I deal with the plaintiff's contentions, I will summarise the assets disclosed by JST. These were:

(a) 1,320,002 shares in Tunghua International Enterprises Pte Ltd ("Tunghua"), a Singapore company;

(b) Ten shares in International Ferro Pte Ltd ("International Ferro"), a Singapore company;

(c) One Mercedes Benz E240;

(d) One US$ account at United Overseas Bank Limited ("UOB") held jointly with Mdm Santosa and with an overdrawn balance of US$1.970m;

(e) One SGD savings account at UOB held jointly with Mdm Santosa and with a credit balance of $883.87;

(f) An autosave account at DBS Bank held jointly with Mdm Santosa and with an estimated credit balance of $20,000; and

(g) One Toyota Camry.

JST declared that the above were all the assets that he had and he did not own anything outside Singapore.

35 The plaintiff complained that the bank accounts in Singapore which JST had disclosed were inadequate for his maintenance. Further, the existence of a loan facility of about $1.9m from UOB indicated JST had substantial assets because banks would not lend without security. JST responded that the loan facility was secured by a mortgage over an apartment unit in Singapore known as 26 Shelford Road, #05-03, Shelford View, Singapore 288420 ("the Singapore property"). A search on the Singapore property showed that initially it had been owned by JST and Mdm Santosa jointly. In August 1985, JST had transferred his interest in the Singapore property to Mdm Santosa so that she became the sole owner of the Singapore property.

36 The plaintiff complained that JST should have explained why he made this transfer. I agree that under the freezing order, JST was required to disclose any asset which belonged to him although it was not in his own name. Therefore, if Mdm Santosa held the Singapore property or a share therein on trust for him, JST should have disclosed this.

37 The transfer to Mdm Santosa took place almost 30 years before the court order was made and therefore had nothing to do with JST's dealings with the plaintiff. The fact that the Singapore property supports a substantial overdraft which JST utilises and is jointly responsible for may be an indication that he has a beneficial interest in the property. However, it is equally possible that Mdm Santosa allows her husband to use the Singapore property to secure his indebtedness without accepting that he has any beneficial interest in it. Bearing in mind the high standard of proof required for contempt proceedings, I find that the non-disclosure of the Singapore property and the non-explanation for the transfer to Mdm Santosa do not constitute contempt.

38 The second complaint was that JST did not disclose his interest in a residential property situated at 39A, Matheson Road, Applecross, Western Australia ("the Matheson property"). This property is registered in the joint names of JST and his wife. JST explained that shortly after the Matheson property was purchased, he executed a document called a "Land and Building Ownership Agreement" in Indonesia. By this document, dated 17 October 2003, he declared that the property belonged entirely to Mdm Santosa and that he waived any claim to it. The document was executed before a Notary Public.

39 JST explained the circumstances in which it was decided that the Matheson property should be solely owned by Mdm Santosa – in April 1996 he had a heart attack. In September 2003, just a few weeks before the purchase of the Matheson Property, he had a more serious heart attack. He was then aged 55, his wife aged 49 and his children aged between 18 and 22. He needed to ensure that his wife and children had homes in Singapore, Indonesia and Australia, where his children were studying. As Mdm Santosa was and is a homemaker with no income, JST had to be named as co-owner and borrower in order for her to buy the Matheson property. However, it was intended at all times that the property would be Mdm Santosa's.

40 The plaintiff did not accept that the agreement of October 2003 between JST and Mdm Santosa was a valid agreement or that it genuinely reflected the ownership of the Matheson property. The Notary Public who prepared the agreement filed an affidavit to which the agreement was

exhibited and confirmed that it had been executed before her on the date in question. The plaintiff pointed out that there was a discrepancy between the copy of the agreement exhibited to the Notary Public's affidavit and the copy exhibited to JST's affidavit. On one there was a notary stamp reading "*Theresia Lusiati Siti Rahayu Notaris Jakarta*" whereas on the other, no such stamp appeared. I do not think anything much can be made of this discrepancy. The copy that did not have the stamp was the notary's copy and it is perfectly possible that she did not put a stamp on the copy that she retained in her files.

41 The question here is whether JST genuinely believed that the Matheson property did not belong to him despite his name appearing on the Australian title deeds. If he is only a trustee for Mdm Santosa, then following *Federal Bank*, he would not need to disclose the Matheson property. The plaintiff pointed out that under the Torrens system of land registration in Australia, the registered proprietor has "indefeasible title" and that the register is everything. Therefore, JST as one of the registered owners of the Matheson property is an owner of that property as a matter of law and cannot deny his ownership of it.

42 However, in Australia as much as in Singapore, equitable principles apply to registered land and it is possible for the registered owner of land to hold it beneficially for a third party. A document such as the Land and Building Ownership Agreement executed by JST would under Singapore law be sufficient to constitute him the trustee of his share in the Matheson property for Mdm Santosa. The plaintiff has not shown me that Australian law, originating as it does from the same common law spring as Singapore law, is any different in this respect. Bearing in mind the standard of proof for contempt of court, I find that JST did not breach the freezing order by failing to disclose the Matheson property.

43 The next complaint was that JST had failed to disclose that he owned one share in an Australian company called Misan Investments Pty Ltd ("Misan"). JST's explanation for this omission was that he had become a shareholder of Misan in order to obtain a business visa from the Australian authorities and that he never intended to acquire any real interest in Misan. He also said that four years earlier, he had transferred the Misan share back to the friend who had helped him in his visa application. As the plaintiff pointed out, however, JST did not exhibit a copy of the alleged transfer form nor did he produce any confirmation from his friend. I find that JST was in breach of his disclosure obligations in relation to the Misan share.

44 The plaintiff also noted that JST had failed to disclose two bank accounts which he had in Australia: one with the Adelaide Bank ("Adelaide Bank account") and the other with the Australia and New Zealand Banking Corporation ("ANZ Bank account"). As far as the Adelaide bank account was concerned, JST submitted that it was a loan account and had a negative balance. As for the ANZ Bank account, he said it did not belong to him because Mdm Santosa used that account to service the loan on the Matheson property.

45 These reasons are unsatisfactory. In *Monex*, the lack of money in a bank account did not constitute good reason for the failure to disclose it (*Monex* at [38]). Nor would it constitute good reason on the present facts. The fact of joint ownership of the ANZ Bank account is also irrelevant as long as it was an account in JST's name and *prima facie* an account in which the plaintiff would have an interest (*Monex* at [37]). Whilst Mdm Santosa may have used money in ANZ Bank account to service the Matheson property loan, there was no evidence as to where the funds in the account came from. JST's own evidence was that his wife was a homemaker and did not work. The money in the account was therefore likely to have been paid in by him and he would have an interest in it even if he allowed her to use it to pay the loan.

46 JST should have disclosed both bank accounts in his affidavit. He did not do so and thus he was in breach of his disclosure obligations and in contempt of court for the non-disclosure.

47 The plaintiff's final complaint was with respect to PTAB. The plaintiff noted that JST had not disclosed any income generating asset in his Affidavit of Assets or during cross-examination. JST had, however, admitted that he travelled about four to eight times every month on business for PTAB, a company which he managed and controlled. The plaintiff submitted that in the circumstances, it was reasonably probable that JST is *a*, if not *the*, beneficial owner of PTAB and he had failed to disclose this in his Affidavit of Assets. It was also submitted that JST had disclosed some of his assets and kept the rest of them hidden.

48 The plaintiff's submission is attractive but faces a difficulty. This is because the plaintiff has not been able to prove beyond a reasonable doubt that JST is either *a* or *the* beneficial owner of PTAB.

49 JST's evidence was that PTAB belongs to Mdm Santosa. No documents were produced which would contradict that evidence either in part or as a whole. Secondly, PTAB is an Indonesian company. The determination of who owns it would be governed by Indonesian law. The plaintiff wants me to draw an inference that JST owns it because he operates and controls it. That is an inference that may be drawn under Singapore law in suitable circumstances. I am not prepared to draw it when I know that the company is governed by Indonesian law, an entirely different legal system, and there is no evidence that Indonesian law permits such an inference. It may be that under Indonesian law property belonging to Mdm Santosa also belongs to JST under the doctrine of community of property, but that has not been established before me in this case.

50 The evidence showed that JST had a consistent pattern of placing assets in the name of Mdm Santosa. The plaintiff suspects that JST's reason for so doing was to ring-fence these assets from his creditors. That suspicion is not necessarily justified: JST may have intended to protect his family in the event of his early demise. Suspicion is an inadequate basis to hold someone liable for contempt of court – proof beyond a reasonable doubt must be furnished.

Summary of findings against JST

51 To summarise, I find that JST committed contempt of court when he:

(a) Did not file his Affidavit of Assets in OS 1066 within time;

(b) Failed to file any Affidavit of Assets in Suits 960 and 961;

(c) Failed to disclose:

(i) His share in Misan;

(ii) The Adelaide Bank account; and

(iii) The ANZ Bank account.

Contempt proceedings against BNK

52 BNK was involved in two proceedings, namely Suit 960 and OS 1066. The freezing orders were served on her on two separate occasions: first by email on 16 November 2012 and second by courier to a company in which she is a director.

53 At the time of the hearing, BNK was about 32 years old. She is an Indonesian citizen and at the time of the hearing, she lived mainly in Jakarta in her parents' house with her husband and young child. Although she was a director of a family company, PT Indo Asia Cemerlang, her evidence was that she hardly went to the office and spent most of her time looking after her child. She stated that she was a director in name only and that her role was just to sign documents on her father's instructions.

First complaint: Delay in filing of the Affidavit of Assets

54 BNK's Affidavit of Assets should have been filed by 23 November 2012. She did not meet this date but asked for an extension of time to file her affidavit on the basis that she was then living in Australia and taking care of her new-born child. The plaintiff granted her an extension of time up to 12 December 2012. BNK neither filed her affidavit by the extended date nor asked the court for an extension of time. She only filed her Affidavit of Assets in each action on 26 February 2013.

55 I find that BNK is in contempt of court. Her delay was lengthy and no acceptable reason for it was given. Although she was living in Australia then, she was in touch with her solicitors and had been able to ask for an extension of time. She could very well have contacted them more frequently and prepared her affidavit earlier. Looking at the assets disclosed in the affidavits, she would not have needed the whole of the period of almost 12 weeks that elapsed between 12 December 2012 and 26 February 2013 to prepare her Affidavit of Assets. Based on this alone, she breached her disclosure obligations.

Second complaint: Did BNK disclose all her assets?

56 BNK disclosed the following assets:

(a) The property known as 25 Shelford Road, #05-03 D'Chateau, Singapore 288415;

(b) An Audi S8 motor vehicle;

(c) A savings account with UOB with a balance of $19,134.16;

(d) A current account with UOB in the joint names of herself and her brother YPA with a balance of US$7,904.48;

(e) 250 shares in PT Indonesia Cemerlang of which 50 shares had been transferred to Mdm Santosa in July 2012;

57 The plaintiff made several complaints about alleged inadequate disclosure by BNK. The first complaint related to a property in Perth, Australia known as 18 Mapleton Street, Stirling, 6021 Western Australia ("the Mapleton property"). The plaintiff alleged the Mapleton property belonged to BNK and should have been disclosed.

58 After the plaintiff raised the matter, BNK filed a further affidavit in which she admitted that she was the registered owner of the Mapleton property and apologised for omitting it from her Affidavit of Assets. She explained that she did not view it as her asset because it was bought at her mother's behest. The Mapleton property was put in her name for convenience: she spoke English while her mother spoke very little English. Further, her father could not be the borrower because of his age and his heart problem. She produced a document called a Land and Building Ownership Agreement dated 1 February 2008 entered into between herself and Mdm Santosa under which she declared that the

property belonged to Mdm Santosa and that she had no interest in it.

59 The plaintiff submitted that BNK was in fact the true owner of the Mapleton property. This was because she was employed in JST's company, enjoyed a monthly salary and became the registered owner of the property. This salary gave her the financial means to buy the house and service the loan. Further, the purchase could have been financed by BNK's parents or her husband on her behalf. Her evidence was that her parents and husband support her completely and it would be in line with their behaviour for her parents to purchase a house for her.

60 There is no evidence that BNK had the financial means to purchase the Mapleton property. It was purchased in early 2008 at the time when she had just completed her university education. Although she was working for the family company, she could not have earned very much by that time. The purchase must have been financed by her parents. There is no reason to doubt the authenticity of the Land and Building Ownership Agreement in respect of the Mapleton property. It is clear from the evidence that the family policy was to put assets in the name of Mdm Santosa and the Land and Building Ownership Agreement is consistent with that. I find that BNK is not the beneficial owner of the Mapleton property and she did not breach the freezing order by not disclosing it at the beginning.

61 The plaintiff's next complaint was that BNK had not disclosed any bank account in Australia. When the plaintiff had voiced its suspicions regarding a possible bank account in Australia, BNK admitted she had one. In her next affidavit, BNK said that she believed that "as borrower" for the Mapleton property, there might be a bank account in Australia in her name to service the loan. However, she said that she did not have details of this account as she was not involved in the repayment of the loan. BNK was cross-examined about this bank account. She then confirmed that she had used the account to fund her living expenses while she was in Australia although the main purpose of the account was to facilitate mortgage loan repayments by her mother. She did admit that the account had a credit balance.

62 I find that BNK breached the court order by not disclosing her bank account in Australia and explaining how it was operated.

63 The plaintiff's third complaint related to non-disclosure of salary and of receipt of a sum of US$15 million which BNK had received in or about May 2011 as a result of a sale of shares by International Ferro. The complaint was based on JST's testimony that the sale proceeds of approximately US$30 million had been paid to BNK and YPA equally.

64 As far as salary was concerned, BNK's evidence was that she did not get a regular salary. There is no evidence to contradict BNK's assertion that she received cash for her routine expenses as and when she required it and was not in possession of a fixed salary.

65 As for the US$15 million, BNK was not asked about this when she appeared in court. However, she had a joint USD account with YPA in Singapore. No explanation was given for this account, which seems an unnecessary account bearing in mind BNK's lifestyle and complete dependence on her parents and husband. In the light of JST's evidence regarding BNK's receipt of a substantial sum in US$, it would appear that BNK's disclosure in regard to the US$ account was inadequate. I find her in breach.

Summary of findings against BNK

66 To summarise, I find that BNK committed contempt of court when she:

(a) Did not file her Affidavit of Assets in Suit 960 and OS 1066 on or before 12 December 2012;

(b) Did not disclose her bank account in Australia; and

(c) Did not make full disclosure in relation to the receipt of money from the sale of shares by International Ferro.

Contempt proceedings against YPA

67 YPA was also involved in two proceedings, namely, Suit 960 and OS 1066. The freezing orders were served on him by email on 16 November 2012 and by courier to his office in Indonesia.

68 At the date of the hearing, YPA was 29 years old. He graduated with a Bachelor of Economics degree from Curtin University in Western Australia in 2004. He then went to work for his parents. He told the court that he earned a salary of 50 million rupiah, or about US$5,000, a month. YPA is an Indonesian citizen.

First complaint: Delay in filing his Affidavit of Assets

69 The freezing orders were served on YPA on 16 November 2012 and he would have been aware of his obligations on that date to file a list of his assets by 23 November 2012. YPA did not do so but his solicitors requested an extension of time to comply with these orders because YPA was in Indonesia. An extension up to 12 December 2012 was granted but YPA only filed his Affidavits of Assets in Suit 960 and OS 1066 on 26 February 2013.

70 YPA did not give any reason for his failure to comply with the orders within the extended time limit granted by the plaintiff. The fact that he was in Indonesia cannot constitute an excuse in view of the modern communications facilities in place between Singapore and Indonesia. I find YPA was in breach of the orders in failing to file his affidavits until 26 February 2013.

Second complaint: Did YPA disclose all his assets?

71 In his Affidavits of Assets, YPA disclosed the following:

(a) 750,000 shares in Tonghua;

(b) A bank account with UOB with a balance of $26,000;

(c) Joint ownership with his mother of a property known as 25 Shelford Road, #05-06, D'Chateau, Singapore 288415;

(d) A bank account with UOB in the joint names of himself and his mother with a balance of $28,556.28 as at August 2012 and $63,556.00 as at February 2013;

(e) A bank account with UOB in the joint names of himself and his wife with a balance of $1,333.80;

(f) A bank account with UOB in the joint names of himself and BNK with a balance of US$7,904.48;

(g) The property known as Jalan Kencana Indah, 1-5, Kelurahan Pondok Pinang, Jakarta Selatan, Indonesia; and

(h) That up to July 2012, he had shares in PT Indo Asia Cemerlang but that these shares had been transferred to Dick Tan in that month.

72 The plaintiff's first complaint was that YPA had failed to disclose three plots of land in Pasir Jaya Village, Jati Uwung District, Tangerang Regecy, Banten Province, Indonesia ("Banten land") owned by him. While he had pledged the land to the plaintiff as security over a coal contract, he later took steps in Indonesia to enforce his possession and ownership of the land. From his conduct, it could not be said that he did not own the Banten land.

73 YPA submitted that he had not been in contempt by omitting to include the Banten land as it was pledged to the plaintiff and the title deeds had been surrendered to the plaintiff. Due to the pledge, he did not consider the Banten land to be his. At all times, the plaintiff was aware of the Banten land and should not complain about its non-inclusion in the affidavits. In any case, the breach had been cured since the land had been included in the further affidavit filed on 14 July 2013.

74 I find that YPA was in contempt in not disclosing the Banten land from the beginning. He had agreed in cross-examination, that he had taken steps in the Indonesian courts to cancel the pledge to the plaintiff. If he did not consider the Banten land as his own, he would not have taken out the Indonesian proceedings. His submission that he did not consider the land to be his own was unmeritorious.

75 YPA submitted, in the alternative, that the plaintiff already knew about the Banten land and the committal proceedings were being used as a tool of oppression. However this smacks of consequentialism and is unsustainable. Compliance with disclosure obligations does not depend on whether the plaintiff had prior knowledge of the asset. If the court order calls for full disclosure, then all assets have to be disclosed including those that the plaintiff knows about.

76 The plaintiff's second complaint was that YPA had failed to disclose his salary. YPA testified that his salary was deposited into an account in his wife's name. If and when he needed money, he would ask his wife for it. Thus, he did not have money and did not need to disclose it.

77 This submission has to be rejected. A monthly salary that is paid into a bank account is caught by a freezing injunction as and when it is paid into the account (see *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2004] 4 SLR(R) 74 at [57]). Salary received which remains unspent at the date of a freezing order must be declared and the fact that for convenience it is put into some else's account does not mean it no longer belongs to you. YPA was able to get money back from his wife as and when requested – she was obviously just safe-keeping it for him.

78 The third complaint concerned the non-disclosure of the proceeds of sale of shares by International Ferro. YPA asserted that he did not know he was paid US$15 million from this sale. When referred to an Indonesian court action which had been commenced in his name for the payment of the said money, he attributed the action wholly to JST.

79 This is hard to believe. YPA has a university degree: he is a knowledgeable man who studied in Australia and must have the ability to think for himself. It is inconceivable that he would be unaware of the significance of court proceedings brought in his name. At the very least, he would have been aware of what he was suing for, even if the action was controlled by JST. He also had a USD joint

account with his sister which he failed to explain.

Summary of findings against YPA

80 To summarise, I find that YPA committed contempt of court when he:

(a) Did not file his Affidavit of Assets in Suit 960 and OS 1066 on or before 12 December 2012;

(b) Did not disclose the Banten Land;

(c) Did not disclose his accumulated salary; and

(d) Did not disclose the proceeds of share sale by International Ferro.

Sentencing

81 I now turn to establish the defendants' culpability and the sentence that should be meted out. In doing so, I note that it is well established that an order for committal is a drastic remedy with criminal overtones. It is a remedy of last resort. If there are any alternative procedures that are available to assist with compliance, those should be sought first (*P J Holdings Inc v Ariel Singapore Pte Ltd* [2009] 3 SLR(R) 582 at [5]). This was why I granted the contempnor in *Monex* a period of time to comply with his disclosure obligations before committing him. It is my view that both YPA and BNK need to explain what became of the funds they received from the sale of shares by International Ferro. Therefore, I order them to each file an affidavit in each of S 960 and OS 1066 giving such explanation. The affidavits shall be filed on or before Thursday 27 March 2014.

82 The usual position in sentencing for civil contempt is that if the breach is merely a casual or accidental one with no "suggestion of contumacy", the penalty is an adverse costs order or an inquiry for damages (David Eady & A.T.H. Smith, *Arlidge, Eady & Smith on Contempt* (Sweet & Maxwell, 4th Ed, 2011) at para 12-97).

83 While a custodial sentence is typically not imposed for cases of civil contempt, this is highly dependent on the facts and sentences can range from several days to a few months. *Cartier International B.V. v Lee Hock Lee and another* [1992] 3 SLR(R) 340 was one such instance, and concerned the breach of an injunction against trade mark infringement. In meting out a six month custodial sentence, the High Court observed that the punishment of committal was appropriate for inveterate offenders who had done their calculations and built fines into their costs. G P Selvam JC held (at [43] – [46]) that:

> 43 Having taken into consideration all the facts and the submissions, I ordered that the defendant be committed to prison for a total of six months. A fine would not be proper because it was clear to me that the defendant had done his calculations and had built fines into his cost. It has been said that the purpose of legal punishment is to persuade offenders that law-breaking is not the way to make a living. In this case the defendant was a double antagonist in that in addition to breaking the law himself he also procured others to do it on his behalf.
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> 44 He employed several cohorts to divert attention from him and reduce fines. He also had been contumelious and clever in the way he went to circumvent orders of court. A punishment other than committal would serve no effective and useful purpose in the case of this defendant. Finally as costs must follow the event I ordered him to pay the costs.

84 While the defendants in this case are clearly not in the same category as that in the case cited above, all of them, through their lateness in filing their Affidavits of Assets and the omission of a number of assets, some on specious grounds, had undermined the administration of justice. JST's higher culpability was established during cross-examination: both BNK and YPA testified that he was the person who ultimately dictated how BNK and YPA's financial affairs were arranged. His attitude towards compliance with court orders was cavalier and minimalist. If he complied with the letter of one of the freezing orders, he certainly did not comply with its spirit.

85 YPA also did not show the required deference in respect of the court orders binding him. Apart from his delay in filing his affidavits and his omission of assets, his attitude was demonstrated in the nonchalant manner in which he responded to questioning during cross-examination.

86 Compliance with the court orders should have been accomplished on 23 November 2012. The defendants took their time to file their affidavits. Even when the affidavits were submitted, they were lacking. This caused the plaintiff to spend time and money to take out court proceedings to secure compliance by the defendants.

87 Although the plaintiff managed to obtain compliance by the defendants at long last, it is my view that penalties must be imposed on the defendants. Taking into account the relative culpability of the various defendants and the nature of the breaches I have found, I impose a fine of $18,000 on JST, a fine of $12,000 on YPA and a fine of $10,000 on BNK. In default of payment of the fines, the defendants shall be committed to prison for periods of two weeks (JST), ten days (YPA) and five days (BNK) respectively. Additionally, the defendants shall pay the plaintiff's costs of the contempt proceedings in this suit and in OS 1066 on the indemnity basis. JST shall pay the plaintiff's costs of the contempt proceedings in Suit 961 on the indemnity basis.