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

[2025] SGHC 213

Originating Application No 1012 of 2024 (Registrar's Appeal No 163 of 2025)

Between

(1) Zhongshan Shengwang Electrical Appliance Co Ltd
(2) Fanco Fan Marketing Pte Ltd

… *Applicants*

And

(1) Phua Kian Chey Colin
(2) Triple D Trading Pte Ltd

… *Respondents*

GROUNDS OF DECISION

[Contempt of Court — Civil contempt — Whether production of documents may be sought in committal proceedings]
[Civil Procedure — Privileges — Privilege against self-incrimination]

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v
Phua Kian Chey Colin and another

[2025] SGHC 213

General Division of the High Court — Originating Application No 1012 of 2024 (Registrar's Appeal No 163 of 2025)
Kwek Mean Luck J
28 August, 14 October 2025

30 October 2025

Kwek Mean Luck J:

Introduction

1 HC/RA 163/2025 ("RA 163") was an appeal by the appellants against the decision of the learned Assistant Registrar ("AR"), who in HC/SUM 1737/2025 ("SUM 1737") allowed in part the application for the production of documents brought against the appellants by the respondents. SUM 1737 was brought in the course of and in support of committal proceedings. This application raised two novel legal issues. First, the availability of production of documents in committal proceedings, in the light of O 23 of the Rules of Court 2021 ("ROC 2021") and ss 10(2) and 26(1) of the Administration of Justice (Protection) Act 2016 (2020 Rev Ed) ("AJPA"). Second, the availability of the privilege against self-incrimination in committal proceedings.

2 After hearing parties, I allowed RA 163 and set aside the orders made by the AR below. These are my grounds of decision.

Procedural background

3 Triple D Trading Pte Ltd ("the 2nd Appellant") is in the business of wholesale trade and retail of ceiling fan products.[1] Mr Phua Kian Chey Colin ("the 1st Appellant") is the sole shareholder and director of the 2nd Appellant.[2] I will refer to them collectively as "the Appellants".

4 Fanco Fan Marketing Pte Ltd ("the 2nd Respondent") is in the business of distributing and selling ceiling fan products.[3] Zhongshan Shengwang Electrical Appliance Co. Ltd ("the 1st Respondent") is a manufacturer and seller of, *inter alia*, ceiling fan products and lighting fixtures.[4] I will refer to them collectively as "the Respondents". The Respondents were separately involved in successful litigation against the 2nd Appellant.

5 The 1st Respondent and the 2nd Respondent commenced two originating applications, HC/OA 1012/2024 ("OA 1012") and HC/OA 1005/2024 ("OA 1005") respectively, for permission to apply for committal orders against the Appellants.

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1 Affidavit of Quek Lip Ngee dated 26 September 2024 ("Quek's affidavit") at para 12; Affidavit of Yin Jian dated 3 September 2024 (Yin's affidavit") at para 12.

2 Quek's affidavit at para 14; Yin's affidavit at para 13.

3 Quek's affidavit at para 11.

4 Yin's affidavit at para 11.

OA 1005

6 In OA 1005, the 2nd Respondent sought permission to apply for committal orders against the Appellants. This is on the basis that the Appellants had breached an order issued by the AR, HC/ORC 2796/2024 ("ORC 2796"), in which the 2nd Appellant was ordered to produce certain copies of documents or classes of documents.[5]

7 Pursuant to ORC 2796, the 1st Appellant filed an affidavit on behalf of the 2nd Appellant on 14 June 2024.[6] The 2nd Respondent contends that the Appellants nevertheless breached ORC 2796 as they failed to produce the documents required under ORC 2796, and that the 1st Appellant had lied on affidavit to the court.[7]

8 The court granted the 2nd Respondent permission to apply for the committal orders on 15 October 2024. An application for the committal orders, HC/SUM 3104/2024, was taken out by the 2nd Respondent on 22 October 2024.

OA 1012

9 In OA 1012, the 1st Respondent sought permission to apply for committal orders against the Appellants. This was on the basis that the Appellants had breached two orders, HC/ORC 1583/2024 ("ORC 1583"), in which the 2nd Appellant was directed to disclose its assets and means by way

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5 Quek's affidavit at para 4.

6 Quek's affidavit at para 18.

7 Quek's affidavit at para 5.

of affidavit, and HC/ORC 2894/2024 ("ORC 2894"), a post-judgment Mareva injunction over the 2nd Appellant.[8]

10 The 1st Respondent contends that the Appellants continued to withhold particulars and supporting documents for payments made out of the 2nd Appellant's bank account and diverted asserts out of the bank account in breach of the Mareva injunction.[9] Further, the 1st Appellant lied on affidavit about the 2nd Appellant's assets and means, admitted to the dissipation of the 2nd Appellant's funds and assets, failed to comply with the 2nd Appellant's duty to account for outflows from its bank account, and failed to produce documents to the court.[10]

11 The court granted the 1st Respondent permission to apply for the committal orders on 15 October 2024. An application for the committal orders, HC/SUM 3105/2024, was taken out by the 1st Respondent on 22 October 2024. OA 1005 was consolidated with OA 1012 on 28 April 2025.

Appellants' reply affidavits

12 The 1st Appellant filed two affidavits in response to OA 1005 and OA 1012 on 19 November 2024 (the "OA 1005 affidavit") and 19 May 2025 (the "OA 1012 affidavit") (collectively, the "Reply Affidavits").

13 In the OA 1005 affidavit, the 1st Appellant averred that the Appellants had complied with ORC 2796 as, *inter alia*, the requested documents were not

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8 Yin's affidavit at para 4.

9 Yin's affidavit at para 35.

10 Yin's affidavit at para 5.

in the 2nd Appellant's possession and control. Many of the documents were misplaced when the 2nd Appellant shifted its office to an address at WCEGA Tower.[11]

14 In the OA 1012 affidavit, the 1st Appellant averred that the Appellants had complied with ORC 1583 and ORC 2894. The 1st Appellant explained, *inter alia*, that the 2nd Appellant was a going concern with customers and debtors and therefore its use of funds was in the ordinary and proper course of business.[12]

SUM 1737

15 On 20 June 2025, the Respondents took out SUM 1737 against the Appellants, applying for the production of documents and information in relation to the various averments made by the 1st Appellant in his Reply Affidavits. This was accompanied by a joint supporting affidavit from a director of the 2nd Respondent and a solicitor for the 1st Respondent (the "Supporting Affidavit").[13] The 1st Appellant filed a reply affidavit on 25 July 2025, contending that SUM 1737 was liable to be dismissed "on the basis of the applicable law, procedural grounds and/or irregularities".[14]

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11 Affidavit of Phua Kian Chey Colin in OA 1005 affirmed on 18 November 2024 and filed on 19 November 2024 ("OA 1005 Reply Affidavit") at paras 23 and 26.

12 Affidavit of Phua Kian Chey Colin in OA 1012 dated 19 May 2025 ("OA 1012 Reply Affidavit") at paras 76–86.

13 Joint Affidavit of Quek Lip Ngee and Lim Zhi Ying Julia dated 20 June 2025.

14 Reply Affidavit of Phua Kian Chey Colin dated 25 July 2025 at para 8.

16 The AR heard parties on 11 August 2025 and allowed the application in part, granting an order for the production of certain categories of documents. The AR's grounds may be summarised as follows:

(a) The Supporting Affidavit should not be struck out as the procedural non-compliances did not substantially prejudice the Appellants.[15]

(b) A court may order a party to committal proceedings to produce documents under O 11 r 3 of the ROC 2021. The ROC 2021 and the AJPA do not exclude the application of O 11 r 3 to committal proceedings under O 23 of the ROC 2021. None of the case authorities suggest that document production is somehow inappropriate or alien in the context of committal proceedings.[16]

(c) The privilege against self-incrimination is available to persons compelled to testify or produce documents which may incriminate in committal proceedings. However, by making the claim to privilege in their written submissions, the Appellants had not properly invoked it, as reliance on the privilege and the basis for that reliance should be set out on affidavit. Further, the Appellants sought to protect themselves against incrimination in the very same proceedings for which disclosure is sought. The Appellants should not be allowed to invoke the privilege against self-incrimination as a shield against an invitation for them to substantiate a defence they put forward.[17]

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15 Notes of Evidence (11 August 2025) ("NE (11 August 2025)") at p 6 line 25 to p 8 line 6.

16 NE (11 August 2025) at p 8 line 12 to p 10 line 7.

17 NE (11 August 2025) at p 12 line 1 to p 14 line 8.

Procedural objections

17 Before delving into the substantive arguments, I deal with the procedural objections raised by the Appellants. In my judgment, the procedural objections did not justify striking out the Supporting Affidavit. I set out the procedural objections below, along with my assessment.

18 First, the Appellants submitted that the 1st Respondent's name in SUM 1737 is different from the 1st Respondent's name in the Supporting Affidavit.[18] Therefore, the Supporting Affidavit is defective and inadmissible. The name of the 1st Respondent is stated as "ZHONGSHAN SHENGWANG ELECTRICAL APPLICANCE CO., LTD." on the cover page of the Supporting Affidavit, instead of "APPLIANCE". I agreed with the AR that this was no more than a typographical error and was not a basis for striking out the Supporting Affidavit.

19 Second, the Appellants submitted that the Supporting Affidavit is not in compliance with O 15 r 21 of the ROC 2021, which states that "[t]wo or more persons may make a joint affidavit if all the facts that they are affirming are the same."[19] The joint makers of the Supporting Affidavit were not privy to the same facts. I agreed with the AR that this can be regularised through the Respondents filing separate affidavits.

20 Third, the Appellants submitted that it is highly irregular for counsel to make affidavits on behalf of clients where the facts are in dispute.[20] One of the

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18 Appellants' Joint Written Submissions dated 20 August 2025 ("AWS") at paras 6–7.

19 AWS at paras 8–10.

20 AWS at paras 11–13.

joint makers of the Supporting Affidavit is a solicitor for the 1st Respondent. The AR directed that the Respondents regularise this by filing an affidavit duly affirmed by a representative of the 1st Respondent. It was not contended by the Appellants that substantial prejudice was caused by this irregularity. I was satisfied that the direction given by the AR was sufficient to address the irregularity, and that this was no basis to strike out the Supporting Affidavit.

21 At the first hearing before me on 28 August 2025 ("the First Hearing"), the Respondents informed the court that they intended to regularise the Supporting Affidavit to address the AR's concerns, but had not done so as timelines were not yet given. I directed the Respondents to regularise the Supporting Affidavit within three weeks of the First Hearing. This was subsequently complied with. Mr Quek Lip Ngee, a director of the 2nd Respondent, has filed a separate affidavit, having been authorised in a power of attorney to represent the 1st Respondent, reaffirming the contents of the Supporting Affidavit.[21]

22 Fourth, the Appellants submitted that it is irregular for the Supporting Affidavit to contain legal arguments. This is contrary to the SG Courts website on "How to prepare an affidavit" where it is stated that legal arguments should not be included in affidavits. They submitted that the pages 21 to 100 of the Supporting Affidavit contain legal arguments and should be expunged.[22] The Respondents disagreed that the pages referred to contained legal arguments. They submitted that the pages involve material facts relating to the issues, and

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21 Affidavit of Quek Lip Ngee dated 18 September 2025.

22 AWS at para 14.

that it is also overly broad for the Appellants to seek to expunge pages 21 to 100 of the Supporting Affidavit.

23 The Appellants did not raise this fourth argument before the AR. Their contention was also vastly overstated. After the initial pages outlining the relevant provisions of the Rules of Court that relate to production of documents, the remaining pages of the Supporting Affidavit deal with the material facts. It is not contended that the inclusion of these pages causes them any prejudice. I thus found no basis for expunging the affidavit on this ground.

Issues on appeal

24 I turn now to the main issues raised in this appeal, which I summarise below.

(a) Whether production of documents may be sought in committal proceedings, in the light of O 23 of the ROC 2021 and ss 10(2) and 26(1) of the AJPA.

(b) Whether the privilege against self-incrimination can be invoked in a committal proceeding.

Production of documents in committal proceedings

Appellants' case

25 The first main plank of the Appellants' appeal was that the production of documents process is inconsistent with the procedure and practice of committal proceedings in Singapore. They submitted that O 23 of the ROC 2021 is a self-contained order for committal proceedings, which does not contain any provision for production of documents. Order 23 does not allow the import of

the production of documents process contained elsewhere in the ROC. This is supported by ss 10(2) and 26(1) of the AJPA.[23] To allow the import of O 11 of the ROC 2021 to committal proceedings would subvert the intention of Parliament in enacting s 10(2) of the AJPA.[24] Committal proceedings operate in a two-staged process as set out in O 23 of the ROC 2021 and applications under O 11 of the ROC 2021 have never been part of this process. There are no judicial authorities in Singapore providing that O 11 of the ROC 2021 or orders for productions of documents are part of the procedure and practice for committal proceedings.[25]

26 The Appellants also made what they framed as an alternative submission, but which in substance repeated their main submissions. They submitted that since SUM 1737 was taken out after stage one of a two-stage committal process, granting the application would subvert the procedural safeguards envisaged by the two-stage process and would amount to an abuse of the process of the court and is not in the interests of justice.[26]

Respondents' case

27 The Respondents agreed with the AR, who held that nothing in the AJPA or the ROC 2021 suggest that a court may not order a party to committal proceedings to produce documents or information, and that none of the

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23 AWS at paras 21–26.

24 AWS at para 27.

25 AWS at para 28.

26 AWS at paras 30–32.

authorities suggest that document production is somehow inappropriate or alien in the context of committal proceedings.[27]

Decision

28 The provisions of the AJPA relied on by the Appellants state:

> **Power to punish for contempt**
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> **10**.—(1) The General Division of the High Court, the Appellate Division of the High Court and the Court of Appeal have jurisdiction to try and power to punish for contempt of court.
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> (2) The General Division of the High Court has and exercises the same jurisdiction, powers and authority in accordance with the same procedure and practice in respect of contempt committed in connection with proceedings in the Court of Appeal, contempt committed in connection with proceedings in the Appellate Division of the High Court and contempt of courts subordinate to it as it has and exercises in respect of contempt of itself.
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> …
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> **Contempt proceedings**
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> **26**.—(1) Proceedings for contempt of court and the power of the court to punish the contempt of court must be exercised in accordance with the procedure set out in Rules of Court or Family Justice Rules.

29 It is clear from a plain reading of the above provisions that, contrary to the Appellants' submissions, they do not suggest that O 23 of the ROC 2021 is self-contained or that the operation of O 11 of the ROC 2021 is excluded from committal proceedings. Indeed, s 26(1) of the AJPA states that proceedings for contempt of court must be exercised in accordance with the procedure "set out in Rules of Court", without limiting it to O 23 of the ROC 2021.

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[27] Respondents' Joint Written Submissions dated 20 August 2025 ("RWS") at paras 15–18.

30 Nothing in O 23 suggests that it is intended to be exhaustive of the procedure applicable to committal proceedings, nor does it contain an express exclusion of the applicability of other provisions in the ROC 2021. There is also nothing in O 11 that suggests that its operation is excluded from committal proceedings. O 11 is situated under "Part 1 General Provisions" in the ROC 2021. A plain reading of O 11 r 3 suggests that it is available to parties in any action, including committal.

31 While the Appellants alluded to procedural safeguards from the two-stage process set out for committal proceedings, they had not explained how an order for production of documents would undermine those procedural safeguards.

32 The two-stage process in committal proceedings provides a procedural safeguard in that it requires a committal applicant to state upfront and with sufficient particularity, in the supporting affidavit at the first stage, the grounds or bases for the application for permission to commence committal proceedings; see *Farooq Ahmad Mann v Xia Zheng* [2025] 4 SLR 374 at [25]. This informs the respondent of the case to meet. SUM 1737 was brought to compel the Appellants to produce documents and information to substantiate their defence as stated in the Reply Affidavits, and did not purport to introduce new grounds for committal. SUM 1737 thus proceeded in a manner consistent with the Respondents' case for committal, and it was not apparent how the procedural safeguards in the two-stage process are undermined by the application.

33 I also noted that foreign courts have taken the position that civil committal proceedings fall within the scope of their respective civil procedure rules and that production of documents may be applied for. In *Masri v*

Consolidated Contractors International Company SAL [2011] EWCA Civ 21 ("*Masri*"), the Court of Appeal accepted that proceedings for committal or other penalties for contempt are civil proceedings. Applications for discovery in relation to them must therefore be governed by the Civil Procedure Rules 1998 (SI 1998 No 3132) (UK). This includes disclosure of documents; *Masri* at [41]. By the same token, the High Court of Australia in *Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd* [2015] HCA 21 ("*Boral Resources*") held that the provisions of O 75 of the Supreme Court (General Procedure) Rules 2005 (Vic), which sets out the procedure for civil contempt proceedings, are not quarantined from the other provisions of the rules and that an order of discovery may be sought in committal proceedings; *Boral Resources* at [28]–[34]. This is subject to the potential invocation of the privilege against self-incrimination or the privilege against self-exposure to a penalty to excuse compliance; *Boral Resources* at [2].

34 I therefore found no merit to the Appellants' submission that the production of documents regime under O 11 of the ROC 2021 is inapplicable to committal proceedings under O 23. In summary, from an examination of the relevant provisions of the ROC 2021 and the AJPA, I found that the production of documents regime under O 11 applies to committal proceedings.

35 The Respondents also contended that the AR erred in declining to find a juridical basis for ordering the production of information outside the O 11 r 11 context.[28] I note that the Respondents did not appeal against the AR's decision. This issue was therefore not before me in RA 163.

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[28] RWS at paras 24–35.

Privilege against self-incrimination

Appellants' case

36 The second plank of the Appellants' appeal was that, even on the premise that O 11 of the ROC 2021 is *prima facie* applicable to committal proceedings, the Appellants are entitled to rely on the privilege against self-incrimination to resist SUM 1737.

37 The principle against self-incrimination was recognised as part of Singapore law in *Beckkett Pte Ltd v Deutsche Bank AG* [2005] 3 SLR(R) 555 ("*Beckkett*") at [31]–[32].[29] This common law privilege is consistent with the AJPA and O 23 of the ROC 2021. The Western Australia case of *Woods v Skyride Enterprises Pty Ltd* [2012] WASC 4 ("*Woods*") held at [13] that the privilege against incrimination or disclosure applies in respect of natural persons but does not arise in the case of corporations. Notwithstanding the position taken in *Woods*, if the court accepts that the 1st Appellant is entitled to the privilege, that should extend to the 2nd Appellant, as the 1st Appellant is the sole director and shareholder of the 2nd Appellant. The only practical means for the 2nd Appellant to comply with a production of documents order is through the 1st Appellant, and that would encroach on his privilege.[30]

38 In *Comet Products UK Ltd v Hawkex Plastics Ltd* [1971] 2 QB 67 ("*Comet Products*") at 73G, Lord Denning MR referred to a quote by Bowen LJ in *Redfern v Redfern* [1891] P 139 at 147: "… a party cannot be compelled to discover that which, if answered, would tend to subject him to any

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29 AWS at para 37.

30 AWS at paras 40–44.

punishment, penalty, forfeiture, … 'no one is bound to incriminate himself'". Lord Denning MR also held that a man who is charged with contempt of court cannot be compelled to answer interrogatories or to give evidence himself to make him prove his guilt; *Comet Products* at 74B.[31]

39 The Appellants disagreed with the AR's holding that the Appellants should not be permitted to rely on the privilege since the Appellants have put forward positive defences. In line with the holding in *Comet Products*, a person charged with contempt of court cannot be compelled to answer interrogatories or to give evidence himself to make him prove his guilt in contempt proceedings. In *Comet Products* at 75E–75F, Lord Denning MR allowed the defendant's appeal not to be cross-examined on his affidavit and held that it is for the judge to disregard the affidavit and/or to give it very little weight. The Appellants accept that it is the discretion of the judge hearing the committal hearing proper to decide whether to disregard the 1st Appellant's Reply Affidavits and/or to give it very little weight and/or draw any adverse inferences from the 1st Appellant's refusal to produce documents in relation to it.[32]

Respondents' case

40 The Respondents submitted that even if the plea of privilege against self-incrimination was appropriately raised, the court retains a discretion in determining whether a disclosing party may nonetheless rely on the privilege as part of an overall balancing test.[33]

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31 AWS at para 50.

32 AWS at paras 51–53.

33 RWS at para 40.

41 The Appellants' written submissions shed no further light as to what information or documents sought in SUM 1737, if ordered to be disclosed, would result in the 1st Appellant incriminating himself in criminal proceedings. The requested documents and information relate to matters specifically referred to in the 1st Appellant's Reply Affidavits and which form part of his affirmative defences in the underlying committal proceedings. The 1st Appellant should minimally state expressly and particularise his claim on affidavit and provide some reason as to why that is the case; see *Hung Ka Ho v A-1 Office System Pte Ltd* [1992] 1 SLR(R) 550 ("*Hung Ka Ho*") at [10]–[16].[34]

42 Section 134 of the Evidence Act 1893 (2020 Rev Ed) (the "Evidence Act") also qualifies the right to privilege against self-incrimination in the context of a party giving evidence in civil proceedings like civil contempt.[35]

43 Finally, the Respondents submitted that the Appellants have waived their right to assert the privilege against self-incrimination. Such a privilege, even if properly asserted, can be waived by the disclosing party; see *Lim Suk Ling Priscilla v Amber Compounding Pharmacy Pte Ltd* [2020] 2 SLR 912 ("*Priscilla Lim*") at [80].[36] The 1st Appellant did not raise a plea of privilege when he filed the Reply Affidavits. In fact, certain affirmative facts and defences, including direct references to documents in support of the same, were exhibited or relied on by the 1st Appellant in those affidavits.

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34 RWS at para 41.

35 RWS at para 41.

36 RWS at para 42.

Decision

Privilege against self-incrimination may be invoked in civil proceedings

44 In *Riedel-de Haen AG v Liew Keng Pang* [1989] 1 SLR(R) 417 ("*Riedel*"), Chan Sek Keong J (as he then was) held at [12] that there is no doubt that the privilege against self-incrimination is one of the principles of English law which has been received in Singapore by virtue of the Charter of Justice 1826. In civil proceedings, the privilege extends to discovery of documents which will tend to criminate or subject the defendant to a penalty or forfeiture.

Privilege against self-incrimination may be invoked by corporate entities

45 The Respondents did not dispute that the privilege against self-incrimination may be invoked by a natural person (*viz*, the 1st Appellant). In so far as the Respondents initially contended that the privilege cannot be invoked by a corporate entity, I note that there are two Court of Appeal decisions, namely *Expanded Metal Manufacturing Pte Ltd v Expanded Metal Co Ltd* [1995] 1 SLR(R) 57 ("*Expanded Metal Manufacturing*") and *Beckkett,* where the court allowed corporate entities to invoke the privilege against self-incrimination. In the former case, the court allowed the first appellant, which was a company, to assert the privilege against self-incrimination; see *Expanded Metal Manufacturing* at [33]–[35]. Likewise, in the latter case, the court found that there was a real risk that the respondent company might face criminal investigation or prosecution in Indonesia and allowed the privilege to be asserted; *Beckkett* at [31]–[42]. When these authorities were raised to the attention of counsels at the First Hearing, they agreed that in Singapore, corporate entities can invoke the privilege against self-incrimination. Subsequently, in the Respondents' supplemental written submissions, they

noted that in *Fila Sport S p A v Ramesh Tulsidas Wadhwani trading as P T International Corporation* [2002] SGHC 35 at [14], Lai Siu Chiu J expressed the tentative inclination that the privilege against self-incrimination ought not to apply to corporate entities.[37] I note that this was *obiter dicta* as Lai J had found no basis to make a discovery order in the first place. I also note the positions taken in other jurisdictions – in Australia, the privilege cannot be invoked by corporate persons; *Boral Resources* at [2], but in England, the privilege is to be accorded to a company; *The Law of Privilege* (Bankim Thanki QC gen ed) (Oxford University Press, 3rd Ed, 2018) ("*The Law of Privilege"*) at para 8.09. Be that as it may, the Court of Appeal authorities I highlighted are binding on this court.

46 From the above, it can be seen that the privilege against self-incrimination may be invoked in civil proceedings to resist the production of documents which will tend to criminate or subject the defendant to a penalty or forfeiture. The privilege can be invoked by natural persons or corporate entities. The next issue was whether the Appellants had done enough to invoke the privilege.

Whether the Appellants had sufficiently invoked the privilege against self-incrimination

47 Initially, the Appellants did not assert the privilege against self-incrimination on affidavit. Instead, the claim for privilege was conveyed through counsel for the Appellants in written submissions. It was also unclear

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[37] Respondents' Joint Supplemental Submissions dated 1 October 2025 ("RSS") at para 3.

in what context the Appellants were claiming the privilege and what they were claiming privilege over.

48 In *The Law of Privilege*, the learned authors observe at para 8.16 that:

> [t]he correct and established procedure **is for the party himself, not the solicitor**, to take on his oath the objection, whether it be to answering a question in the witness box or as a reason for not answering a CPR Part 18 request or as a reason for not disclosing a document. Failure to comply with this procedure means the privilege has not been invoked.
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> [emphasis added in bold]

49 Further, case law indicates that the mere assertion by a party that he may or will criminate himself is not sufficient, and the judge should be certain that the authority of the court is not trifled with; *Guccio Gucci SpA v Sukhdav Singh* [1991] 2 SLR(R) 823 ("*Guccio Gucci*") at [7]. Likewise, the Court of Appeal observed in *Beckkett* that to plead the privilege against self-incrimination, there "must be reasonable grounds to apprehend danger to the [defendant], and those grounds must be reasonable, rather than fanciful"; *Beckkett* at [32]. In *Hung Ka Ho*, the High Court held at [10]–[11] that:

> 10. For this privilege to be successfully invoked … **as Chan Sek Keong J put it in *Riedel-de Haen* (at [7]), 'it must be shown that there is a real risk that the incriminating answer or answers would expose him [the defendant] to arrest or prosecution for any criminal offence**'. … **A defendant seeking the protection of the privilege has therefore to show that he is being compelled to incriminate himself on a potential charge or charges which are not trivial and which carry penalties which are not insubstantial.**
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> 11. To satisfy these requirements, **a defendant seeking to invoke the privilege will have to say that he has answers to the questions (since he cannot incriminate himself if he is unable to answer them), and that he believes that the answers will expose him to a real risk of prosecution**. He is only excused from saying this if this is already evident in the

> plaintiff's application for the Anton Piller order, or if judicial notice can be given to these facts.
>
> [emphasis added in bold]

50 That the court examines the grounds for claiming the privilege against self-incrimination and must be satisfied that there is a real or reasonable risk of incrimination, is also evident from *Priscilla Lim*. There, the Court of Appeal assessed the circumstances of the case to consider when a claim for the privilege might be considered "fanciful" rather than "reasonable"; *Priscilla Lim* at [87].

51 The propositions derived from *The Law of Privilege* and *Guccio Gucci* were brought to the attention of the parties prior to the First Hearing. Counsel for the Appellants informed the court at the First Hearing that he conceded that the privilege has to be asserted through the Appellants themselves and not through counsel. He could not find any authorities pointing otherwise. When the propositions in *Beckkett* and *Hung Ka Ho* as cited above were put to counsel for both parties, counsel for the Appellants accepted that a blanket claim of privilege over all the documents was insufficient, and that the court must be satisfied that there is a real risk of self-incrimination. He then sought leave to file a supplementary affidavit for the Appellants to assert the privilege against self-incrimination. I gave leave for the Appellants to do so, within three weeks of the First Hearing.

52 The 1st Appellant subsequently filed a supplementary affidavit ("Appellants' supplementary affidavit") asserting the privilege against self-incrimination for both Appellants, in relation to all the documents ordered by the AR in SUM 1737, citing incrimination in relation to the committal proceedings at hand. In the Appellants' supplementary affidavit, they took the position that the nature and stage of the committal proceedings were sufficient

to indicate a real and appreciable risk of prosecution and/or the recovery of a penalty against the Appellants.[38]

53 The Respondents submitted that this was insufficient. The Appellants should have particularised the incriminating nature of the documents in the Appellants' supplementary affidavit and provided cogent reasons as to why that would be the case.[39]

54 In my view, the sufficiency of the Appellants' supplementary affidavit should be construed in the context of the two different situations in which the privilege against self-incrimination may be invoked.

(a) The first situation is where the privilege against self-incrimination is invoked on the basis of a threat of sanction being brought against a party in separate proceedings. The cases of *Beckkett, Expanded Metal Manufacturing* and *Hung Ka Ho* related to such a factual matrix.

(b) The second situation is where the privilege against self-incrimination is invoked on the basis that the threat of sanction is in the *civil proceedings (such as the committal proceedings in the present case) itself*. Thus far, I am not aware of a local decision dealing with such a situation.

55 In the first situation where the privilege is asserted on the basis of a threat of sanction in separate proceedings, the defendant seeking the protection of the

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38 Affidavit of Phua Kian Chey Colin dated 18 September 2025 ("Appellants' supplementary affidavit") at paras 10–15.

39 RSS at paras 5–8.

privilege has to show that he is being compelled to incriminate himself on a potential charge or charges which are not trivial and which carry penalties which are not insubstantial. The court will also examine the grounds for claiming the privilege against self-incrimination and must be satisfied that there is a real or reasonable risk of incrimination; see the authorities canvassed at [49]–[50] above.

56 I note that in this assessment of reasonable grounds, the court is entitled to, on its own accord, take cognisance of the circumstances of the case and the nature of evidence which the witness is called to give. The learned authors of *The Law of Privilege* state at para 8.42 that a party does not have to give chapter and verse to show why disclosure of documents might incriminate him. This proposition stems from *Downie v Coe* [1997) Lexis Citation 4172, where the English Court of Appeal held that:

> **… It is quite plain that the claimant does not have to give chapter and verse to show why disclosure or the answering of the question or interrogatory might incriminate him**. As Lord Denning MR pointed out in *Rio Tinto Zinc Corporation v Westinghouse Electric Corporation* [1978] AC 547, [1978] 1 All ER 434, page 574 of the former report, **to require him to do that might expose him to the very peril against which the privilege exists to protect him. It is also plain that the circumstances of a case may of themselves show that a risk of prosecution exists**. …
>
> **It is not therefore incumbent on a party seeking to exercise this privilege himself to describe in detail the peril to which he might be exposed**. …
>
> [emphasis added in bold]

57 From an examination of the authorities above, I distil the following principles regarding the invocation of the privilege against self-incrimination in civil proceedings.

(a) The privilege can be invoked by natural persons or corporate entities.

(b) It is for the party to invoke the privilege and not his solicitor.

(c) The court will examine if there are reasonable grounds for claiming the privilege and must be satisfied that there is a real or reasonable risk of incrimination.

(d) When privilege against self-incrimination is asserted on the basis of risk of prosecution or penalty being brought against a party, the party does not need to give full precise information or detail as to why disclosure may incriminate him. To require a party to do so might expose the party to the very peril against which the privilege exists to protect him.

(e) The court may take cognisance of the circumstances of the case which may indicate a risk of prosecution.

58 As I have highlighted at [54], these principles arose in the context of the first situation, where the privilege against self-incrimination is asserted on the basis of a threat of sanction *in other proceedings*.

59 In my view, these principles should also be applied to the second situation highlighted at [54] above, such as in the present case where the threat of sanction is *in these committal proceedings*. In such cases, the very civil proceeding itself carries the relevant sanction. This militates for at least the equivalent protective stance. The mere nature and stage of the committal proceeding would be sufficient to support the inference that the disclosure of the documents would potentially expose a committal respondent to potential

penalty from the committal proceeding. To require more from a committal respondent would be to undermine the very protection of the privilege.

60 I was therefore satisfied from the Appellants' supplementary affidavit and the circumstances of the case, that the Appellants had set out sufficient grounds and established that disclosure of the documents carried a risk of exposure to penalty, and that the Appellants were *prima facie* entitled to invoke the privilege against self-incrimination.

Whether the privilege against self-incrimination applies on the present facts

61 The Respondents' next set of objections was that, even if the Appellants were *prima facie* entitled to invoke the privilege against self-incrimination, the privilege did not apply on the present facts. The Respondents raised three objections in this vein.

(a) First, ss 134 of the Evidence Act qualifies the right to privilege against self-incrimination in the context of a party giving evidence in civil proceedings like civil contempt.[40]

(b) Second, a committal respondent cannot decline on self-incrimination grounds to answer questions which involve determining whether they have complied with orders which are the subject of the committal.[41]

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40 RWS at para 41.

41 RSS at para 4.

(c) Third, the privilege only applies to testimonial documents and does not apply to pre-existing documents not created by the Appellants.[42]

(1) Section 134 of the Evidence Act

62 I begin with s 134(1) of the Evidence Act which provides:

> **Witness not excused from answering on ground that answer will criminate**
>
> **134.**—(1) A witness is not excused from answering any question as to any matter relevant to the matter in issue in any suit, or in any civil or criminal proceedings, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate, such witness …

63 In *Riedel*, Chan J assessed the ambit of this provision and held at [22] that "s 134 of the Evidence Act has merely qualified the privilege against self-incrimination to the extent the witness gives *oral testimony* in judicial proceedings to which the Evidence Act is applicable" [emphasis added]. Consequently, I found that s 134(1) of the Evidence Act is not applicable to the issue at hand, which relates an order for production of documents arising from an affidavit.

64 At the First Hearing, the Respondents also referred to s 134(4)(*a*) of the Evidence Act, which provides that where an accused gives evidence in any criminal proceedings, he is not entitled to refuse to answer a question or produce a document or thing on the ground that to do so would tend to prove the commission by him of the offence charged. They did not contend that s 134(4)(*a*) of the Evidence Act applies to committal proceedings. Rather, their contention was that s 134(4)(*a*) of the Evidence Act applies by analogy to

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42 RSS at paras 13–16.

committal proceedings, because ss 134(1) to 134(3) of the Evidence Act only applies where the privilege is pleaded in relation to a sanction other than in the underlying civil proceeding.

65 Properly understood, this was a contention that the effect of s 134(4) of the Evidence Act is that the privilege against self-incrimination should not apply under the second situation highlighted at [54] above, and in particular in committal proceedings.

66 I was unable to agree with the Respondents' submission. Section 134(4) of the Evidence Act explicitly excludes the application of the privilege against self-incrimination in the circumstances mentioned therein with respect to criminal proceedings. This does not include civil committal proceedings. If Parliament's intent was to exclude the application of the privilege in civil committal proceedings as well, that could have been done in a similarly explicit manner, but it was not. Nor is it appropriate to impute that the privilege does not apply where the threat of sanction is in the committal proceeding itself, simply because ss 134(1) to 134(3) of the Evidence Act deal with the situation where the threat of sanction exists in other proceedings. Sections 134(1) to 134(3) of the Evidence Act stand for what they provide for, not more. Moreover, Part 3 of the Evidence Act, and specifically s 134, has been held to apply only to oral evidence; *Riedel* at [21]. But this is not the circumstance before this court. This is a further reason why s 134(4) is not directly relevant to whether the privilege against self-incrimination can be invoked to resist an order for production of documents.

67 I therefore took the view that s 134 of the Evidence Act did not prevent the Appellants from citing the threat of sanction in the committal proceeding itself to invoke the privilege against self-incrimination in the same proceeding.

(2) Applicability of privilege against self-incrimination where threat of sanction is in committal proceeding itself

68 I turn next to the Respondents' submission that, even if the privilege against self-incrimination could *prima facie* be invoked, the privilege should not apply, as a committal respondent cannot decline on self-incrimination grounds to answer questions which involve determining whether they have complied with orders which are the subject of the committal. Otherwise, it would make enforcement of the orders of the court impossible. In this regard, the Respondents relied on *Phillips v Symes* [2003] All ER (D) 105 ("*Phillips"*) at [50(7)], [54(iv)] and [55]–[59].[43]

69 In considering this submission, it would be useful to return to the two situations in which the privilege against self-incrimination may be invoked, highlighted at [54] above. The first situation is where the privilege against self-incrimination is invoked on the basis of a threat of sanction being brought against a party in separate proceedings. The second situation is where the privilege against self-incrimination is invoked on the basis that the threat of sanction is in the civil proceedings (such as the committal proceedings in the present case) itself.

70 A reading of *Phillips* suggests that the English Court of Appeal was of the view that the privilege is available in the second situation (to which the facts

[43] RSS at para 4.

in this case fall into); see *Phillips* at [54(iv)] and [59]. The court noted that the judge below had acknowledged that *in committal proceedings,* the defendant is entitled to decline to answer questions that may incriminate him; *Phillips* at [50(7)]. The court held that the defendant was entitled to claim the privilege against self-incrimination in proceedings alleging fresh contempts and in relation to any further contempts that may be alleged in those proceedings, even though it may relate to the very order under scrutiny; *Phillips* at [54(iv)].

71 For completeness of analysis, I would also deal with the Respondents' submission based on *The Law of Privilege* at para 8.55, which cites an *obiter* comment of Lord Oliver in *Crest Homes plc v Marks* [1987] 1 AC 829 ("*Crest Homes*") at 859C–859D. There, his Lordship observed that while it may be right that a defendant can resist disclosure by pleading the privilege, it would produce an extraordinary result where a defendant who makes inadequate discovery can resist any application for production of particular documents on the ground that to comply would demonstrate that he was in breach of the earlier discovery order and thus be in contempt of court.

72 As this citation of *Crest Homes* is immediately preceded by the learned authors' citation of *Memory Corporation plc v Sidhu* [2000] Ch 645 ("*Memory Corporation*"), it would be useful to situate the citation of *Crest Homes* by examining the ruling in *Memory Corporation*. This decision was also referenced in *Phillips.* The court in *Philips* noted at [54(iv)] that the claimant, having regard to Arden J's ruling in *Memory Corporation*, conceded the correctness of the proposition that the defendant should be entitled to claim the privilege in later proceedings alleging fresh contempts.

73 In *Memory Corporation*, a defendant was ordered to attend cross-examination on an affidavit relating to a worldwide freezing order against his assets; *Memory Corporation* at [1]. The claimants declined to give him an undertaking not to use any information obtained in the cross-examination for the purposes of an application for contempt; *Memory Corporation* at [3]. The question accordingly arose as to whether the defendant could claim the privilege against self-incrimination in that cross-examination. Arden J held that he could, rejecting a submission that if a defendant were able to hide behind the privilege against self-incrimination on the premise of a reasonable apprehension of contempt proceedings, the process of cross-examination would be rendered nugatory; *Memory Corporation* at [22]–[23]. As can be seen, this is a ruling in respect of the first situation as identified in [54] above.

74 These authorities as cited in *The Law of Privilege* deal with the question of whether a party is entitled to assert the privilege against self-incrimination to decline to answer questions about his compliance with a court order in non-committal civil proceedings, by citing the risk of separate committal proceedings being commenced against him. Hence, the concerns raised by the Respondents' second objection were raised in the context of the first situation identified in [54] above. The facts at hand fall under the second situation where the privilege is asserted in the committal proceedings itself. While the concern of proper enforcement of court orders may be germane, the considerations differ, and the very penal nature of the proceedings may militate for a more protective approach. I also see the force in Arden J's observation that the assertion of the privilege does not mean the court cannot bring a defendant to book; *Memory Corporation* at [23]. The court may draw the appropriate inferences from the assertion of the privilege, the result of which is that a defendant is not necessarily assisted from relying on the privilege; *Memory*

Corporation at [13]. The contention that an assertion of the privilege would impede the enforcement of court orders was, in my view, overstated.

75 As to Lord Oliver's hypothetical at [71] above, I do not propose to deal with it in detail as the present facts differ, save to say that, if necessary, an appropriate carveout may be circumscribed for such a specific factual matrix.

76 I add that, in addition to the position apparently taken in *Phillips*, other judicial authorities also point towards a general principle that a committal respondent cannot be compelled to give evidence in committal proceedings which would expose him to the threat of punishment. As mentioned at [38] above, Lord Denning MR in *Comet Products* affirmed the statement that a party cannot be "compelled to discover that which, if answered, would tend to subject him to any punishment, penalty, forfeiture"; *Comet Products* at 73G. He went on to hold that a committal respondent cannot be compelled to answer interrogatories or to give evidence himself to make him prove his guilt and that a committal respondent is not a compellable witness; *Comet Products* at 74B. In my view, while *Comet Products* related to an application to cross-examine a committal respondent, the above propositions would also mean that a party is entitled to resist production of documents in committal proceedings, on the basis that it would tend to subject him to penalty.

77 I note that it is unclear whether *Comet Products* related to the privilege against self-incrimination or the broader right to silence. In *Comet Products*, it is not apparent that the committal respondent had asserted on affidavit the privilege against self-incrimination. Nor had the committal respondent delineated any basis for self-incrimination beyond the quasi-criminal nature of the committal proceedings. The nomenclature of privilege was not used. While

some cases have interpreted *Comet Products* as a species of the privilege against self-incrimination; see *Great Future International Ltd v Sealand Housing Corpn* [2004] EWHC 124 (Ch) at [25]–[26], other cases have construed *Comet Products* as a case dealing with the absolute right of a committal respondent to remain silent; see *Re L (a child)* [2017] 1 FLR 1135 ("*Re L*") at [31]. In *Re L*, the English Court of Appeal distinguished between the absolute right of a committal respondent to remain silent and the privilege against self-incrimination The latter may entitle a witness in certain circumstances to decline to answer a particular question but would not entitle the witness to refuse to go into the witness box or refuse to take the oath; *Re L* at [31]. Regardless of the precise rationalisation of *Comet Products*, it appears that in recognition of the quasi-criminal nature of committal proceedings, a protective approach was taken towards committal respondents.

78 This dovetails with what the Australian authorities have described to be the privilege against self-exposure to a civil penalty, or the penalty privilege. The penalty privilege has been described to be one of a trilogy of privileges that bear some similarity with the privilege against incrimination; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* [2002] 192 ALR 561 at [13]. Its ambit was succinctly described by the High Court of Australia in *Pyneboard Pty Ltd v Trade Practices Commission* (1983) 45 ALR 609 ("*Pyneboard*") at 613:

> It is well settled that '… a party cannot be compelled to discover that which, if answered, would tend to subject him to any punishment, penalty, forfeiture, or ecclesiastical censure', to use the words of Bowen LJ in *Redfern v Redfern* [1891] P 139 at 147: …. Indeed, **in a civil action brought merely to establish a forfeiture or enforce a penalty the rule is that neither discovery nor interrogatories will be allowed** …. See generally the discussion by Deane J in *Refrigerated Express Lines (Alasia) Pty Ltd v Australian Meat and Live-stock*

> *Corporation* (1979) 42 FLR 204. There, his Honour drew a **distinction between discovery in a mere action for a penalty and discovery in an action which was not for a penalty the result of which might be used to establish a party's liability to a penalty in other proceedings** (at 207–8). **In the first situation, the court should, in the absence of statutory provision to the contrary, refuse to make any order for discovery, production of documents or the provision of information for the reason that an intended consequence of the discovery, production of documents or provision of information is the imposition of the penalty, this being the object of the action** ….
>
> [emphasis added in bold]

79 The penalty privilege has been applied to committal proceedings by the Australian courts in *Woods* at [20]–[21] and was considered by the High Court of Australia to be potentially applicable (had the committal respondent been a natural person) in *Boral Resources* at [2]. This echoes the position taken in *Comet Products*.

80 In summary, from a survey of the judicial authorities in England and Australia, I am fortified in coming to the view that the privilege against self-incrimination may be invoked in committal proceedings, even where the threat of sanction is in those very committal proceedings itself.

(3) Whether pre-existing documents created by third parties fall outside the ambit of the privilege against self-incrimination

81 The Respondents' third objection was that, even if the privilege against self-incrimination could *prima facie* be invoked, the documents sought to be produced are pre-existing documents which came into existence prior to compulsory disclosure, and were created by other third parties, and thus fall

outside the ambit of the privilege.[44] They submitted that this distinction has been recognised in England in *JSC BTA Bank v Ablyazov* [2014] EWHC 2788 (Comm) at [115], where Popplewell J held that the privilege does not provide a person with protection against the risk of incriminating himself "by the provision of … documents which come into existence independently of any order" which compelled their production and that it "does not normally cover documents other than those which come into existence by an exercise of will pursuant to a testimonial obligation imposed upon the party". It is also recognised locally in *Sa'adiah bte Jamari v Public Prosecutor* [2023] 3 SLR 191 ("*Sa'adiah*") at [56].

82 In *Sa'adiah*, Aidan Xu @ Aedit Abdullah J noted that foreign authorities (such as the UK, Australia and Canada) have held that the common law privilege against self-incrimination does not apply in criminal proceedings to material which have an existence independent of the accused's will, including documents acquired pursuant to a warrant; *Sa'adiah* at [56]. This is because the privilege was historically directed at the employment of the legal process to extract from the person's own lips an admission of guilt. The privilege, in this context, is intended to prevent the use of legal compulsion to extract from the person a sworn communication of his knowledge of facts which would incriminate him. While the policies of the privilege admittedly apply to some extent to non-testimonial cooperation, it is in testimonial disclosures, which are communicative or assertive, that the oath and the private thoughts and beliefs of an individual – and therefore the fundamental sentiments supporting the privilege – are involved; see the discussion by the Supreme Court of Canada in *R v Stillman* [1997] 1 SCR 607 at [206], as cited in *Sa'adiah* at [56].

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44 RSS at paras 13–16.

83 I note that this position is not without controversy. In *The Law of Privilege*, the learned authors viewed this position to be a deviation from existing authorities; see *The Law of Privilege* at paras 8.32–8.41. According to the learned authors, the application of this distinction in *Attorney General's Reference (No 7 of 2000*) [2001] 1 WLR 1879 was decided in the specific context of the Insolvency Act 1986 (c 45) (UK), which removed any privilege which might have existed, and it was not authority that the privilege did not apply to independent evidence; *The Law of Privilege* at para 8.34. This was, however, taken as binding authority in subsequent decisions by the English courts; see, *eg*, *C plc v P* [2007] 3 All ER 1034 ("*C plc*"). In *C plc*, Lawrence Collins LJ was of the view that there was a powerful case in policy for there being no privilege with respect to disclosure of freestanding documents or other material not brought into existence under compulsion; *C plc* at [46]–[52]. However, Collins LJ did not find it necessary to rule on this wider question as: (a) his Honour hesitated to distinguish existing House of Lords authorities on the basis that they involved a testimonial obligation to disclose and verify documents; (b) s 14 of the Civil Evidence Act 1968 (c 64) (UK) provides that a person in civil proceedings has a right to "refuse to produce any document or thing"; and (c) such inroads into the privilege are primarily matters for Parliament; *C plc* at [63]–[65].

84 I also note that despite the observation in *Sa'adiah* that the Australian courts have confined the privilege against self-incrimination in criminal proceedings to testimonial disclosures, differing views have been expressed by the High Court of Australia in *Environment Protection Authority v Caltex Refining Co Pty Ltd* (1993) 118 ALR 392 ("*Caltex*"), which was referred to by Collins LJ in *C plc* at [50]. Of the coram of seven judges in *Caltex*, two judges, Mason CJ and Toohey J, took the view that the production of documents

pursuant to a process of law, such as a subpoena, involves some testimonial aspects, as "by producing the documents described, the person producing them admits that the documents existed, were in his or her possession or power and that they are authentic in the sense that they match the description which they have been given"; *Caltex* at 407–408. While the case for protecting someone against compulsion to make an admission of guilt is much stronger than the case for protecting someone from compulsion to produce books or documents in the nature of real evidence of guilt, the privilege does protect an individual in the latter scenario; *Caltex* at 408. Deane, Dawson and Gaudron JJ took the view that the privilege "protects a person from being compelled to *produce* evidence which will incriminate him, whether testimonial or not"; *Caltex* at 427. However, the learned judges noted that the immunity of an accused person from being compelled to produce documents appeared to rest more on the principle that the prosecution bears the burden of proof as opposed to the privilege against self-incrimination; *Caltex* at 428.

85 In Singapore, a number of reported cases in which the privilege against self-incrimination was invoked concerned testimonial disclosure. In those cases, disclosure was sought over information to be sworn on affidavit. Such information included, *inter alia,* the names and addresses of persons who have purchased infringing materials and the whereabouts of infringing articles and documents; see, *eg*, *Guccio Gucci* at [4]; *Riedel* at [1]; *Hung Ka Ho* at [1]; *Lee Thin Tuan v Louis Vuitton* [1992] 2 SLR(R) 135 at [3]; *Expanded Metal Manufacturing* at [10].

86 However, I was cognisant that in *Priscilla Lim*, the Court of Appeal permitted the privilege against self-incrimination to be invoked in relation to what appeared to be pre-existing non-testimonial documents. In that case, the

respondent companies (collectively, "Amber") had obtained search orders against the appellants and seized more than 100,000 documents. This included all e-mail correspondences on the appellants e-mail accounts, all data processing devices and all documents, plans, drawings, notes, memoranda and power point slides relating to the trade secrets or confidential or proprietary information of Amber; *Priscilla Lim* at [9]. Amber then sought permission to be released from its *Riddick* undertaking, to use some of the documents obtained in the course of the search order for the purpose of making reports to the authorities. The court held that the privilege against self-incrimination applied and held that this would operate as a significant factor against the grant of leave to Amber to be released from its *Riddick* undertaking; *Priscilla Lim* at [91]. I observed that the documents seized by the search order would necessarily be pre-existing as they would have come into existence prior to the making of the search order. Nevertheless, the court allowed the privilege to be invoked over some of these documents. In this, there was no suggestion that the court was limiting this holding to only testimonial documents and excluding pre-existing documents. It would thus appear that *per Priscilla Lim*, the privilege against self-incrimination can be asserted over pre-existing non-testimonial documents disclosed in the course of search orders.

87 Therefore, in light of the Court of Appeal's decision in *Priscilla Lim*, I am bound to hold that the privilege against self-incrimination is applicable to pre-existing documents as well.

88 For completeness, although the Respondents sought to draw a further distinction on the basis that some of the pre-existing documents in the present

case were not created by the Appellants, *eg*, bank statements,[45] the authorities cited by the Respondents revolved around the dichotomy between pre-existing and testimonial evidence, and not who created the documents. This was understandably so, given that there would be no need to consider the creator of pre-existing documents if the view taken is that the privilege is inapplicable over all pre-existing documents, as was the case in the authorities the Respondents relied on.

89 The Respondents raised the example that the Appellants' bank statements could be obtained through a *Bankers Trust* order to justify this distinction based on the creator of the pre-existing document. However, where the premise is that the privilege against self-incrimination can apply to pre-existing documents, I did not think that the possibility of obtaining the documents by some other means militates for the inapplicability of the privilege over those documents. It would be up to the party to decide whether to avail itself of those other means, which would then necessitate the fulfilment of the associated requirements. The possibility of such alternative avenues should not affect the application of the privilege. I also noted that in *Priscilla Lim,* while it is not clear what exactly the documents in dispute were due to the wide scope of the sheer scope of the search order, there is no reason to assume that the documents over which privilege was asserted were limited to those created by the appellants. I therefore found no basis to draw a further distinction based on the creator of the documents.

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[45] RSS at paras 13 and 16.

Implied waiver

90 I now turn to the next issue, which is whether the Appellants have waived their right to invoke privilege against self-incrimination, on the premise that they are entitled to assert it. In *Priscilla Lim*, the Court of Appeal recognised at [80] that the privilege against self-incrimination may be found to have been waived by the disclosing party, although the court did not find such waiver on the facts of that case. In *The Law of Privilege*, the learned authors note that there are three categories of waivers: (a) express or intentional waiver, which involves express consent to the use of the material; (b) implied waiver, where privilege is lost as a result of a step taken in proceedings by the party claiming privilege or because of the nature of the claim brought, *eg*, a suit by former clients against former solicitors; and (c) collateral waiver, which may occur as a result of a primary waiver of material spreading to associated material; *The Law of Privilege* at para 5.22.

91 The Respondents submitted that the Appellants have impliedly waived the right to invoke the privilege against self-incrimination by asserting affirmative facts and defences, including direct references to documents in support of the same, in the 1st Appellant's Reply Affidavits. The Appellants also failed to raise the privilege in the subsequent correspondence between the parties' solicitors when the Respondents requested for documents.[46]

92 In *Expanded Metal Manufacturing*, the Court of Appeal considered whether a party would be able to maintain a *bona fide* defence while claiming the privilege against self-incrimination; *Expanded Metal Manufacturing* at [30]–[32]. The court was of the view that the quote cited by the respondents

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46 RWS at paras 43–45.

from Templeman LJ's judgment in *Rank Film Distributors Ltd v Video Information Centre (a firm)* [1982] AC 380 at 423 ("*Rank Film Distributors*") did not support the respondents' proposition that the first appellant was not entitled to maintain a defence as the privilege against self-incrimination would cast doubts on its *bona fides*. Templeman LJ was simply reiterating the "obvious proposition that the court may draw adverse inferences against a defendant if he invokes the privilege and refuses to produce the documents required"; *Expanded Metal Manufacturing* at [31]. Nonetheless, the court went on to find that the discovery required in the case (relating to past instances of trade mark use) would not add to or subtract from the appellants' defences to the respondents' claim for trade mark infringement, because the appellants were relying on statutory defences and the first appellant was not contesting that the relevant trademarks had been used. On the other hand, the court noted that compliance with the discovery order would render the appellants liable for trade mark offences. The court also noted that, if the respondents succeed in their claim, the court can draw adverse inferences against the appellants for failing to furnish documents and information when assessing damages. For those reasons, the court held that the appellants' defence did not preclude them from relying on the privilege against self-incrimination; *Expanded Metal Manufacturing* at [32].

93 In my view, while the Court of Appeal in *Expanded Metal Manufacturing* did not accept the respondents' argument, the court's analysis suggests that if the production of documents sought adds to or subtracts from a party's case, a party may not be allowed to assert the privilege against self-incrimination. At the very least, it suggests that the relevance of the production of documents sought to a party's case is a factor germane to an assessment of whether the privilege against self-incrimination can be asserted by that party.

94 In my view, such a position is well justified, even more so in the present case, as the privilege against self-incrimination was asserted on the basis of a threat of sanction in the same committal proceeding. In committal proceedings, a party may assert a positive case on affidavit based on the truth of certain facts. If that party then claims the privilege against self-incrimination over documents relating to those very same facts, asserting that the documents, if disclosed, will tend to incriminate or subject him to a penalty or forfeiture which is the very subject of the committal proceedings to which the party is mounting a defence, the premise of such an assertion would necessarily be that the facts averred to on affidavit are contradicted by the documents. The invocation of the privilege would thus inherently contradict his averment on affidavit as to the truth of the same fact. A party should not be allowed to take inconsistent positions as to the truth of a particular fact.

95 I found the above analysis to be fortified by the Court of Appeal's consideration of implied waiver in the context of legal professional privilege, in *ARX v Comptroller of Income Tax* [2016] 5 SLR 590 ("*ARX")*. There, the court took the view that the doctrine of implied waiver is concerned about "the unfairness which arises from inconsistent conduct when a party seeks, on the one hand, to rely upon the contents of the privileged material to advance his case while seeking, on the other hand, to prevent the opposing party from inspecting the document"; *ARX* at [105]. As the court in *ARX* put it at [65]:

> The doctrine of implied waiver has always been concerned with fairness of a very particular sort. The principle of the matter, simply put, is that a party cannot have his cake and eat it. **If a party voluntarily puts privileged material before the court, he cannot rely on the advantageous aspects of it to advance his case but claim privilege in respect of the other less advantageous aspects of the documents for fear that it might damage his case**. …
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> [emphasis added in bold]

96 While this comment was made in the context of legal professional privilege, I considered the principles regarding implied waiver set out there to be relevant to the privilege against self-incrimination. Both counsels also agreed that the principles on implied waiver as set out in *ARX* at [65] and [105], that fairness and consistency may require disclosure, applied to the privilege against self-incrimination. This buttressed my view that a committal respondent cannot assert the privilege over self-incrimination in relation to an application for production of documents that would add to or subtract (or in other words, relate directly to) from the committal respondent's case. In doing so, a committal respondent would have taken inconsistent positions as to the truth of a particular fact. He would on the one hand, be asserting a positive case, but on the other hand be relying on the privilege against self-incrimination on the premise of sanction in the very same proceeding to avoid disclosing documents relating to those facts.

97 In this context, I examined the Appellants' defences in the Reply Affidavits. The Appellants had raised a number of defences, and, in response, the Respondents had sought the disclosure of many categories of documents. Both parties had run their arguments on waiver without distinguishing between the treatment of different categories of documents. Therefore, for brevity, I shall focus on select categories of documents to illustrate the interplay between the Appellant's case and the application for production of documents, without canvassing the documents sought *seriatim*.

(a) In the OA 1005 affidavit, the 1st Appellant averred that the requested documents were lost when the 2nd Appellant's office had

shifted from the Bizhub address to the WCEGA Tower address.[47] Although he had digitally edited certain photographs tendered to court to show that the 2nd Appellant's signage was affixed at the WCEGA Tower address, the edit merely blocked out the names of other uninvolved companies.[48] The Respondents sought the production of any and all digitally unaltered copies of the photographs the 1st Appellant had of the WCEGA Tower address, including the photograph previously provided, in its native format and a softcopy with the metadata intact.[49] In my assessment, such discovery related to documents which would add to or subtract from the Appellant's case. Further, an assertion of the privilege over this category of documents, on the premise that it would incriminate the Appellants in the committal proceedings, necessarily acknowledged the falsity of the 1st Appellant's averment and was inconsistent with the averment that the photographs were innocuously altered.

(b) In the OA 1012 affidavit, the 1st Appellant denied that he had failed to disclose the 2nd Appellant's inventory of goods and stocks.[50] One allegation was that the 2nd Appellant took delivery of a 40-foot container of ceiling fan products at the Bizhub address. The 1st Appellant denied this allegation, explaining that the 40-foot container of alleged ceiling fans did not belong to the 2nd Appellant.[51] The Respondents sought the production of any and all supporting documents

47 OA 1005 Reply Affidavit at para 17.

48 OA 1005 Reply Affidavit at para 76.

49 S/n 3 of the Schedule to SUM 1737.

50 OA 1012 Reply Affidavit at p 17.

51 OA 1012 Reply Affidavit at para 58–61.

> as to the identity of the person or entity which owned the ceiling fan products and which paid for the goods. Likewise, such discovery related to documents which would add to or subtract from directly to the Appellants' case. Further, an assertion of the privilege over this category of documents, on the premise that it would incriminate the Appellants in the committal proceedings, was necessarily inconsistent with the averment that the 40-foot container of ceiling fan products did not belong to the 2nd Appellant.

98 I was therefore broadly satisfied that the production of documents sought added or subtracted to the Appellants' case and the Appellant's assertion of the privilege would result in inconsistent positions on affidavit. Therefore, the Reply Affidavits would be sufficient to constitute an implied waiver of the privilege against self-incrimination over the documents requested for by the Respondents.

(1) When material has been put before the court

99 In this case, while the 1st Appellant has filed his Reply Affidavits, OA 1005 and OA 1012 had yet to be heard. There was thus an anterior question as to whether the Appellants could even be said to have put the material before the court for the purposes of asserting a positive case in the committal proceedings, which then thereby implicitly waived their right to invoke the privilege against self -incrimination.

100 The Respondents submitted that the mere filing of the Reply Affidavits sufficed. Unless there is cross-examination, the affidavit would be all that would be used for the committal hearing. The Appellants submitted that the mere filing

of the Reply Affidavits was insufficient. As there had not been any committal hearing, the affidavits filed cannot be held against them.

101 I note that in *Comet Products*, Lord Denning MR observed, in the context of whether a party was liable to be cross-examined, that mere filing of an affidavit is not sufficient, but where a party has filed and gone on to use it in court, then the party is liable to be cross-examined upon the affidavit if the court so orders; *Comet Products* at 74F. This position has also been taken locally in *Motorola Solutions Credit Co LLC v Kemal Uzan* [2015] SGHC 228 ("*Motorola Solutions Credit*"). There, the plaintiffs referred to some e-mails in an affidavit supporting a specific discovery application. The High Court took the view that the application for a declaration of legal privilege over the e-mails was promptly made by some of the defendants, because once the specific discovery application was heard, the affidavit would be deployed and the e-mails admitted into evidence. Once admitted in evidence, privilege would be lost. However, until the specific discovery application was heard, the affidavit filed in support of the application was not yet admitted in evidence as the filing of the affidavit was only preparatory to the admission of that evidence; *Motorola Solutions Credit* at [14].

102 In my assessment, the mere filing of the Reply Affidavits did not mean that the Reply Affidavits were received into evidence. In the ordinary course of events, unless the Appellants disclaim the affidavits at the committal hearing, the Reply Affidavits would be admitted and placed before the court. The Appellants would thus be taken to have impliedly waived their privilege against self-incrimination as the Appellants would presumably be relying on the Reply Affidavits. However, in this case, while the Respondents have referred to it in their application for production of documents, the Reply Affidavits, affirmed

and filed to resist the committal hearing, have yet to be formally admitted into evidence, because the committal hearing has yet to be heard.

103 Hence, it remained open for the Appellants not to place themselves in an inconsistent position. In the Appellants' supplementary affidavit, they requested for leave, in the event that the court was not inclined to allow the privilege against self-incrimination to be asserted, to withdraw the 1st Appellant's Reply Affidavits.[52] The Respondents, however, contended that the Appellants should not be allowed to do so.[53] In the premises, I considered whether the Appellants should be allowed to withdraw the Reply Affidavits.

104 In *ARX*, the Court of Appeal held that, if there was an implied waiver of privilege, it was possible for references to privileged material to be deleted and for privilege to be preserved, if for example, the reference was inadvertent and the material had yet to enter the trial record; *ARX* at [71]:

> If the court concludes that there has been an implied waiver of privilege, it will then have to consider the extent of the disclosure required. In certain circumstances, disclosure of only a part of the document might suffice if that is all that is needed to correct the unfairness; in other cases, remedial action can be taken to obviate the need for disclosure (see *Great Atlantic* ([59] *supra*) at 539H *per* Templeman LJ). For instance, if reference was made only to a part of a document which is clearly severable from the whole, then disclosure of just the implicated section might suffice to remedy the prejudice. In other instances, **for example if the reference was inadvertent and the material had yet to enter the trial record, it might be possible for the references to be deleted and privilege to be preserved** (see *The Law of Privilege* at para 5.34).
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> [emphasis added in bold]

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52 Appellants' supplementary affidavit at paras 16–18.

53 RSS at paras 17–26.

105 The court therefore took the view that a mere reference in a pleading to a document does not constitute an automatic waiver of privilege over that document. In this regard, the court noted the formulation of an election order, espoused by Denning MR in *Buttes Gas and Oil Co v Hammer (No 3)* [1981] 1 QB 223 ("*Buttes*"), on the premise that there had been a waiver of privilege; *ARX* at [78]. To remedy the waiver, a party would be forced to elect to either produce the document or to strike out the offending portions of the pleadings; *ARX* at [78(a)]. In my assessment, while *ARX* and *Buttes* related to waiver of privilege by references in a pleading, the principle that a party may be allowed to elect ought to apply in the present circumstances as well, where waiver is attributable to the filing of positive defences in a committal proceeding I therefore took the view that since the Reply Affidavits have yet to be read in court or otherwise relied on by the Appellants, it was open to the Appellants at this stage to elect between the production of the requested documents or to withdraw the Reply Affidavits.

106 The Respondents relied on the Canadian decision of *Gill v Gill* [2004] BCJ No 781 ("*Gill*"), where the British Columbia Supreme Court had the opportunity to consider when a party may be permitted to withdraw its filed affidavit. The court at [36], after canvassing the authorities, noted the following non-exhaustive factors to be considered:

1. Was the affidavit filed by mistake?
2. Has the affidavit been used, in the sense of having been before the court, during the course of considering an application?
3. Is there a pending application before the court for which a party has indicated it intends to rely upon the affidavit?
4. Is the application to withdraw the affidavit made as a strategic or tactical decision to deny the other party

> access to relevant information or the ability to cross-examine the deponent?
>
> 5. Would the other party be prejudiced in any way by the withdrawal of the affidavit?
>
> 6. Are there policy considerations which would militate against a withdrawal of the affidavit?
>
> 7. Would the administration of justice be adversely affected by the withdrawal of the affidavit?

107 The Respondents also cited Prof Jeffery Pinsler SC in his article *Disclosure of Evidence Before Trial: The Development of the Rules of Court and the Transformation of Policy* [1998] Sing JLS 15. Prof Pinsler noted at p 21 that a party may decide that it was not necessary or desirable for his own witness's affidavit to stand as evidence and may seek to rely on the general rule that an affidavit is not to be received in evidence unless the witness is present for cross-examination. In this context, he voiced concern with such a tactical manoeuvre, as it may cause uncertainty in evidence and as a court document, it should not be withdrawn at a whim.

108 The Appellants submitted that there is a right to elect to withdraw affidavits. They relied on *In Re Ottaway* [1882] 20 Ch 126 ("*Ottaway*"), in which a registrar expressed the view that he had "never known a case in which a party has been held compellable to read an affidavit (which he desired to withdraw) merely because it had been filed". This statement was affirmed by the English Court of Appeal of England and Wales; *Ottaway* at 129.

109 In my judgment, a party does not have an untrammelled right to withdraw an affidavit. As noted by Prof Pinsler, the tactical withdrawal of affidavits may lead to uncertainty in evidence, as parties in presenting their case would have operated on the assumption that all affidavits filed would, in the

ordinary course of events, be admitted into evidence. Brett LJ expressed the following view in *In re Quartz Hill &c. Company* (1882) 21 Ch D 642 at 646, as cited in *Gill* at [11].

> I cannot imagine anything more calculated to bring the course of justice into contempt than to allow a person to file evidence which if there is no cross-examination makes in his favour, but which he knows will break down on cross-examination, and then to withdraw it if he finds that cross-examination is threatened.

I therefore assessed the circumstances to determine if the Appellants should be allowed to withdraw the Reply Affidavits.

110 First, while the Reply Affidavits were not filed by mistake, I accepted the Appellants' evidence that they were advised by lawyers at the time (from a different firm), and their understanding was that they were required to file the Reply Affidavits, *ie*, they had no choice to do so.[54] As the interaction between the privilege against self-incrimination and the committal proceedings did not appear to be previously considered in Singapore, and this is a novel issue, I gave the Appellants the benefit of doubt.

111 Second, I did not think that the Reply Affidavits had been used substantively; see *Comet Products* and *Motorola Solutions Credit* as analysed at [101] above. In *Templeton Insurance Ltd v Motorcare Warranties Ltd* [2012] EWHC 795 (Comm) ("*Templeton*"), which the Respondents cited,[55] the English High Court took the position that the second and third defendants' affidavit evidence would have been inadmissible in the hearing of the application for "no case to answer", if it had simply been sworn and filed in accordance with the

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54 Appellants' supplementary affidavit at para 17.

55 RSS at f/n 15.

court's order. But on the facts, the court found that it had been used by counsel for the second defendant. The judge had been invited to read it in advance of the hearing, it was referred to in the second defendant's skeleton and the evidence was, in part, relied on at the opening of trial by opposing counsel without objection. In this context, the court rejected the argument that the affidavit evidence could not be relied on in the hearing for "no case to answer"; *Templeton* at [24] (under the header "The Evidence"). In the present case, while the Respondents have referred to the Reply Affidavits as the basis for SUM 1737, the Appellants themselves have not relied on it for any purpose since the committal proceedings have not yet been heard.

112 Third, I accepted the Respondents' contention that the withdrawal will deny disclosure of the documents sought. But this denial of disclosure, if allowed, would be pursuant to the Appellants' privilege against self-incrimination, and the Respondents' description of it as "tactical" did not detract from the fact that the Appellants were entitled to invoke the privilege.[56]

113 Fourth, I did not agree with the Respondents that the balance of prejudice weighed against permitting the withdrawal of the Reply Affidavits. The Respondents contended that they had been prejudiced as the proceedings were unnecessarily lengthened by the course of events.[57] But in my view, any protraction of proceedings was attributable to the Appellants' past conduct and would not be exacerbated by a withdrawal of the Reply Affidavits. It would in any event, be compensable by costs. By withdrawing the Reply Affidavits, the Appellants have withdrawn the evidence they had earlier relied on in their

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56 RSS at para 21.

57 RSS at para 21.

defence. The Appellants' position was that this would mean that the Appellants are in effect "pleading guilty to the charge", as no positive defence would be averred.[58] I agreed with the Appellants that time and costs would be saved for all parties since they would effectively proceed to the next stage, which is on sentencing. Further, in the event the Appellants apply to give oral evidence at the committal hearing and the court, for whatever reason, grants them permission to do so, it would be open to the Respondents to contend that the Appellants had not set out their case on affidavit nor furnished any documents in support of their contentions.

114 Having been satisfied that the use of the Reply Affidavits would have amounted to an implied waiver of the Appellants' right to invoke the privilege against self-incrimination, and having regard to the pertinent factors, I granted leave for the Appellants to withdraw the Reply Affidavits. In the circumstances, I found that the Appellants had not taken steps which could be regarded as them impliedly waiving the privilege against self-incrimination.

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58 Appellants' Supplemental Written Submissions dated 1 October 2025 at para 25.

Conclusion

115 For the reasons above, I allowed the appeal. I granted leave to the Appellants to withdraw the 1st Appellant's Reply Affidavits and set aside the orders made below.

Kwek Mean Luck
Judge of the High Court

Lee Wei Han Shaun, Oh Pin-Ping, Loy Ming Chuen Brendan, Lieu Kah Yen and Lim Zhi Ying Julia (Bird & Bird ATMD LLP) for the applicants;
Nakoorsha bin Abdul Kadir and Nicholas Say Gui Xi (Nakoorsha Law Corporation) for the respondents.