

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 7

Originating Summons No 1137 of 2019
Summons No 4835 of 2019

Between

RCMA Asia Pte Ltd
(formerly known as Tong Teik
Pte Ltd)

... Applicant

And

Matthew Peloso

... Respondent

GROUND OF DECISION

[Contempt of Court] — [Civil contempt]
[Contempt of Court] — [Sentencing]

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RCMA Asia Pte Ltd (formerly known as Tong Teik Pte Ltd)

v

Peloso, Matthew

[2021] SGHC 7

High Court — Originating Summons No 1137 of 2019, Summons No 4835 of 2019

Chua Lee Ming J

22 June, 22, 23 September 2020

14 January 2021

Chua Lee Ming J:

Introduction

1 The applicant, RCMA Asia Pte Ltd (“RCMA”), commenced these contempt proceedings against Mr Matthew Peloso (“Peloso”), alleging that Peloso, as an officer and sole director of a company known as Sun Electric Power Pte Ltd (“SEP”), breached an injunction order dated 11 May 2018 that was granted against SEP (the “Injunction Order”) in Suit No 191 of 2018 (“Suit 191”).

2 Peloso was cross-examined on his affidavits. I found against Peloso with respect to only one of the grounds relied on by RCMA and imposed a fine of \$15,000 (in default, 10 days’ imprisonment) against him. I also ordered him to pay costs amounting to \$16,000. Both Peloso and RCMA have appealed against my decision.

Facts

3 In 2015, the Energy Market Authority of Singapore introduced the Forward Sales Contract Scheme (“FSC Scheme”) to spur competition and create liquidity in Singapore’s wholesale and retail electricity markets. A participant is required to carry out certain market-making obligations in the electricity futures market in respect of a volume of futures trades in return for incentive payments (“FSC Payments”). SEP (a company in the business of generating, transmitting, distributing and selling electricity) was at all material times a participant of the FSC Scheme.

4 RCMA was and is in the business of trading energy and other commodities. SEP outsourced its obligations under the FSC Scheme to RCMA. RCMA agreed to assume SEP’s obligations under the FSC Scheme in return for a 70% share of all the FSC Payments that SEP would receive under the FSC Scheme (the “Agreement”). Pursuant to a Deed of Assignment dated 7 December 2016, SEP assigned to RCMA, among other things, 70% of all its “present and future rights” to receive the FSC Payments.¹

5 On 22 February 2018, RCMA commenced Suit 191 against SEP, claiming, among other things, the sum of S\$6,533,333.52 being RCMA’s 70% share of the FSC Payments received by SEP for the months of December 2017 to July 2018.² RCMA also filed an *ex parte* application for, among other things, an injunction to restrain SEP, its directors, officers, employees and/or agents from disposing, dealing with or diminishing the value of RCMA’s 70% share of the FSC Payments received by SEP.

6 On 26 February 2018, I directed that RCMA’s *ex parte* application for an injunction be heard *inter partes* and granted an interim injunction restraining

SEP, its directors, officers, employees and/or agents from “in any way disposing, dealing with or diminishing [RCMA’s] 70% share of FSC Payments received by [SEP] in respect of market making trades taken on by [RCMA] to 26 February 2018”, pending the *inter partes* hearing (the “February 2018 Order”).³

7 The *inter partes* hearing was held on 11 May 2018. I granted RCMA an interim injunction, pending final determination of Suit 191, restraining SEP, its directors, officers, employees and/or agents from “in any way disposing, dealing with or diminishing the value of” RCMA’s 70% share of the FSC Payments paid to SEP, provided that RCMA met its obligations under the Agreement (the “Injunction Order”).⁴

8 By July 2018, RCMA had completed its obligations under the Agreement.⁵ Between January and August 2018, the FSC Payments for the period from January to June 2018 were paid into SEP’s account No 689624781001 with OCBC Bank (the “OCBC Account”). The OCBC Account had been set up for the specific purpose of receiving the FSC Payments.⁶

9 It was not disputed that the amount of FSC Payments was fixed at \$1,555,555.60 per month except that the payment for June 2018 was made over three months from June to August 2018.

10 Suit 191 was fixed for trial in August 2019. However, SEP failed to exchange affidavits of evidence-in-chief in accordance with the Court’s directions and its solicitors discharged themselves from further acting. The trial was vacated.

11 On 21 August 2019, SEP applied to place itself under judicial management in Originating Summons No 1060 of 2019 (“OS 1060”). Copies of the application and a supporting affidavit filed by Peloso on 21 August 2019 (“Peloso’s 1st Affidavit in OS 1060”) were served on RCMA. On reviewing Peloso’s 1st Affidavit in OS 1060, RCMA discovered the following:

(a) On 24 September 2018, Peloso withdrew S\$1.5m from the OCBC Account and loaned it to Sun Electric Energy Assets Pte Ltd (“SEEAPL”), another company that he controlled.⁷

(b) Peloso transferred S\$2m on 27 November 2018, S\$4m on 3 December 2018 and S\$91,555.39 on 17 December 2018 from the OCBC Account to SEP’s account No 0489073012 with DBS Bank Ltd (the DBS Account”). The total amount transferred was S\$6,091,555.39.⁸

(c) On 18 January 2019, Kashish Worldwide FZE (“Kashish”), a company incorporated in the United Arab Emirates, sued SEP in Suit 74 of 2019 (“Suit 74”) claiming S\$6,995,755.78 being alleged trading losses incurred by SEP under various contracts for differences that SEP had allegedly executed with Kashish between 2016 and 2018. SEP did not enter an appearance and on 4 February 2019, Kashish entered default judgment against SEP for that amount and interest. Peloso informed Kashish that SEP had funds in excess of S\$6m in the DBS Account and provided Kashish with a copy of the bank statement for December 2018. On 18 February 2019, Kashish obtained a garnishee order to show cause in respect of the DBS Account. On 8 March 2019, the Court made a final garnishee order in respect of the moneys in the DBS Account. On 21 March 2019, DBS Bank Ltd paid the sum of S\$6,091,555.39 from the DBS Account to Kashish.⁹

According to Peloso, he had given Kashish a copy of the DBS Account statement for December 2018 because he was hoping to avoid a lawsuit by Kashish by showing Kashish that SEP had the funds to pay Kashish once the funds were released from the Injunction Order.¹⁰

12 On 10 September 2019, RCMA applied for leave to apply for an order of committal against Peloso. Leave was granted on 24 September 2019. On 30 July 2020, I granted RCMA’s application for Peloso to be cross-examined on the affidavits that he had filed in these proceedings.

RCMA’s case

13 In its Statement Pursuant to Order 52, Rule 2 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (the “O 52 Statement”), RCMA alleged that Peloso, as an officer of SEP, breached the Injunction Order by causing SEP to dispose, deal with and/or diminish the value of its 70% share of the FSC Payments that were subject to the Injunction Order. Specifically, RCMA alleged that Peloso caused SEP to:

- (a) withdraw S\$1.5m from the OCBC Account on 24 September 2018 to loan to SEEAPL (the “September 2018 Withdrawal”);¹¹
- (b) transfer a total amount of S\$6,091,555.39 from the OCBC Account to the DBS Account between 27 November and 17 December 2018 (the “DBS Transfers”);¹² and
- (c) fail to:
 - (i) contest the claim by Kashish;

- (ii) inform Kashish and the Court hearing the garnishee application about the Injunction Order; and/or
- (iii) inform RCMA of Kashish’s application to garnish the funds that were subject to the Injunction Order (the “Injunction Funds”).¹³

14 It was not disputed that Peloso had knowledge of the Injunction Order and that he had to comply with the Order. It was also not disputed that Peloso was responsible for the actions/omissions set out above.

Whether the September 2018 Withdrawal breached the Injunction Order

15 In his affidavit filed in these contempt proceedings, Peloso asserted that the September 2018 Withdrawal did not breach the Injunction Order for the following reasons:¹⁴

- (a) The Injunction Order (made in May 2018) only enjoined 70% of FSC Payments for January to June 2018 excluding April 2018. As the FSC Payments per month was \$1,555,555.60, the total amount enjoined by the Injunction Order was \$5,444,444.60. The FSC Payment for April 2018 had been withdrawn on 30 April 2018 to pay expenses (the “April 2018 Withdrawal”) and therefore could not have been enjoined by the Injunction Order.
- (b) After the September 2018 Withdrawal, SEP still had \$5,669,200.15 comprising:
 - (i) a balance of S\$4,891,635.39 in the OCBC Account;

- (ii) a balance of \$639,158.12 in its trading account with DBS (the “DBS Trading Account”); and
- (iii) a balance of \$138,406.64 in SEP’s operating account (No 686111840001) with OCBC Bank (“SEP’s Operating Account”).

16 I rejected Peloso’s assertion. First, in my view, Peloso’s reasons for his assertion were nothing more than an afterthought. Peloso’s reasons were inconsistent with his previous explanations given elsewhere:

- (a) In Peloso’s 1st Affidavit in OS 1060, he admitted that the September 2018 Withdrawal should not have been made and said that he had made the withdrawal because “SEEAPL needed the money urgently and the funds in the OCBC Account were the only option available at the time”.¹⁵
- (b) In Peloso’s affidavit dated 2 September 2019, filed in a separate action in Suit 200 of 2016 (“Peloso’s 4th Affidavit in Suit 200”), he claimed that the September 2018 Withdrawal “was done purely out of desperation”.¹⁶ Suit 200 of 2016 was an action commenced by SEP and another related company claiming damages for trading losses against a company called Menrva Solutions Pte Ltd and another party (“Suit 200”).

17 In his oral testimony, Peloso explained that both the abovementioned affidavits were drafted by the same solicitor who had made the “same calculation errors”.¹⁷ I did not believe Peloso’s explanation. No evidence was adduced of the solicitor’s alleged errors. Instead, Peloso’s explanation was

inconsistent with his second affidavit filed in OS 1060 on 29 August 2019 (“Peloso’s 2nd Affidavit in OS 1060”). In that affidavit, Peloso attempted to explain why he had stated (in Peloso’s 1st Affidavit in OS 1060) that the *April 2018 Withdrawal* was wrong.¹⁸ Peloso did not mention any calculation or other errors by his solicitor; he also did not correct his statement (in Peloso’s 1st Affidavit in OS 1060) that the September 2018 Withdrawal was wrong.

18 Further, in Peloso’s 2nd Affidavit in OS 1060, he claimed that in Peloso’s 1st Affidavit in OS 1060, he had “assumed that [the April 2018 Withdrawal] was not permitted” and that having “since had the opportunity to review [his] records thoroughly, [he] realised that [his] impression was mistaken”. However, Peloso’s mistaken assumption about the April 2018 Withdrawal was immaterial to the matter before me. It was not Peloso’s case that his admission in his 1st Affidavit in OS 1060 (that the September 2018 Withdrawal was wrong) was caused by his mistaken assumption about the April 2018 Withdrawal. In any event, according to Peloso, SEP had almost fully made up the shortfall created by the April 2018 Withdrawal.¹⁹ Peloso could not have thought that the September 2018 Withdrawal was wrong as a result of any shortfall created by the April 2018 Withdrawal.

19 In my view, Peloso was not a credible witness. I found that the real reason for the September 2018 Withdrawal was as stated in the two affidavits referred to at [16] above.

20 Second, I disagreed with Peloso’s assertion that the balance amounts in the DBS Trading Account and SEP’s Operating Account could be counted as part of the Injunction Funds. The amount in the DBS Trading Account as at 26 September 2018 was \$728,405.12. DBS retained a margin deposit of \$89,247

from this amount, leaving a balance amount of \$639,158.12. However, the balance in the DBS Trading Account would be further reduced if DBS required additional margin for either existing or new trades. It might have been different if SEP had withdrawn the balance in the DBS Trading Account and deposited the amount in either the OCBC Account or the DBS Account, but SEP did not do so. As for SEP's Operating Account, the moneys in this account were meant for SEP's operational expenses; the expectation must be that these moneys would be so used. I noted that Peloso did not produce statements of SEP's Operating Account for the months after September 2018, to show what happened to the balance amount in the account.

21 In my view, neither of the balances in the DBS Trading Account or SEP's Operating Account could be counted as part of the Injunction Funds. The Injunction Order must be complied with both in letter and in spirit (*Lee Shieh-Peen Clement and another v Ho Chin Nguang and others* [2010] 4 SLR 801 at [17]). It could not be said that by making the September 2018 Withdrawal and relying instead on the balances in the DBS Trading Account and SEP's Operating Account, SEP and/or Peloso had complied with the Injunction Order.

22 It was also telling that Peloso did not make use of the moneys in the DBS Trading Account and/or SEP's Operating Account to make the loan to SEEAPL despite his assertion that these moneys were freely available to SEP.

23 I agreed with Peloso that the Injunction Funds did not include the FSC Payment for April 2018 since this amount had been withdrawn before the Injunction Order was granted on 11 May 2018. This meant that the amount of the Injunction Funds was \$5,444,444.60²⁰ and not \$6,533,333.52 (as RCMA claimed). The September 2018 Withdrawal left the OCBC Account with

\$4,891,635.39. This was clearly short of the amount of \$5,444,444.60 that was required for the Injunction Funds. Accordingly, I found that Peloso breached the Injunction Order by causing the September 2018 Withdrawal.

24 The question as to whether the April 2018 Withdrawal breached the February 2018 Order did not arise because the present contempt proceedings were based only on alleged breaches of the *Injunction Order*. The April 2018 Withdrawal would not have breached the Injunction Order since, as stated above, the Injunction Funds did not include the FSC Payment for April 2018. In any event, the O 52 Statement did not allege that the April 2018 Withdrawal breached the Injunction Order. The grounds on which committal is sought must be set out in the statement supporting an application for committal: O 52 r 2 of the Rules of Court. The supporting facts for committal must be included in the statement and there should be sufficient particulars in the statement to define the scope of the contempt: *Singapore Civil Procedure 2020* vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 2020) at para 52/2/2. As the Court of Appeal emphasised in *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 (“*Mok Kah Hong*”) (at [61]):

... It is a fundamental rule of justice that a person called upon to answer a charge must first know the precise case he has to meet and should be accorded ample opportunity to refute the allegations. To this end, the O 52 r 2(2) statement serves a crucial role in enabling the respondent to know the case that has been put forth against him. It also functions as the boundaries of the applicant’s case, such as to prevent the applicant from relying on grounds that have been omitted from the statement. This safeguards the interests of the respondent, whose liberty is at stake. ...

Whether the DBS Transfers breached the Injunction Order

25 RCMA submitted that SEP was not entitled to make the DBS Transfers because the OCBC Account had been set up to receive the FSC Payments. I disagreed with RCMA. There was nothing in the Injunction Order that required SEP to keep the funds in the OCBC Account or that prohibited SEP from transferring the funds in the OCBC Account to another account; RCMA had not sought any such order. The Injunction Order merely restrained SEP, its directors, officers, employees and/or agents from “in any way disposing, dealing with or diminishing the value of” RCMA’s 70% share of the FSC Payments. In my view, the mere transfer of the funds from the OCBC Account to the DBS Account did not breach the Injunction Order. Indeed, taken to its logical conclusion, RCMA’s submission would have meant that the DBS Transfers would have breached the Injunction Order even if the moneys had remained intact in the DBS Account. This could not be correct. Any moneys in the DBS Account would have remained available to satisfy any judgment that RCMA may have succeeded in obtaining in Suit 191.

26 As such, I found that the DBS Transfers did not breach the Injunction Order.

Whether SEP’s actions/omissions in relation to Kashish breached the Injunction Order

27 As stated at [13(c)] above, RCMA’s third ground in these committal proceedings was that Peloso caused SEP to dispose, deal with and/or diminish the value of its 70% share of the FSC Payments by causing SEP to:

- (a) fail to contest the claim by Kashish;

- (b) fail to inform Kashish and the Court hearing the garnishee application, about the Injunction Order; and/or
- (c) fail to inform RCMA of Kashish's application to garnish the Injunction Funds.

28 RMCA's case as set out in the O 52 Statement did not allege that the trades between SEP and Kashish were fictitious or that Kashish's claim was a sham. Peloso testified that the decision not to contest Kashish's claim was based on a legal opinion dated 20 January 2019.²¹ Although the legal advice to SEP pointed out some technical defences, ultimately, the position remained that SEP had no defence once Kashish addressed the technicalities. In the circumstances, the decision not to contest Kashish's claim was a reasonable one. The decision not to contest the garnishee application was also reasonable. After all, Kashish had a valid judgment in its favour. The failure to inform Kashish or the Court in the garnishee proceedings of the Injunction Order was inconsequential, as was the failure to inform RCMA about the garnishee application. The Injunction Order was not material to the garnishee proceedings. The Injunction Order did not give RCMA any proprietary rights over the Injunction Funds. Neither did it give RCMA any priority to the Injunction Funds as against Kashish in the garnishee proceedings.

29 On the basis that the trades between SEP and Kashish were not fictitious, in my view, none of the above omissions by SEP could be said to have breached the Injunction Order. During oral submissions, RCMA confirmed that it was not proceeding on the basis of the ground as stated in the O 52 Statement.²² Instead, RCMA submitted that its case was based on a conspiracy between SEP/Peloso

and Kashish to siphon away the Injunction Funds. RCMA argued that pursuant to this alleged conspiracy:

- (a) SEP entered into fictitious trades with Kashish which created a liability on SEP's part;
- (b) Kashish sued SEP and SEP allowed Kashish to enter judgment by not contesting the claim; and
- (c) SEP did not object to Kashish's application in the garnishee proceedings to attach the Injunction Funds and did not inform RCMA of the garnishee proceedings.

30 I rejected RCMA's submission. RCMA's case based on the alleged conspiracy was not one of the grounds in the O 52 Statement. The alleged conspiracy ought to have been clearly set out and particularised in the O 52 Statement to inform Peloso in clear terms what was the case that he had to meet. As the Court of Appeal said in *Mok Kah Hong*, the O 52 Statement "also functions as the boundaries of the applicant's case, such as to prevent the applicant from relying on grounds that have been omitted from the statement" (see [24] above). In my judgment, RCMA was not entitled to rely on the alleged conspiracy in these proceedings.

31 In any event, the burden was on RCMA to prove the alleged conspiracy *beyond a reasonable doubt* (*STX Corp v Jason Surjana Tanuwidjaja and others* [2014] 2 SLR 1261 at [8]). Granted, there were errors and inconsistencies in the contracts for differences relied upon by Peloso as evidence of the trades executed between SEP and Kashish and the amounts due to Kashish. Although these errors and inconsistencies raised questions about the authenticity of the

trades, in my judgment, the evidence was not sufficient to prove *beyond a reasonable doubt* that Kashish was engaged in a conspiracy with SEP and/or Mr Peloso to defraud RCMA by entering into fictitious trades, commencing Suit 74, obtaining judgment in default and enforcing the judgment by attaching the Injunction Funds.

32 Accordingly, I found that RCMA had not proved its case for committal in connection with SEP's and/or Peloso's actions/omissions in relation to Kashish.

Sentence

33 I found that only the September 2018 Withdrawal breached the Injunction Order. It was not disputed that the September 2018 Withdrawal was repaid in full. \$1.2m was repaid on 16 November 2018 and the balance of \$300,000 was set off against debts owed by SEP to SEEAPL.²³ In the circumstances, as RCMA also accepted, a custodial sentence was not warranted. Nevertheless, in my view, the breach committed by Peloso showed a blatant disregard for the Injunction Order. In my judgment, a fine of \$15,000 (in default, ten days' imprisonment) was appropriate and I so ordered.

34 In its application for committal, RCMA also sought an order that Peloso pay the sum of \$6,533,333.52 (*ie*, the amount of the Injunction Funds according to RCMA) to the DBS Account or to any other bank account in SEP's name. As I found that the only act of contempt that had been proven was the September 2018 Withdrawal and the amount withdrawn had been repaid, the question as to whether Peloso should be ordered to make good the amount withdrawn, was moot.

Conclusion

35 For the reasons set out above, I found that Peloso had committed contempt of court by making the September 2018 Withdrawal in breach of the Injunction Order. I imposed a fine of \$15,000 (in default, ten days' imprisonment). I also ordered Peloso to pay costs in connection with these proceedings in the total sum of \$16,000 inclusive of disbursements.

Chua Lee Ming
Judge

Mohammed Reza s/o Mohammed Riaz, Victoria Katerina Jones and
Kwek Yuan, Justin (JWS Asia Law Corporation) for the plaintiff;
Lim Chee San (TanLim Partnership) for the defendant.

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- 1 David Maher's 1st Affidavit filed on 10 September 2019 ("Maher's 1st Affidavit"), at
p 73.
2 Maher's 1st Affidavit, at pp 57–79.
3 Statement pursuant to Order 52, Rule 2 of the Rules of Court ("O 52 Statement"), at pp
12–13.
4 O 52 Statement, at pp 15–16.
5 Maher's 1st Affidavit, at para 20.
6 Peloso's 4th Affidavit in S 200/2016, at para 89 (see David Maher's 3rd Affidavit filed
on 4 November 2019 ("Maher's 3rd Affidavit"), at p 53).
7 Maher's 1st Affidavit, at para 25.
8 Maher's 1st Affidavit, at para 27.
9 Maher's 1st Affidavit, at p 223.
10 Peloso's 4th Affidavit in Suit 200, at para 105 (see Maher's 3rd Affidavit, at p 59); NE,
22 September 2020, at 84:4–10.
11 O 52 Statement, at paras 5(a) and 22.
12 O 52 Statement, at paras 5(a) and 23.
13 O 52 Statement, at paras 5(b) and 31.

- 14 Peloso’s 1st Affidavit filed on 21 October 2019 (“Peloso’s 1st Affidavit”), at paras 6,
9–10.
- 15 Peloso’s 1st Affidavit in OS 1060, at para 48(k) (see Maher’s 1st Affidavit, at pp 119 –
120).
- 16 Peloso’s 4th Affidavit in Suit 200, at para 87 (see Maher’s 3rd Affidavit, at p 52).
17 NE, 22 September 2020, at 75:30–76:23.
- 18 Peloso’s 2nd Affidavit in OS 1060, at paras 4–6.
- 19 Peloso’s 1st Affidavit in OS 1060, at paras 48(i) and (j) (see Maher’s 1st Affidavit, at p
119).
- 20 \$1,555,555.60 x 5 x 70%.
- 21 Peloso’s List of Documents dated 3 August 2020.
22 NE, 23 September 2020, at 11:9–27.
- 23 Peloso’s 1st Affidavit, at para 11; NE, 23 September 2020, at 4:13–31.