

**TIONG CHENG PENG & ANOR v. KER MIN CHOO & ORS**

HIGH COURT MALAYA, JOHOR BAHRU  
 GUNALAN MUNIANDY JC  
 [ORIGINATING PETITION NO: 26-4-2008]  
 17 DECEMBER 2014

**CIVIL PROCEDURE:** *Contempt of court – Committal proceedings – Whether contempt of court proven beyond reasonable doubt – Whether procedural safeguards strictly adhered to commit contemnor to prison*

The first and second respondents were the directors and shareholders of Syarikat Jotang Wires & Cables Sdn Bhd ('Jotang') which was wound-up by an order of the Johor Bahru High Court in 2011. Teo Cheng Hua ('TCH') was appointed as the liquidator of Jotang *vide* the winding-up order. Until his removal, he had full access to the books, documents, accounts, records and data of Jotang in his capacity as the liquidator. He was later removed as the liquidator *vide* an order of the court under s. 232(1) of the Companies Act 1965 ('the order') in 2013 and was replaced by the official receiver ('OR'). Following the removal, TCH had failed to serve the liquidation documents to the OR as the newly appointed liquidator within eight days from the date of the order and had also failed to hand over all relevant books documents, accounts, records and data which was in his custody to the OR. As such, the respondents applied for a committal order to be made against TCH for contempt of court for deliberately breaching the express terms of the order.

**Held (allowing application for committal order with costs):**

- (1) An act of disobedience to a court order, as alleged in this case to be wilful and deliberate, is recognised as conduct amounting to contempt of court. To be punishable, it must pose a serious, real or substantial risk of prejudice to a fair and proper trial of pending legal proceedings. Strict adherence to all procedural safeguards prescribed by law is vital in committal proceedings for contempt which are penal in nature. This must necessarily be so as committal is indeed a very serious matter as it involves deprivation of a person's liberty on being found guilty of and convicted for contempt. The courts are required to proceed very carefully before making order to commit the contemnor to prison. (para 10)
- (2) It was beyond dispute that the proposed contemnor ('PC') had blatantly not complied with and disregarded the time-frame stipulated in the order. Not only that he had attempted to initiate alteration or variation of the stipulated time-frame by communication with the OR, he had further made allegations to the effect that the order had been unlawfully and wrongfully obtained which was tantamount to challenging the validity of the order itself. His conduct was manifestly in contempt of the order that required strict compliance by him to facilitate liquidation

- A of the company being taken over by the OR in compliance with the order and clearly obstructed the process of proper liquidation by the OR that was prejudicial to the legitimate interests of the contributories. (para 13)
- (3) His reason for non-compliance, which was that the applicants had failed to pay the prescribed fees to the OR for the purpose of opening a file and had allegedly led to his attempt to serve documents to the OR being rejected, was rendered baseless because documentary evidence showed that no documents whatsoever had been received from TCH. As such, his defence was devoid of any truth and the reason advanced was wholly incredible. It instead disclosed dishonesty on his part in presenting evidence to the court. His allegation that the applicants had failed to pay the prescribed fees was hollow and showed his tendency as an experienced liquidator to present misleading and self-serving picture of the facts for his own advantage. (paras 16 & 17)
- (4) The applicants had made a clear-cut case of contempt of court against TCH beyond any reasonable doubt for intentional and deliberate breach of the order without any reasonable and credible grounds. The complaint of his wilful disobedience of the specific and express terms of the order was indisputable and uncontradicted. His blatant disregard of his duty to adhere to the order as an officer of the court was inexcusable for which he had to be penalised *via* committal proceedings. (para 18)

**Case(s) referred to:**

*Hong Kwi Seong v. Ganad Media Sdn Bhd & Another Appeal* [2012] 8 CLJ 667 CA (*refd*)  
*Loot Ting Yee v. Tan Sri Sheikh Hussain Sheikh Mohamed & Ors* [1982] CLJ 66A;  
[1982] CLJ (Rep) 203 FC (*refd*)

- F *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd* [2002] 4 CLJ 401 FC (*refd*)  
*Re B (JA) (An Infant)* [1965] Ch 1112 (*refd*)  
*Re Bramblevale Ltd* [1970] 1 Ch 128 (*refd*)  
*Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849  
FC (*refd*)

**Legislation referred to:**

- G Companies Act 1965, ss. 228, 232(1)  
Courts of Judicature Act 1964, s. 13  
Federal Constitution, art. 126  
Rules of Court 2012, O. 52 rr. 3(2), 4

**Other source(s) referred to:**

- H *Oswald's Contempt of Court*, 3rd edn, p. 6  
*For the 1st and 2nd respondents - Justin Voon (HV Yoong with him); M/s Moi, NK Koh & Chee*  
*For the liquidator/contemnor - NG Vinod (Mohd Sofian with him); M/s Tam Cheng Yau & Co*

- I *Reported by Lyana Shohaimay*

## JUDGMENT

**Gunalan Muniandy JC:**

[1] This is an application [encl. 162] by the first and second respondents (R1 and R2) in a winding-up petition for an order of committal against the court appointed liquidator, one Teo Cheng Hua, ('TCH') pursuant to O. 52 r. 4 of the Rules of Court 2012 ('ROC'). The applicants prayed for these orders:

- (i) That a committal order be given against TCH for contempt of court;
- (ii) That TCH be committed to prison for committing contempt of court;
- (iii) That TCH be ordered to pay a fine in the sum deemed fit by this court for the above contempt;
- (iv) That the cost of these proceedings be borne by TCH; and
- (v) Further and/or other reliefs to the applicants deemed fit and just by the court.

**Background Of Case**

[2] R1 and R2 were directors and shareholders/contributories of Syarikat Jotang Wires & Cables Sdn Bhd ('Jotang company'), a limited company incorporated under the Companies Act 1965 ('CA'). Jotang company was wound-up by an order of Johor Bahru High Court ('JBHC') on 24 March 2011. TCH was appointed as liquidator of the Jotang company *vide* the said winding-up order. Thereafter, until he was removed, TCH had full access to all books, documents, accounts, records and data of the company in his capacity as liquidator. Subsequently, TCH was removed as liquidator *vide* order of this court dated 26 September 2013 ('the order'), under s. 232(1) of the CA on cause shown and replaced by the official receiver ('OR').

[3] At all material times, TCH's correspondence address was his office address at 2C & 2C-1, Jalan Giam, Taman Majidee, 80250 Johor Bahru and also at No. 9, Jalan Mohd Amin 7, 80100 Johor Bahru, Johor.

**Grounds For Committal**

- (i) According to para. (d) of the order TCH was directed to do the following act:

Teo Cheng Hua [No. Kelulusan: 517/04/12 (J/PH)] atau [No. K/P: 460810-01-5093] secara serta merta dan tidak lewat dari lapan (8) hari dari tarikh Perintah ini menyerahkan kepada Pegawai Penerima sebagai Pelikuidasi baru segala buku-buku, dokumen-dokumen, kertas-kertas, akaun-akaun, surat-menyurat dan segala dokumen-dokumen lain yang relevan dalam milikannya berkenaan dengan jawatannya sebagai Pelikuidasi.

- A (ii) TCH had failed to comply with and breached para. (d) of the order that clearly and specifically required him to hand over all relevant books, document, accounts, etc. in his custody as liquidator of the Jotang company to the OR within eight days from 26 September 2013 or on/ before 4 October 2013.
- B (iii) Without receipt of the complete liquidation documents in accordance with the terms of the order the OR was prevented from discharging his duties promptly and properly and thus, liquidation of the Jotang company could not proceed effectively at the material time.
- C (iv) TCH was clearly personally aware of the order, particularly para. (d), for *inter alia* these reasons!
- (a) He was served with the application for his removal dated 17 April 2013 (encl. 116) together with the supporting affidavit;
- D (b) He had filed an affidavit in reply dated 29 May 2013;
- (c) TCH was, thus, aware that if encl. 116 is allowed he would be required to serve the complete liquidation documents on the newly appointed liquidator within eight days from the date of the order;
- E (d) TCH had attended court on 22 May 2013 during the contempt hearing in chambers and was present in the vicinity of the court on 26 September 2013 when the order was made at the proceedings where he was represented by his counsel; and
- F (e) He was at all material times represented by solicitors who were clearly informed *vide* letter dated 2 October 2013 by the applicants' solicitors regarding para. (d) of the order and specifically of the requirement for complete liquidation documents to be served on the OR on or before 4 October 2013.
- G (v) At all material times, TCH and his solicitors did not intend to reply to correspondence from applicants' solicitors as to whether para. (d) of the order had been complied with and till to date there was non-compliance.
- H (vi) *Vide* applicants' solicitors' letter dated 28 November 2013 to TCH, a copy of the sealed order that had just been extracted was served on TCH.
- (vii) Thereafter, on enquiry from the OR by the applicants' solicitors, it was found that as at 17 October 2013 complete liquidation documents had yet to be served on the OR and TCH continued to breach and disobey the order.
- I (viii) Even after a lapse of more than two months TCH still did not comply with the order and this clearly constituted serious breach and total disrespect for the order.

- (ix) Applicants' solicitors had met with OR and were taken aback to be told that TCH had tried to negotiate and arrange ('mengurus') with the OR for the deadline to surrender the complete liquidation documentation to the OR to be extended. A
- (x) The order did not provide for any extension of time and no party could extend the time stipulated except the court. B
- (xi) At no instance had any reasonable explanation been given for non-compliance with the order nor did he have any valid ground for the failure at any material time.
- (xii) *Vide* letter dated 29 November 2013, applicants' solicitors had notified the OR that TCH could not arbitrarily alter the terms of the order as regards the time frame for surrender of the company documentation to the OR *via* the same letter the solicitors confirmed with the OR that up to 29 November 2013 the documentation had yet to be served on the OR. C  
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- (xiii) As at 6 December 2013, which was some two months one week subsequent to the order, the complete documentation had still not been released to the OR by TCH. It was only on 10 December 2013 that TCH served several documents on 10 December 2013 on the OR who confirmed that the documents were incomplete. E
- [4]** On the foregoing grounds, it was contended that this was a straightforward case where TCH had clearly committed contempt of court by deliberately breaching the express terms of the order. It was further alleged as follows: F
- (i) The breach of the order by TCH was serious and prejudicial to the applicants.
- (ii) Apart from that, TCH had attempted to abuse the court process and law by resorting to alter or vary the terms of the order to obtain an extension without a court order. G
- (iii) TCH had attempted to unnecessarily and wrongfully delay handing over of the liquidation document to the OR.
- (iv) As a consequence, there was serious interference in the administration of justice. H

#### The Law on Contempt of Court

**[5]** The Federal Court in *Loot Ting Yee v. Tan Sri Sheikh Hussain Sheikh Mohamed & Ors* [1982] CLJ 66A; [1982] CLJ (Rep) 203; [1982] 1 MLJ 142 dealt, *inter alia*, with the real question for the court's determination in a case of contempt. Raja Azlan Shah, Ag LP (as His Highness then was) laid down the test in these terms: I

- A We feel that the real question for the court in this case to decide whether there is contempt, is whether the risk of prejudice to a fair and proper trial of the pending legal proceedings is serious or real or substantial. That is an application of the ordinary *de minimis non curat lex* principle - the law does not concern itself with trifles. Intent alone is insufficient to establish contempt (see *R v. Ingrams & Ors., Ex parte Goldsmith*).
- B [6] In *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849; [2012] 3 MLJ 458, the Federal Court adopted the general definition of contempt of court given by *Oswald's Contempt of Court* (3rd edn.) at p. 6 as follows:
- C To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants, or their witnesses during the litigation.
- D [7] His Lordship Arifin Zakaria, CJ explained that art. 126 of the Federal Constitution, together with s. 13 of the Courts of Judicature Act 1964 empowered the Federal Court, the Court of Appeal and the High Courts to punish any contempt of itself. Having traced the traditional classification of contempt of court in England as being either civil or criminal wherein the general approach had been that a criminal contempt meant an act that so threatens the administration of justice that it requires punishment whereas by contrast civil contempt involved disobedience of a court order, His Lordship observed:
- E Contempt has been reclassified either as (1) a specific conduct of contempt for breach of a particular court order; or (2) a more general conduct for interfering with the due administration of justice. This classification is better explained in the words of Sir Donaldson MR in *Attorney-General v. Newspaper Publishing Plc, (supra)* at p. 362.
- F Of greater assistance is the reclassification as (a) conduct which involves a breach, or assisting in the breach, of a court order; and (b) any other conduct which involves an interference with the due administration of justice, either in a particular case or, more generally, as a continuing process, the first category being a special form of the latter, such inference being a characteristic common to all contempts per Lord Diplock in *Attorney-General v. Leveller Magazine Ltd* [1979] AC 440 at p 449.
- G This reclassification was adopted by the Court of Appeal in *Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd* [2001] 4 MLJ 577(CA).
- H [8] In another leading Federal Court case, *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd* [2002] 4 CLJ 401; [2002] 4 MLJ 241 the court adopted the general definition of contempt of court provided by *Oswald's Contempt of Court* (3rd edn.) as a good guide. The court went on to hold:
- I What therefore is contempt of court, 'is interference with the due administration of justice' - per Nicholls LJ at p 923 of *Attorney-General v. Hislop & Anor* [1991] 1 All ER 911 (CA).

In view of the generality of the phrase ‘interference with the due administration of justice’, we are of the view that the categories of contempt are never closed. To that extent we respectfully endorse the statement made by Low Hop Bing J, in *Chandra Sri Ram v. Murray Hiebert* [1997] 3 MLJ 240 at p 270:

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The circumstances and categories of facts which may arise and which may constitute contempt of court, in a particular case, are never closed. This is the same position as in the case of negligence in which the scope for development is limitless. Contempt of court may arise from any act or form whatsoever, ranging from libel or slander emanating from any contemptuous utterance, news item, report or article, to an act of disobedience to a court order or a failure to comply with a procedural requirement established by law. Any of these acts, in varying degrees, affects the administration of justice or may impede the fair trial of *sub judice* matters, civil or criminal, for the time being pending in any court.

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The particular matrix of the individual case is of paramount importance in determining whether a particular circumstance attracts the application of the law of contempt. Hence, a positive perception of the facts is a prerequisite in deciding whether or not there is any contravention necessitating the invocation of the law of contempt.

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[9] As regards the burden of proof of contempt of court, the Federal Court in *Tan Sri Dato’ (Dr) Rozali Ismail & Ors (supra)* adopted the settled principle as reaffirmed by Lord Denning MR in *Re Bramblevale Ltd* [1970] 1 Ch 128 in these words:

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A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time honoured phrase, it must be proved beyond reasonable doubt (see Lord Denning MR in at p 137).

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[10] An act of disobedience to a court order, as alleged in this case to be wilful and deliberate, is recognised as conduct amounting to contempt of court. To be punishable, it must pose a serious, real or substantial risk of prejudice to a fair and proper trial of pending legal proceedings. It is also trite law that strict adherence to all procedural safeguards prescribed by law is vital in committal proceedings for contempt which are penal in nature. This must necessarily be so as committal is indeed a very serious matter as it involves deprivation of a person’s liberty on being found guilty of and convicted for contempt. The courts are required to proceed very carefully before making an order to commit the contemnor to prison. [Cross, J in *Re B (JA) (An Infant)* [1965] Ch 1112].

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### Finding

[11] First and foremost is the issue raised by the proposed contemnor (“PC”) as to the *locus standi* of the applicants to institute this contempt action. Any party having sufficient interest in the outcome of the case can, in law,

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A initiate an action for committal. The applicants were the first and second respondents in the winding up petition and directors/contributories of the company. The contempt action is premised upon breach of the order obtained by the applicants for removal of the PC as liquidator. Hence, in the court's view, on the facts and in law, the applicants had sufficient interest  
B in the matter and the capacity to bring this action. In the result, the issue of *locus standi* as argued was a non-issue and without any basis.

[12] This contempt action is grounded on breach and non-compliance by the PC of the court order dated 26 September 2013 which *vide* para. (d) clearly and expressly required the PC to not more than eight days after the  
C order surrender to the official receiver ('OR') all documents, papers, accounts, etc of the company in his possession as the then liquidator appointed by the court.

[13] It was beyond dispute that the PC had blatantly not complied with and disregarded the time-frame stipulated in the order to do the said act. Not only  
D that, he had attempted to initiate alteration or variation of the stipulated time-frame by communication with the OR. He had further made allegations to the effect that the order had been unlawfully and wrongfully obtained which was tantamount to challenging the validity of the order itself. His conduct was manifestly in contempt of the order dated 26 September 2013 that  
E required strict compliance by him in regard to the said documents to facilitate liquidation of the company being taken over by the OR in compliance with the order and clearly obstructed the process of proper liquidation by the OR that was prejudicial to the legitimate interests of the contributories.

[14] In the determination of whether the PC had refused or neglected to do the act ordered within the time specified in the order, the specified terms of the order are of paramount importance. In *Hong Kwi Seong v. Ganad Media Sdn Bhd & Another Appeal* [2012] 8 CLJ 667; [2013] 2 MLJ 251 the Court of Appeal held:  
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G The specific terms of the judgment or order are of overriding importance, as they are to be construed by the court in order to determine the legal effect as to whether the defendant is required to do an act within a time specified therein and whether the defendant has refused or neglected to do so within the prescribed time in the context of O. 45 r. 1 (a). The court  
H will then decide whether or not to grant leave to the plaintiff to pursue an order of committal under O. 45, r. 1(a)(i).

[15] An important point that is relevant and noteworthy is that this is not the first committal proceedings instituted against TCH in the present action. In previous proceedings for committal initiated by the same applicants, TCH  
I was found guilty of contempt of court for interference or obstruction in the course of justice for which on 19 February 2014 he was sentenced to a fine of RM50,000 and ordered to pay costs of RM33,000 to the applicants within 14 days or on or before 5 March 2014. Despite being present in court on 19 February 2014 and the applicants' solicitors' letter dated 24 February

2014 notifying him of the order. TCH failed to pay costs as ordered. According to the O. 52 r. 3(2) of the ROC statement till to date he has continued to neglect and/or ignore the order for costs to be paid which he has not denied. It further indicated a lack of remorse on the PC's part for his conduct and complete disregard for court orders that should not be tolerated or condoned.

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[16] The only reason proffered by the PC for non-compliance with para. (d) of the order is that the applicants had failed to pay the prescribed fees to the OR for the purpose of opening a file in order to accept the relevant documentation and as such, his attempt to serve the said documentation on the OR on 7 October 2013 had been rejected by the OR who notified him of the reason as aforesaid. From the documentary evidence, including the PC's own correspondence to the OR asking for time to serve the documents and the OR's confirmation to the applicants' solicitors that as at 6 December 2013 no documents whatsoever had been received from the PC as ordered by the court rendered his explanation completely baseless. Hence, on the unrebutted evidence, the allegation made by the TCH in defence of the non-compliance with the order was devoid of any truth and the reason advanced by TCH was wholly incredible. It instead disclosed dishonesty on his part in presenting evidence to the court. His explanation was on the established facts inherently incredible, in conflict with the documentary evidence and *prima facie mala fide*.

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[17] There is no requirement under the law for the applicants to pay any prescribed fees to enable the OA to open any winding-up file. Section 228 of the CA requires only a liquidator other than the OR to provide security before acting as liquidator. The allegation that the applicants had failed to pay the prescribed fees was hollow and showed a tendency on his part as an experienced liquidator, to present a misleading and self-serving picture of the facts for his own advantage.

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[18] For the foregoing reasons, it is found that the applicants had made out a clear-cut case of contempt of court against the PC beyond any reasonable doubt for intentional and deliberate breach of the order dated 26 September 2013 without any reasonable and credible grounds. Based on the factual matrix of the case, as evident from the chronology of events adverted to, the complaint of wilful disobedience of the specific and express terms of the order by the PC was indisputable and uncontradicted. The blatant disregard by the PC of his duty to adhere to the order as an officer of the court was inexcusable, for which he had to be penalised *via* committal proceedings.

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[19] Enclosure 162 is therefore allowed on the above grounds. On the same ground encl. 167 which is to set aside the leave granted for committal and commenced after an inordinate delay has no basis in law or fact and is dismissed with costs.

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