

**Fileforce Sdn Bhd v Lai May Ting & Ors**

HIGH COURT (KUALA LUMPUR) — SUIT NO WA-22NCVC-176-04  
OF 2018  
WONG CHEE LIN J  
11 DECEMBER 2020

*Civil Procedure — Proceedings — Committal proceedings — Application by plaintiff for committal proceeding against contemnors from alleged breaching of Anton Piller order ('APO') — Whether prima facie contempt was proven — Whether there was non-compliance with O 52 r 2B of the Rules of Court 2012 by contemnors — Rules of Court 2012 O 52*

The plaintiff alleged that the first defendant made unlawful use of its confidential information and trade secrets whilst still an employee of the plaintiff. Then, the plaintiff filed a claim against defendants and the plaintiff obtained an ex parte Anton Piller order ('APO') against the defendants. The plaintiff had afterward commenced the present committal proceedings against the first defendant, the first alleged contemnor, Ms Sylvia Lee the second alleged contemnor ('Lee') and Fortisco Sdn Bhd ('Fortisco') the third alleged contemnor for interfering in the administration of justice and refusing to allow the plaintiff and the supervising solicitor ('SS') Mr Philip a/l S Anthonysamy to execute the APO. Against the first defendant, there was the additional allegation that she failed to comply with the provision of the APO to surrender her laptop. Pursuant to the APO, the first defendant was required to surrender her laptop immediately upon service of the APO. Apart from the request made on 19 October 2017 for her to surrender her laptop, the plaintiff's solicitors had, by way of a letter dated 26 October 2017 again demanded that first defendant deliver up her laptop but she had failed and/or refused to do so to date.

**Held**, dismissing the application:

- (1) This court only had to determine whether a prima facie case of contempt was shown against them. In this application, this court had to consider whether the plaintiff had shown they had been in contempt and the burden of proof was beyond reasonable doubt (see para 10).
- (2) The failure to serve a show cause notice before committal proceeding under O 52 r 2B of the Rules of Court 2012 was not fatal under or prejudicial to Lee and Fortisco as was held in the recent Federal Court decision in *Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor* [2020] 4 MLJ 791 (see para 27).

- A (3) On a careful reading of *Dato' Seri Yusof bin Dato' Biji Sura @ Mohamad v BTM Timber Industries Sdn Bhd & Ors* [2010] 1 MLJ 644, what the Court of Appeal was saying is that it had not been shown that the alleged contemnors in that case were persons appearing to be in control of the premises. In this case, the APO used the words 'owner of the said premises' or 'persons in control of the premises'. It was not in dispute that Fotisco was the owner of the said premises and that Lee was the person who had control of the said premises. There can be no doubt that Lee and Fortisco were the persons who were obliged to facilitate the execution of the APO. In the present case, the wording of the APO was not too vague to be enforced by committal proceedings (see para 28).
- B
- C
- D (4) The plaintiff had not established beyond reasonable doubt that Lee and Fortisco as the owner and the person having control over the said premises had refused permission to the plaintiff to execute or hindered the plaintiff from executing the APO on 19 October 2017, thereby breaching the terms of the APO. Accordingly, the application was dismissed as against Lee and Fortisco (see para 29).

**[Bahasa Malaysia summary]**

- E Plaintiff mendakwa defendan pertama telah menggunakan maklumat sulit dan rahsia perniagaan ketika masih bekerja sebagai pekerja plaintiff. Kemudian, plaintiff telah memfailkan tuntutan terhadap defendan-defendan dan memperoleh perintah Anton Piller ('PAP') terhadap defendan-defendan.
- F Plaintiff kemudiannya memulakan prosiding komital ini terhadap defendan pertama, kontemnor pertama yang didakwa, Cik Sylvia Lee kontemnor kedua yang didakwa ('Lee') dan Fortisco Sdn Bhd ('Fortisco') kontemnor ketiga yang didakwa kerana telah mengganggu pentadbiran keadilan dan enggan membenarkan plaintiff dan peguam cara penyelia ('PCP') Encik Philip a/l S
- G Anthonysamy untuk melaksanakan PAP. Terhadap defendan pertama, terdapat dakwaan tambahan bahawa dia telah gagal untuk mematuhi peruntukan di dalam PAP untuk menyerahkan komputer ribanya. Menurut PAP tersebut, defendan pertama hendaklah menyerahkan komputer ribanya sejurus sahaja PAP tersebut diserahkan. Di sebalik permintaan yang dibuat pada 19 Oktober
- H 2017 untuk dia menyerahkan komputer ribanya, peguamcara plaintiff telah menuntut kembali komputer riba tersebut untuk diserahkan melalui surat bertarikh 26 Oktober 2017. Namun, defendan pertama masih gagal dan/atau enggan untuk berbuat demikian sehingga ke hari ini.

**I Diputuskan, menolak permohonan tersebut:**

- (1) Mahkamah ini hanya harus menentukan adakah kes prima facie untuk kes penghinaan mahkamah telah dibuktikan terhadap defendan-defendan. Dalam permohonan ini, mahkamah ini harus mempertimbangkan adakah kontemnor telah menunjukkan mereka

- telah menghina dan beban pembuktian adalah diluar keraguan munasabah (lihat perenggan 10). A
- (2) Kegagalan menyampaikan notis tunjuk sebab sebelum prosiding komital di bawah A 52 k 2B Kaedah-Kaedah Mahkamah 2012 tidak mengakibatkan permohonan ini fatal atau memprejudiskan Lee dan Fortisco sebagaimana yang dinyatakan dalam keputusan Mahkamah Persekutuan baru-baru ini dalam *Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor* [2020] 4 MLJ 791 (lihat perenggan 27). B
- (3) Pada pembacaan teliti *Dato' Seri Yusof bin Dato' Biji Sura @ Mohamad v BTM Timber Industries Sdn Bhd & Ors* [2010] 1 MLJ 644, seperti yang dinyatakan oleh Mahkamah Rayuan adalah bahawa kontemnor di dalam kes tersebut tidak menunjukkan bahawa mereka orang yang mengawal premis tersebut. Dalam kes ini, PAP menggunakan perkataan 'pemilik premis tersebut' atau 'orang yang mengawal premis'. Tidak dinafikan bahawa Fotisco adalah pemilik premis tersebut dan Lee adalah orang yang mengawal premis tersebut. Tidak ada keraguan bahawa Lee dan Fortisco adalah orang yang diwajibkan untuk memudahkan pelaksanaan APO. Dalam kes ini, terma di dalam PAP tersebut tidak terlalu samar untuk dilaksanakan oleh prosiding komital (lihat perenggan 28). C D E
- (4) Plaintiff gagal membuktikan tanpa keraguan yang munasabah bahawa Lee dan Fortisco sebagai pemilik dan orang yang mempunyai kawalan ke atas premis tersebut dan telah enggan membenarkan plaintiff untuk melaksanakan atau menghalangi plaintiff melaksanakan PAP pada 19 Oktober 2017, sehingga melanggar terma di dalam PAP tersebut. Oleh itu, permohonan ini terhadap Lee dan Fortisco adalah ditolak (lihat perenggan 29). F

#### Cases referred to

- Dato' Seri Yusof bin Dato' Biji Sura @ Mohamad v BTM Timber Industries Sdn Bhd & Ors* [2010] 1 MLJ 644; [2010] 1 MLJ 644, CA (distd) G
- Isaacs v Robertson* [1984] 3 All ER 140, PC (refd)
- Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor* [2020] 4 MLJ 791; [2020] 7 CLJ 173, FC (refd)
- Pembinaan KSY Sdn Bhd v Lian Seng Properties Sdn Bhd* [1991] 1 MLJ 100, SC (refd) H

#### Legislation referred to

Rules of Court 2012 O 52 r 2B

- Justin Voon (Christina Chin with him) (Justin Voon Chooi & Wing) for the plaintiff.* I
- Daniel Ong (Balbir Singh with him) (KY Thong & Co) for the defendant.*
- Gregory Ling (Ranjit Singh & Yeoh) for the proposed intervener.*

**A Wong Chee Lin J:**

**B** [1] This is the hearing of a committal proceeding commenced by the plaintiff against the first defendant, the first alleged contemnor Ms Lai May Ting ('Lai'), Ms Sylvia Lee the second alleged contemnor ('Lee') and Fortisco Sdn Bhd ('Fortisco') the third alleged contemnor.

## BACKGROUND FACTS

**C** [2] The plaintiff alleged that Lai made unlawful use of its confidential information and trade secrets whilst still an employee of the plaintiff. The plaintiff seeks injunctive relief, an account of secret profits and damages against Lai and the second and third defendants.

**D** [3] Lai has given a potential client an email on 20 July 2017 stating that she will be holding a demo of 'our filing systems' at the showroom at B1-3-3A, Solaris Dutamas, No 1 Jalan Dutamas, 50480 Kuala Lumpur ('the said premises') which is just two lift lobby away from her office.

**E** [4] The plaintiff filed a claim against Lai and the second and third defendants and on 11 October 2017 the plaintiff obtained an ex parte Anton Piller order ('APO') against the defendants. However, the raid was to be conducted at the said premises which are not the premises of the defendants. The said premises belong to Fortisco of which Lee is a director and the person in control of the said premises.

**G** [5] On the 19 October 2017, the plaintiff's counsel Mr Foong Cheng Leong and the supervising solicitor ('SS') Mr Philip a/l S Anthonysamy went to the said premises in the morning to execute the APO. However, they could not execute the APO because they were not permitted to do so. Because the contents of the SS's report is relevant, it is set out in full below. This is what is said in the SS's report:

## EXECUTION OF SEALED ORDER DATED 11TH OCTOBER, 2017

**H** ON : FIRST DEFENDANT (LAI MAY TING)

PLACE : B1-3-3A, SOLARIS DUTAMAS, NO 1, JALAN DUTAMAS, 50480 KUALA LUMPUR (hereinafter referred to as 'the said Premise')

**I** 1. On or about 10.35 a.m. 19th October, 2017, Mr Foong Cheng Leong (Solicitor appointed by the Plaintiff's Solicitor for service of documents onto the First Defendant, Ms Lai May Ting) and myself, Mr Philip a/l S Anthonysamy (as the appointed Supervising Solicitor) had rang the door bell of the said Premise.

2. Thereafter, we were greeted at the entrance of the said Premise by a lady who seemed to be a Malay origin (hereinafter referred to as 'the said Lady') who allowed us entry to the said Premise after I had informed the said Lady that we wanted to see Ms Lai May Ting. A
3. The said Lady then brought us to see Ms Lai May Ting in an office room situated on the front Left (L) side facing the entrance of the said Premise. B
4. Very shortly after that, I introduced myself as the Supervising Solicitor and then introduced Mr Foong Cheng Leong to Ms Lai May Ting, who was at that time speaking to an Indian gentleman. I then further explained to Ms Lai May Ting that we there to serve a Court Order together with other Court documents filed by Fileforce Sdn Bhd on her. C
5. Upon hearing this from me, Ms Lai May Ting asked us to wait just outside the room where she was in wherein we were invited to sit down next to a large table (where the said Lady who invited us previously into the said Premise was also working) while Ms Lai May Ting carried on speaking to the said Indian gentleman. D
6. Approximately 5 minutes thereafter, the said Indian gentleman who was with Ms Lai May Ting left the said Premise wherein Mr Foong Cheng Leong and myself were invited by Ms Lai May Ting to sit in another office room in the said Premise which belonged to one young Chinese man (hereinafter referred to as 'the said Chinese man'), who seemed to be a staff of Fortisco Sdn Bhd ('hereinafter referred to as 'Fortisco'). E
7. While in the room, the said Chinese man first came in to take a handphone which was on the table in the room we were seated in.
8. The said Chinese man then came in again the second time to take away a laptop which was also on the table in the room we were seated in. When we asked the said Chinese man to leave that laptop there, the said Chinese man informed us that the laptop belonged to him. F
9. Mr Foong Cheng Leong then went on to serve the Writ of Summons, Statement of Claim, Notice of Application (ex parte), its Affidavit In Support and the Sealed Court Order dated 11th October, 2017 (hereinafter referred to as 'the said Court Order') on Ms Lai May Ting. G
10. I then explained the contents of the said Court Order to Ms Lai May Ting and told Ms Lai May Ting clearly that it was my duty as an appointed Supervising Solicitor to supervise everything that goes on and to explain to her one by one all that is stated in the said Court Order. H
11. However, Ms Lai May Ting still interrupted myself a few times telling us that the Plaintiff cannot enforce the said Court Order because the said Premise is not her office. I kindly requested Ms Lai May Ting to allow myself to finish explaining the said Court Order, to which Ms Lai May Ting agreed. Despite me explaining to Ms Lai May Ting Item (ii) page 3 which states 'Bahawa pemunya dan/atau orang-orang yang mengawal Premis tersebut dan/atau pengawal keselamatan dan/atau pihak-pihak Badan Pengurusan Bersama atau Perbadanan Pengurusan dan/atau I

- A** pihak-pihak yang relevan (sekiranya ada) yang bertanggungjawab ke atas keselamatan dan/atau akses kepada Premis tersebut adalah dikehendaki membenarkan wakil-wakil Plaintiff (termasuk peguamcara Plaintiff), bersama dengan Peguamcara Penyelia tersebut tanpa sebarang halangan dan/atau gangguan untuk mengakses dan/atau memasuki ke Premis tersebut', Ms Lai May Ting was adamant.
- B**
12. I also highlighted to Ms Lai May Ting paragraph (v) page 8 of the said Court Order which required Ms Lai May Ting to hand over her laptop to the Plaintiff's Solicitor immediately upon service of the said Court Order to which Ms Lai May Ting answered that she did not have her laptop with her.
- C**
13. Then both Mr Foong Cheng Leong and myself advised Ms Lai May Ting to seek legal advice from a lawyer immediately as she had ONE (1) hour to do so from 10:54 am
- D**
14. Upon hearing this, Ms Lai May Ting went to another office room situated on the front Right (R) side facing the entrance of the said Premise. There was a Chinese lady wearing a black dress, whom we came to know as Ms Sylvia from Fortisco Sdn Bhd (hereinafter referred to as 'Ms Sylvia') in that office room whom Ms Lai May Ting had a discussion with.
- E**
15. Thereafter, Ms Sylvia came into the office room we were seated in all this while and told us to speak to her lawyer, one Mr Francis Tan, on Ms Sylvia's handphone. I then spoke to Mr Francis Tan from Messrs Rosni, Francis Tan & Ho and explained the said Court Order to him and extended a copy to Ms Sylvia as Mr Francis wanted the said Court Order to be faxed/scanned to him.
- F**
16. After receiving the said Court Order, Mr Francis Tan then called back to Ms Sylvia's handphone which was then handed to me to speak to Mr Francis. Mr Francis informed me that he has read the said Court Order. At this juncture, I also brought Mr Francis to the attention of Item (ii) page 3 of the said Court Order which states 'Bahawa pemunya dan/atau orang-orang yang mengawal Premis tersebut dan/atau pengawal keselamatan dan/atau pihak-pihak Badan Pengurusan Bersama atau Perbadanan Pengurusan dan/atau pihak-pihak yang relevan (sekiranya ada) yang bertanggungjawab ke atas keselamatan dan/atau akses kepada Premis tersebut adalah dikehendaki membenarkan wakil-wakil Plaintiff (termasuk peguamcara Plaintiff), bersama dengan Peguamcara Penyelia tersebut tanpa sebarang halangan dan/atau gangguan untuk mengakses dan/atau memasuki ke Premis tersebut', to which Mr Francis replied that he is well aware of and that the Plaintiff is not allowed to enter and search the said Premise. Mr Francis went on to inform me that he will reply immediately with a letter to the Plaintiff's Solicitor, to which I replied that we shall wait first for his said reply letter.
- G**
- H**
- I**
17. On or about expiry of the ONE (1) hour at or about 11.54 am, we received from Ms Sylvia a copy of the reply letter issued by Messrs Rosni, Francis Tan & Ho dated 19th October 2017 to the Plaintiff's Solicitor and

- Mr Foong Cheng Leong read the reply letter which made it clear to us that Fortisco Sdn Bhd will not be allowing the execution of the said Court Order to take place. I had asked Ms Lai May Ting once more if she was going to handover her laptop to us and her handphone pursuant to the said Court Order, to which Ms Lai May Ting replied that she did not have her laptop with her and that she cannot give her handphone as she needs to consult with her lawyer first on this. Ms Lai May Ting also informed us that she has not found a lawyer to represent her yet. A
18. I explained one last time to Ms Lai May Ting that if she does not comply with the said Court Order, she will be liable for contempt of court wherein the punishment would be a fine or imprisonment. To this, Ms Lai May Ting replied again that she needs to consult her lawyer first as she still did not have a lawyer although ONE (1) hour had passed by from 10.54 am for her to do so. B
19. Ms Sylvia also loudly butted in that conversation saying that we are not allowed to search the said Premise as Ms Lai May Ting does not work with them and that the search will be disrupting Fortisco's business. C
20. By reason of letter dated 19th October 2017 handed to us and read by Mr Foong Cheng Leong which amongst others, threatens an action of trespass and defamation against all parties involved if the Plaintiff insists on the search and both Ms Lai May Ting as well as Fortisco Sdn Bhd through their Solicitor not allowing the search to take place, both Mr Foong Cheng Leong and myself had no alternative but to leave the said Premise and at the same time we informed the Plaintiff and their representatives who were outside the said Premise at all times that Fortisco Sdn Bhd is not allowing the search to take place. D
21. Before we left, Ms Lai May Ting acknowledged receipt of the documents served on her and signed the acknowledgement copies. E

Dated this 19th day of October, 2017

signed

.....  
PHILIP A/L S  
ANTHONY SAMY  
(NRIC No  
690301-10-5449)

[6] Paragraph (ii) of the APO states as follows:

Bahawa Pemunya dan/atau orang-orang yang mengawal Premis tersebut dan/atau pengawal keselamatan dan/atau pihak pihak Badan Pengurusan Bersama atau Perbadanan Pengurusan dan/atau pihak pihak yang relevan (sekiranya ada) yang bertanggungjawab ke atas keselamatan dan/atau akses kepada premis tersebut adalah dikehendaki membenarkan wakil-wakil Plaintiff (termasuk pegamcara Plaintiff) bersama dengan Peguamcara Penyelia tersebut tanpa sebarang halangan dan/atau gangguan untuk mengakses dan/atau memasuki ke Premis tersebut. F



- A** [7] At the end of the APO, the penal endorsement is set out against each of the defendants. It is further stated that ‘Jika mana-mana wakil-wakil, pekerja-pekerja, ejen-ejen Defendan-Defendan dan/atau orang yang mempunyai kawalan ke atas dan/atau berada di B1–3–3A, Solaris Dutamas No 1 Jalan Dutamas, 50480 Kuala Lumpur tersebut, tidak mematuhi Perintah ini
- B** atau mengingkari Perintah ini, kamu boleh dikenakan proses pelaksanaan bagi maksud memaksa kamu mematuhihinya’.

- C** [8] Because the contents of the letter dated 19 October 2017 from Rosni, Francis Tan & Ho to the plaintiff’s solicitors are relevant, they are also set out in full below:

Rosni, Francis Tan & Ho

Advocates & Solicitors

- D** Your Ref: JCW/L014/04/17 (FSB)()-JV/CC/css

Our Ref: FT/L2017/06785

19 Oct 017

To:

- E** MESSRS JUSTIN VOON CHOOI & WING

Advocates & Solicitors

D6–5–13A, Bangunan Perdagangan D6

801, Jalan Sentul

51000 Kuala Lumpur.

- F** Dear Sirs,

SHAH ALAM HIGH COURT CIVIL SUIT NO 22NCVC-552–09/2017

FILEFORCE SDN BHD V LAI MAY TING & 2 ORS

- G** We act for FORTISCO SDN BHD, the legal and beneficial owner of the premises known as B1–3–3A, Solaris Dutamas, 50480 Kuala Lumpur (‘the said Premise’).

We understand that your representatives have entered into the said Premise this morning and have insisted that our client comply with an Order of Court dated 11.11.2017 to allow them, inter alia to enter, remain, search and other wide ranging acts.

- H** Our clients is not a party to this suit and the said Premise does not belong to any of the 3 Defendant sin the suit. In the premises, it is our client’s position that it is not bound by the said Order. It is our client’s further position that the said Order may have been obtained by material non-disclosure to the Court of the above stated facts.

- I** The said Premise contains our client’s confidential trade records and trade secrets. For the above reasons, we hope that your client will not enforce the said Order and that you will advise your representatives accordingly. If your client insists on the said entry and search, our client reserve their rights file actions against all parties involved to seek damages including for trespass and defamation.



Yours faithfully,  
for Messrs Rosni, Francis Tan & Ho

A

[9] The plaintiff has commenced the present committal proceedings against Lai, Lee and Fortisco for interfering in the administration of justice and refusing to allow the plaintiff and the SS to execute the APO on 19 October 2017. Against Lai, there is the additional allegation that she failed to comply with the provision of the APO to surrender her laptop. Pursuant to the APO, Lai is required to surrender her laptop immediately upon service of the APO. Apart from the request made on 19 October 2017 for her to surrender her laptop, the plaintiff's solicitors had, by way of a letter dated 26 October 2017 again demanded that Lai deliver up her laptop but she has failed and/or refused to do so to date.

B

C

[10] Lai, Lee and Fortisco had previously applied to set aside the ex parte leave to commit but their applications were dismissed on similar grounds as are raised by them in opposing the present application. However, I note that in considering those applications, the court only had to determine whether a prima facie case of contempt has been shown against them. In this application, the court has to consider whether the plaintiff has shown they have been in contempt and the burden of proof is beyond reasonable doubt.

D

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[11] Lai has also tried to set aside the APO but her application has been dismissed. She has appealed against the decision to the Court of Appeal and that appeal is pending.

F

[12] For the purpose of this application, I do not consider it relevant to determine whether the APO was correctly granted or not. The fact is it still remains undischarged to date and, in any event, an order of court has to be complied with unless and until it is set aside, on pain of committal.

G

[13] In *Pembinaan KSY Sdn Bhd v Lian Seng Properties Sdn Bhd* [1991] 1 MLJ 100, the court said: 'It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it, unless and until that order is discharged'.

H

[14] In *Isaacs v Robertson* [1984] 3 All ER 140, the court said:

It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham LC said in *Chuck v Cremer* ((1846) 1 Coop temp Cott 338 at p 342; 47 ER 884 at p 885): A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to

I

- A disobey it ... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid — whether it was regular or irregular. That they should come to court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to
- B the court that it might be discharged. As long as it existed it must not be disobeyed. Such being the nature of this obligation, two consequences will, in general, follow from its breach. The fact is that anyone who disobeys an order of the court ... is in contempt and may be punished by committal or attachment or otherwise.
- C [15] As against Lai, the case is very clear. She has been served with the APO and the relevant cause papers and the terms of the APO have been explained to her. She was also explained the risk of non-compliance with the terms of the APO. She was also asked to surrender her laptop. She responded that she did
- D not have her laptop with her but she was pictured later that day carrying on laptop bag. It is also improbable that she would not have her laptop with her seeing that she was at the premises to carry out a demonstration to a potential client. In any event, she was subsequently asked again by letter dated 26 October 2017 to deliver up her laptop but she has not complied with the APO to date.
- E
- F [16] She has also expressly refused to comply with the APO on the basis that the said premises is not her office. Now it is true that the said premises is not her office but the said premises is the place where the plaintiff has reason to believe that the defendants' products or at least some of the products are, since Lai was there to conduct a demonstration of her products.
- G [17] However, since the person in control of the said premises are Lee and Fortisco and not Lai and since there is a possibility that the plaintiff would not have been able to execute the APO even if Lai had not objected to it, if Lee and Fortisco are not agreeable to the plaintiff executing the APO on the said premises, I am not satisfied beyond reasonable doubt that Lai had obstructed the execution of the APO on 19 October 2017. However, she is guilty of contempt of court in not surrendering her laptop at all, in breach of the terms
- H of the APO.
- I [18] As for the case against Lee and Fortisco, it is true, as alleged by them, that a copy of the APO was only handed to Lee by the SS for her to hand it over to Francis Tan, her lawyer. It was not formally served on her and on Fortisco and the cause papers in the action were not served on her or Fortisco. The SS did not explain the terms of the APO to them and did not explain the consequences of a failure to comply with the terms, that they might be liable to contempt proceedings and might face a fine or imprisonment.

[19] However, the SS had ascertained that Francis Tan was fully aware of the terms of the APO including the order directing the owner of the said premises or the persons in control of the said premises to enter the said premises without any obstruction or hindrance. Doubtless Francis Tan was aware of the repercussions to Lee and Fortisco of the non-compliance with the APO and would have advised Lee and Fortisco on the said consequences. Surely that was the whole point of Lee and Fortisco appointing lawyers, that is to advise them of what they should do. Despite this, Lee had pointedly said that the plaintiff cannot search the said premises and that they are not bound by the APO, they are not parties to the action and the said premises do not belong to any of the defendants and the APO might have been obtained on non-disclosure of those material facts. Rosni Francis Tan & Ho further asserted that the said premises contain their clients' confidential trade records and trade secrets, although no particulars were given of such alleged trade secrets.

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[20] In fact, Rosni Francis Tan & Ho confirmed that they had advised their clients that the APO had to be complied with by them in a letter dated 20 October 2017. However, they said in that letter that Lee and Fortisco had accepted their advice but that after receiving their letter dated 19 October 2017, the plaintiff's counsel and the SS had left the said premises.

D

E

[21] I note from the SS's report that after receiving the letter dated 19 October 2017 from Rosni Francis Tan & Ho, the SS had approached Lai one last time to get her to comply with the APO. At that point, the SS said that Lee had butted in the conversation between the SS and Lai to say that the plaintiff was not allowed to search the said premises as Lai does not work with them and that the search will be disrupting Fortisco's business. Lee has denied on affidavit saying those words. There is therefore a doubt as to whether Lee had said that the plaintiff is not allowed to search the said premises after Rosni Francis Tan & Ho had sent their letter. Since contempt proceedings are quasi-criminal in nature, I agree that where there is any doubt, the benefit of the doubt must be given to the alleged contemnor.

F

G

[22] I cannot therefore assume that after Fortisco's solicitors had written to the plaintiff on 19 October 2017, Lee had asserted that the plaintiff is not allowed to search the said premises. The question to be determined is whether, based on the said letter, which is the only undisputed contemporary document available, Lee and Fortisco can be said to have refused the plaintiff permission to execute the APO.

H

I

[23] It is true that in the said letter, Fortisco had acknowledged that the plaintiff had insisted that Fortisco comply with the APO. In the said letter, Fortisco said that it is not bound by the APO and that the APO may have been obtained by material non-disclosure. It said that it hopes the plaintiff will not

- A enforce the APO but that if the plaintiff insisted on the entry and search, Fortisco reserves the right to seek damages for trespass and defamation.

- B [24] Although Fortisco has set out reasons why it is not bound by the APO and stated its wish that the plaintiff not enforce the APO, it did end the letter by saying that should the plaintiff insist on the entry and search, it will reserve its rights to claim damages. In my view, Fortisco and Lee have not categorically refused to comply with the APO as the option was given to the plaintiff to insist on the entry and search. It seems puzzling to me why the plaintiff's counsel and the SS, upon reading the said letter, did not seek confirmation from Lee whether she and Fortisco are really refusing to allow the plaintiff to enforce the APO. Instead, the SS apparently spoke to Lai only and warned her of the consequences of not complying with the APO but did not speak to Lee. I am therefore of the view that there is a reasonable doubt whether Lee and Fortisco had obstructed the plaintiff from enforcing the APO.

- E [25] By letter the next day, Rosni Francis Tan & Ho denied that Fortisco had refused to allow entry to the plaintiff's representatives. The said solicitors said that they had advised their clients that the APO had to be complied with by them and Fortisco had immediately accepted the said advice. However, after being given a copy of their reply, the plaintiff's representatives had left the said premises.

- F [26] As these statements were made only one day after the raid, they cannot be said to constitute an afterthought on the part of the said solicitors. I am of the view that there appears to be a misunderstanding of the position taken by Lee and Fortisco. Lee and Fortisco asked the plaintiff not to enforce the APO for the reasons set out in their solicitors' letter of 19 October 2017 but said that if the plaintiff really insisted on enforcing the APO they will not obstruct or prevent them but reserve their rights to claim damages which they are entirely entitled to do. The plaintiff however construed the words used by Lee and Fortisco to mean that they are refusing to allow the plaintiff to enforce the APO and instead of seeking further clarification from Lee, they left the said premises after checking only with Lai. I am of the view that it is not clear, beyond reasonable doubt, that the only interpretation of the letter dated 19 October 2017 is that Lee and Fortisco are refusing to permit the plaintiff to execute or enforce the APO.

- I [27] Lee and Fortisco also alleged that the plaintiff had failed to comply with O 52 r 2B of the Rules of Court 2012 and had not served a show cause notice on them prior to commencing the committal proceedings. This issue was raised in the application by Lee and Fortisco to set aside the ex parte leave order obtained by the plaintiff but their application had been dismissed by the court and there is no appeal against that decision. In any event, the failure to serve a

show cause notice is not fatal or prejudicial to Lee and Fortisco as was held in the recent Federal Court decision in *Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor* [2020] 4 MLJ 791; [2020] 7 CLJ 173.

[28] Lee and Fortisco also contended that the words ‘persons in control of the said premises’ are too vague and ambiguous for the plaintiff to base its committal proceedings on. In *Dato’ Seri Yusof bin Dato’ Biji Sura @ Mohamad v BTM Timber Industries Sdn Bhd & Ors* [2010] 1 MLJ 644; [2010] 1 MLJ 644 the Court of Appeal held that the words ‘persons appearing to have control of the premises’ are too vague and the order to be enforced by committal proceedings. However, on a careful reading of that case, what the Court of Appeal is saying is that it has not been shown that the alleged contemnors in that case were persons appearing to be in control of the premises. In this case, the APO uses the words ‘owner of the said premises’ or ‘persons in control of the premises’. It is not in dispute that Fortisco is the owner of the said premises and that Lee was the person who has control of the said premises. There can be no doubt that Lee and Fortisco are the persons who are obliged to facilitate the execution of the APO. In the present case, the wording of the APO is not too vague to be enforced by committal proceedings.

[29] However, in the premises of the case, I am of the view that the plaintiff has not established beyond reasonable doubt that Lee and Fortisco as the owner and the person having control over the said premises had refused permission to the plaintiff to execute or hindered the plaintiff from executing the APO on 19 October 2017, thereby breaching the terms of the APO. Accordingly, the application is dismissed as against Lee and Fortisco.

*Application dismissed.*

Reported by Muhamad Azham Marwan

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