Aquariva Pte Ltd
v
Gezel Group Pte Ltd and another

[2017] SGHCR 14

High Court — Originating Summons No 108 of 2017
Zeslene Mao AR
7 July 2017

Civil procedure – Discovery of documents – Pre-action discovery

31 August 2017 Judgment reserved.

Zeslene Mao AR:

Introduction

1 Originating Summons No 108 of 2017 ("OS 108/2017") arose out of affairs of the Chillax Market, a shop space operated by the 1st defendant, Gezel Group Pte Ltd, at The Grandstand located at Turf Club Road. The business model of the Chillax Market was based on concessionary agreements entered into between the 1st defendant and vendors who wished to sell goods at the Chillax Market. The plaintiff, Aquariva Pte Ltd, was one such vendor. On or about 22 January 2016, the plaintiff entered into a contract with the 1st defendant for a licence to use and operate a concession space of approximately sixty square feet at the Chillax Market for a period of 12 months to sell women's wear and accessories ("the Agreement").

2 The terms of the Agreement may be summarised as follows. The plaintiff was required to pay a monthly licence fee of $1,800 to the 1st defendant on the 1st day of every month, which would comprise the provision of space (including any fixtures or furniture provided), advertising and marketing and administrative services. Sales of the plaintiff's products would be received and recorded into a cash register or point of sales system maintained by the 1st defendant at the Chillax Market and would be payable to the plaintiff after deducting goods and service tax, credit card charges and NETS charges. The plaintiff's position is that the net sales were, pursuant to the Agreement, to be held on trust by the 1st defendant for the plaintiff.

3 About three months after the plaintiff entered into the Agreement, the vendors were informed via an email dated 23 April 2016 that due to the challenging business environment, the Chillax Market was making a loss and had to be closed down completely. Vendors were asked to remove their respective stocks from the Chillax Market within two days from the date of the email. A meeting was held on 24 April 2016 during which the 2nd defendant, Ms Nguyen Huynh Boi Tran, the managing director of the 1st defendant, informed the vendors that the 1st defendant did not have any money in its account and required some time to repay the vendors the respective sums outstanding to each of them. According to Jones Louise Ann ("Ms Jones"), a director of the plaintiff, this announcement came as a surprise as all indications were that the business of the Chillax Market was operating normally. The closure of the Chillax Market left Ms Jones feeling frustrated and dissatisfied.

4 In August 2016, the plaintiff's solicitors sent a letter of demand to the defendants, seeking repayment of the sum of $10,971.58 which was the net sum due from the 1st defendant to the plaintiff for the plaintiff's sales at the Chillax Market which had yet to be paid. To date, this sum appears to be outstanding.

5 On 31 January 2017, the plaintiff commenced OS 108/2017, seeking pre-action discovery against the 1st defendant and the 2nd defendant of the following categories of documents:

(a) the documents relating to all bank accounts held in the name of or beneficially owned by the 1st defendant in relation to the Chillax Market, including but not limited to records of cheques drawn out, bank statements and vouchers in respect of monies in these accounts;

(b) all financial statements and/or accounting documents relating to the business/operations of the 1st defendant and/or its constituent businesses, including all or any financial plans and projections, business plans or other forecasting or management financial information; and

(c) all bank accounts held in the name of or beneficially owned by the 2nd defendant.

6 I heard the parties on 7 July 2017. The plaintiff was represented by Mr Jeremy Cheong and Ms Rebecca Chia. The 1st defendant was not represented at the hearing before me and the 2nd defendant appeared in person. At the conclusion of the hearing, I granted leave for further written submissions to be tendered. After considering the submissions, I now render my decision on the application.

The grounds for the application

7 The plaintiff commenced this application for pre-action discovery based on its suspicion that the 1st defendant's cash flow issues were due to fraud on the defendants' part. In the first place, given the 1st defendant's simple business model, the plaintiff was of the view that the 1st defendant should not encounter cash flow difficulties. The fact that the Chillax Market had to cease operations

a mere three months after the parties had entered into the Agreement itself gave rise to cause for suspicion.

8 In her affidavit filed in support of this application, Ms Jones also stated that she realised in retrospect that there had been certain transactions adopted by the 1st defendant and/or its representatives between February and April 2016 that were suspicious. In particular, sometime in March 2016, the 1st defendant had issued a cheque to the plaintiff for payment of the sales of the plaintiff's products in February. However, this cheque which was issued from a bank account with Oversea-Chinese Banking Corporation ("OCBC") bounced. The 1st defendant's explanation for this was that its bank account had been "temporarily closed" due to issues with internet banking. Subsequently, a cheque for the payment of $597.15 was issued to the plaintiff. This sum, which represented the balance payable to the plaintiff after the licence fees for March and April 2016 had been accounted for, was successfully deposited into the plaintiff's bank account.

9 The plaintiff submits that the circumstances detailed above showed that the 2nd defendant, being a signatory of the 1st defendant's cheques, was issuing cheques from an OCBC account which the 2nd defendant knew and/or ought to have known had insufficient funds or was closed. The plaintiff also highlights what appears to be a discrepancy in the 1st defendant's use of bank accounts – although payment of the licence fees were made by vendors to a United Overseas Bank ("UOB") account, the cheque that the 1st defendant issued to the plaintiff which subsequently bounced was issued from an OCBC account.

10 Subsequently, after the Chillax Market ceased operations, Ms Jones and other vendors who were owed monies decided to seek repayment from the 2nd defendant of the monies that were owed to them. This led Ms Jones to discover

that the 2nd defendant was living in a high-end property and had been taking multiple leisurely and expensive vacations with her husband.

11 Based on the above, the plaintiff formed an impression that the 2nd defendant had been operating the 1st defendant fraudulently. Yet, the plaintiff claims that it is unable to pursue a claim against the defendants because it is not able to ascertain how viable a claim for fraud committed by the 2nd defendant using the 1st defendant as a vehicle would be, given the lack of information which the plaintiff currently possesses. The plaintiff therefore seeks the defendants' financial information in order to (a) understand and clarify why the vendors' money had been depleted and (b) ascertain if there is any cause of action against the defendants that could be pursued.

The applicable legal principles

12 An application for pre-action discovery is made under O 24 r 6(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). In making such an application under O 24 r 6(1), the plaintiff, pursuant to O 24 r 6(3), must file a supporting affidavit stating:

> (a) the grounds for the application, the material facts pertaining to the intended proceedings and whether the person against whom the order is sought is likely to be a party to subsequent proceedings in court; and
>
> (b) specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of the claim made or likely to be made in the proceedings or the identity of the likely party to the proceedings, or both, and that the person against whom the order is

sought is likely to have or have had them in his possession, custody or power.

13 In deciding whether pre-action discovery ought to be ordered, the court must also have reference to the overriding test of under O 24 r 7, which is that such discovery must be necessary or necessary at that stage of the cause or matter, and in any case, necessary either for disposing fairly of the cause or matter or for saving costs.

14 The requirement of necessity in the context of pre-action discovery has been considered in various cases. In *Ching Mun Fong v Standard Chartered Bank* [2012] 4 SLR 185 ("*Ching Mun Fong*"), the Court of Appeal stated that as the scheme of pre-action discovery is to accommodate the situation where a potential plaintiff does not have sufficient facts to commence proceedings, pre-action discovery would be unnecessary where an individual is already in a position to commence proceedings (at [23]). Similarly, in *Bayerische Hypo-und Vereinsbank AG v Asia Pacific Breweries (Singapore) Pte Ltd and other applications* [2004] 4 SLR(R) 39, Belinda Ang J held that pre-action discovery was for "the case of an applicant who is unable to plead a case as he does not yet know whether he has a viable claim against the opponents, and needs pre-action discovery to fill the voids or gaps in his knowledge" (at [25]).

15 In the context of an application for pre-action discovery, the viability of a claim does not relate to the plaintiff's prospect of success in its intended action. As the Court of Appeal noted in *Ching Mun Fong*, pre- and post-action discovery necessarily served different objectives. The object of pre-action discovery thus did *not* allow a plaintiff to obtain evidence to *boost* its intended claim, as this would "effectively render otiose the provisions for the normal discovery following the commencement of action" (at [28]). In other words,

pre-action discovery should be granted where the plaintiff requires discovery to *enable* a claim to be put forth, and not when discovery is sought by the plaintiff in an attempt to determine if the causes of action are likely to be successful in circumstances when the plaintiff already has sufficient facts to plead a case (see also *Ching Mun Fong* at [40]). Whether the plaintiff falls into the former or latter category depends on the precise circumstances of the case.

16 Where a plaintiff already has an accrued cause of action, but seeks pre-action discovery in order to uncover others, it is unlikely that the court would grant the application for pre-action discovery. In *Ng Giok Oh and others v Sajjad Akhtar and others* [2003] 1 SLR(R) 375 ("*Ng Giok Oh*"), the applicants for pre-action discovery acknowledged that their cause of action in negligence against the potential defendants had already accrued but submitted that pre-action discovery would allow them to identify *further* causes of action (see *Ng Giok Oh* at [5] and [7]). Choo Han Teck JC (as he then was) rejected this argument, stating that pre-action discovery "is not an instrument for private detectives snooping for action" and that the appropriate course was for the plaintiffs "to commence the writ action and proceed to discovery in the usual course" (at [7]).

17 *Ng Giok Oh* was identified by the Court of Appeal in *Dorsey James Michael v World Sport Group Pte Ltd* [2014] 2 SLR 208 ("*Dorsey James Michael*") as a decision that suggests that where claimants are already able to commence proceedings in respect of *a* cause of action, they ordinarily ought not to be allowed to obtain pre-action discovery with respect to *other* potential claims (at [36]). This was a significant point in *Dorsey James Michael*. In that case, World Sport Group Pte Ltd ("WSG") sought pre-action interrogatories against Dorsey, a journalist, to ascertain the sources of Dorsey's information in relation to a particular post made on his blog about an agreement that WSG had

entered into with the Asian Football Confederation. In that post, Dorsey quoted portions of a report by PricewaterhouseCoopers Advisory Sdn Bhd ("the PWC report") and made certain other remarks in relation to WSG. WSG alleged that PWC report was confidential, and that it contained defamatory material which Dorsey had republished. WSG also alleged that Dorsey had made other defamatory comments in his blog post. WSG submitted that the pre-action interrogatories were sought in order to (a) ascertain the nature of any breach of a duty of confidentiality; and (b) identify potential parties against whom such proceedings might be commenced.

18 The Court of Appeal held that the test for determining whether pre-action interrogatories would be ordered rested on the issue of necessity. The claimant had to demonstrate that the pre-action interrogatories applied for were necessary to ascertain if his cause of action was viable (at [47]). The procedure for pre-action interrogatories was not meant to be employed for collateral reasons that suggested that the commencement of proceedings was not the key consideration. In additional, other factors such as the availability of alternative avenues to obtain the information and the intrusiveness of the interrogatories sought would be taken into consideration as well. The Court of Appeal elaborated (at [48]):

> A significant consideration against the making of an order [for pre-action disclosure] is that the applicant can, at the time of making the application, immediately commence proceedings against an identified party in relation to the controversy at hand without the disclosure sought. If the applicant already has a complete cause of action against an identified party, orders should not be made with alacrity, as pre-action disclosure is then not necessary.

19 In *Dorsey James Michael*, the claimant, WSG, identified two potential claims for which it sought pre-action disclosure. The first was for defamation

(and potentially, breach of confidentiality) against Dorsey while the second was for defamation and breach of confidentiality against Dorsey's sources.

20 In relation to the potential claim against Dorsey's sources, the Court of Appeal held that the balance of interests was tipped against the ordering of pre-action interrogatories, amongst other things, because there was no likely prospect of proceedings being commenced *in Singapore* for defamation or breach of confidence against Dorsey's sources. In addition, the Court of Appeal noted that it seemed curious that WSG had focussed solely on seeking information from Dorsey when it appeared that the PWC report (or sizeable portions thereof) had been published in the international public domain even prior to Dorsey's blog post. The Court of Appeal further observed that it was "odd that WSG should claim that their reputation had been severely damaged and yet not act *immediately* to clear their name by suing Dorsey directly even while attempting to ascertain the sources" (at [62]) [emphasis in original]. This latter point was significant when the Court of Appeal came to consider the potential claim against Dorsey for defamation. Here, the Court of Appeal noted that WSG already had a "complete" cause of action in defamation against Dorsey (at [71]). Hence, pre-action interrogatories could not be said to be necessary for WSG to commence a claim against Dorsey for defamation.

21 Though *Dorsey James Michael* concerned an application for pre-action interrogatories, the principles governing both types of applications are similar. Indeed, the language of O 26A (which concern pre-action interrogatories) and O 24 r 6 (in respect of pre-action discovery) are practically identical and the tests of relevance and necessity apply in both types of applications. The Court of Appeal's observations in relation to the application for pre-action interrogatories are therefore relevant to an application for pre-action discovery as well. Both *Dorsey James Michael* and *Ng Giok Oh* demonstrate that where a

plaintiff is already able to commence proceedings against *an* identified party in respect of *a* cause of action, pre-action disclosure would not typically be allowed as, in such a case, it cannot be said that the disclosure sought is necessary for the plaintiff to plead a case or commence proceedings against a potential defendant.

22 Besides the tests of relevance and necessity, a plaintiff who seeks pre-action discovery is also required to set out "the substance of his claim to enable a potential defendant to know what the essence of the complaint against him is" (see *Kuah Kok Kim and others v Ernst & Young* [1996] 3 SLR(R) 485 ("*Kuah Kok Kim*") at [31]). In *Kuah Kok Kim*, the Court of Appeal laid down the standard which the plaintiff is expected to meet in an application for pre-action discovery (at [34]–[35]):

> Although the affidavit should state the cause of action, it is not necessary to give particulars of it, even though it may be desirable. Indeed, the rule does not state that particulars of the cause of action must be given. …
>
> If the material facts had to be as precise as those normally pleaded in any cause of action, and if the appellants were in a position to depose to an affidavit to this effect, they could well be in a position to commence proceedings immediately. It would not be necessary to provide a scheme for discovery before action. … We are of the opinion that as long as the appellants stated the facts sufficiently to explain why pre-action discovery was necessary, this was adequate.

23 As the passage above makes clear, whilst a plaintiff need not set out the full details of the intended cause of action, the plaintiff should at least identify the potential claim it wishes to make and explain why pre-action discovery is required for that purpose. As the Court of Appeal warned in *Kuah Kok Kim*, this is so as to ensure that the plaintiff does not take advantage of the Rules of Court to go on a "fishing expedition" (at [31]). Finally, if the intended cause of action is legally unsustainable, pre-action discovery would not be granted as to do so

would result in the unnecessary escalation of costs (see *Manuchar Steel Hong Kong v Star Pacific Line Pte Ltd* [2014] 4 SLR 832 at [78]–[79]).

The parties' submissions

24 The plaintiff submits that the circumstances detailed at [7]–[11] above gave rise to a suspicion that the 2nd defendant had conducted the business of the 1st defendant fraudulently. The fact that the 1st defendant issued cheques from an account which was closed or appeared to have insufficient funds indicated that the 1st defendant wished to create an impression that it could do business though it may have been insolvent. Moreover, the 2nd defendant's lavish lifestyle suggests that the 1st defendant's monies may have been siphoned off by the 2nd defendant.

25 During the hearing, counsel for the plaintiff submitted that pre-action discovery was sought in order to identify if it had a viable claim for *fraud* against the defendants. However, it is well-established that the law does not recognise a free-standing cause of action in fraud *per se* (see, for example, *Syed Ahmad Jamal Alsagoff (administrator of the estates of Shaikah Fitom bte Ghalib bin Omar Al-Bakri and others) and others v Harun bin Syed Hussain Aljuined and others and other suits* [2017] 3 SLR 386 at [44]). Upon further questioning, counsel for the plaintiff explained that the intended cause of action was based on fraudulent trading under ss 339(3) or 340(1) of the Companies Act (Cap 50, 2006 Rev Ed). In the plaintiff's further written submissions, the plaintiff clarified that its intended cause of action was based on s 340(1) of the Companies Act.

26 The plaintiff thus submitted at para 16 of its further submissions that:

> The bank account statements of the 1st Defendant and the bank account statements of the 2nd Defendant are necessary

> for the Plaintiff to trace the funds and determine if the funds had been siphoned by the 2nd Defendant while she was managing the 1st Defendant. If the 2nd Defendant had indeed siphoned the funds away from the bank account of the 1st Defendant, the Plaintiff could then [found] its claim in fraud under section 340(1) of the Companies Act against the 2nd Defendant for using the company as a machine to defraud the vendors.

27 The 2nd defendant's response was simple. She disagreed with the plaintiff's submissions that there was fraud or wrongdoing on her part and explained that the closure of the Chillax Market was due to a challenging business environment. She also stated that her house and lifestyle were provided for by her husband, and that these matters were in any case irrelevant to the present application.

The decision

28 The issue to be decided in the present case is whether pre-action discovery of the classes of documents sought is necessary at this stage for the plaintiff to put forward a claim under s 340(1) of the Companies Act against the defendants. Effectively, the plaintiff wishes to obtain pre-action discovery to ascertain if the business of the 1st defendant "has been carried on with intent to defraud creditors … or for any fraudulent purpose" and if so, to cause the 2nd defendant to be personally responsible, without limitation of liability, for the debts owed by the 1st defendant to the plaintiff as provided for under s 340(1) of the Companies Act.

29 Before dealing with this issues, I set out the relevant portions of ss 339 and 340 of the Companies Act:

> **Liability where proper accounts not kept**
>
> 339. …

(3) If, *in the course of the winding up of a company or in any proceedings against a company,* it appears that an officer of the company who was knowingly a party to the contracting of a debt had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the company at the time of the company being able to pay the debt, the officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 3 months.

Responsibility for fraudulent trading

340.—(1) If, *in the course of the winding up of a company or in any proceedings against a company*, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.

(2) Where a person has been convicted of an offence under section 339(3) in relation to the contracting of such a debt as is referred to in that subsection, the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that the person shall be personally responsible without any limitation of liability for the payment of the whole or any part of that debt.

…

(5) Where any business of a company is carried on with the intent or for the purpose mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business with that intent or purpose shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 7 years or to both.

(6) Subsection (5) shall apply to a company whether or not it has been, or is in the course of being, wound up.

…

(8) On the hearing of an application under subsection (1) or (2), the liquidator may himself give evidence or call witnesses.

[emphasis added]

30 A plain reading of s 340(1) of the Companies Act suggests that an applicant may only seek to make an individual personally responsible for the debts of a company if it was discovered "*in the course of the winding up of a company or in any proceedings against a company*" that the business of that company had been carried on with "an intent to defraud creditors … or for any fraudulent purpose". In my view, the language of s 340(1) makes clear that the commencement of winding up proceedings or proceedings against the company is a pre-condition to the court granting a declaration under s 340(1) of the Companies Act. This reading is also supported by Prakash JA's observation in *Max-Sun Trading Ltd and another v Tang Mun Kit and another (Tan Siew Moi, third party)* [2016] 5 SLR 815 at [98] that "s 340(1) can be engaged only 'in the course of the winding up of a company or in any proceedings against a company'". In this regard, the plaintiff has not been able to cite a case which shows that proceedings under s 340(1) of the Companies Act can be taken out without a prior winding up or a proceeding against the company. On the other hand, there are many examples of cases where proceedings under s 340(1) were brought in the context of a winding up (see, for example, *Tang Yoke Kheng (trading as Niklex Supply Co) v Lek Benedict and others* [2005] 3 SLR(R) 263; *Liquidator of Leong Seng Hin Piling Pte Ltd v Chan Ah Lek and others* [2007] 2 SLR(R) 77; and *Kon Yin Tong and another v Leow Boon Cher and others* [2011] SGHC 228). It should be pointed out that civil liability under s 340(1) is separate and independent from criminal liability under s 340(5) of the Companies Act; in the latter case s 340(6) explicitly provides that criminal liability may be imposed on individuals for fraudulent trading whether or not the company has been, or is in the course of being, wound up (see also *Phang Wah v Public Prosecutor and another matter* [2012] SGCA 60 at [19]).

31 Thus, s 340(1) operates when misconduct is identified *in the course of* winding up or any proceedings against a company. Counsel for the plaintiff

appears to submit that the present pre-action discovery application against the 1st defendant would be sufficient to satisfy the requirement under s 340(1) of "any proceedings against [the 1st defendant]". I do not agree with this submission. In my view, the intention behind s 340(1) of the Companies Act is to hold individuals personal responsible for the debts of a company if it is discovered in the course of proceedings *already instituted* against the company that the business had been carried on fraudulently. An application for *pre-action* discovery, which, as stated in O 24 r 6(1) is necessarily made *prior* to the commencement of proceedings, does not satisfy s 340(1). To interpret "any proceedings against a company" under s 340(1) to include an application for pre-action discovery against a company in order to identify if an action under s 340(1) is made out would, in my assessment, be to subvert the intention behind the section.

32 Accordingly, even if this application for pre-action discovery is granted and the plaintiff obtains evidence that demonstrates that the business of the 1st defendant had been carried on by the 2nd defendant fraudulently, proceedings under s 340(1) cannot be commenced since the pre-condition that the fraud be discovered "in the course of winding up proceedings or any proceedings" against the 1st defendant would not have been satisfied. Steps would still have to be taken either to wind up the 1st defendant or begin proceedings against it. Given the pre-conditions set out in s 340(1) of the Companies Act, I do not think that an action under s 340(1) is one which an applicant can or should seek pre-action discovery in order to commence.

33 In my view, the appropriate course for the plaintiff if it is seeking to hold the 2nd defendant personally responsible for fraudulent trading in respect of the 1st defendant under s 340(1) of the Companies Act is for the plaintiff to either commence winding up proceedings against the 1st defendant or an action

against the 1st defendant and to seek discovery at the appropriate stage in those proceedings to ascertain if an action based on s 340(1) of the Companies Act could be brought against the 2nd defendant. This would, as I see it, comply with the intention behind s 340(1) of the Companies Act. Importantly, this also raises the question as to whether the pre-action discovery can be said to be necessary for the commencement of an action under s 340(1) when the section itself provides a method for the plaintiff to obtain the necessary discovery, *viz*, by commencing winding up or other proceedings against the 1st defendant.

34 It is not disputed that it is open to the plaintiff to commence such proceedings against the 1st defendant. In fact, the plaintiff states as follows at para 21 of its further written submissions:

> [The court] had also questioned why the Plaintiff could not just pursue a claim in contract for the outstanding monies. The Plaintiff *could have done so*, but for the fact that the Plaintiff is in discussion with the other vendors (at least one of whom holds an existing Order of Court against the 1st Defendant for outstanding monies under a similar agreement with the Plaintiff) to pursue a representative action against the 1st and 2nd Defendant[s] if it is determined from the disclosure that there is a viable claim to pursue in fraud.
>
> [emphasis added]

35 Apart from a possible claim against the 1st defendant under the Agreement, the plaintiff is also in a position to commence winding-up proceedings against the 1st defendant. In a letter of demand dated 3 August 2016, the plaintiff demanded that the 1st defendant pay it the sum of $10,971.58. According to the plaintiff, this sum has yet to be paid. It is hence open to the plaintiff to serve a statutory demand on the 1st defendant for the said sum, which, if unsatisfied after three weeks, would be deemed evidence of the 1st defendant's inability to pay its debts under s 254(2)(*a*) of the Companies Act. If a winding up order is granted in respect of the 1st defendant, the liquidator of

the 1st defendant would then be in a position to investigate the 1st defendant's financial affairs and determine if any fraud had been committed and if the 2nd defendant was knowingly a party to such fraud. In fact, such an investigation by the liquidator is contemplated under the Companies Act (see, for example, s 271(2) of the Companies Act).

36 An objection may be raised that while the institution of winding up proceedings may allow the plaintiff access to the books and financial information of the 1st defendant, it would not allow the plaintiff to obtain the bank statements of the 2nd defendant, which is also a category of documents which the plaintiff has requested in this application. However, this class of documents, *viz*, the documents in the 2nd defendant's possession, custody or power relating to *all* bank accounts held in her name or beneficially owned by her, is very wide. Whilst the possibility that the 2nd defendant had been siphoning funds off of the 1st defendant was suggested, the request that the 2nd defendant produce *all* her bank account documents appeared to me to be an oppressive one. Moreover, if the question which the plaintiff seeks an answer to is whether *the 1st defendant's business* had been carried on by the 2nd defendant fraudulently, the books and financial information *of the 1st defendant* should be sufficient to enable that question to be answered. In this regard, the plaintiff's suspicions surrounding the bounced OCBC cheque and the 1st defendant's UOB account as set out above could be verified simply by examining the 1st defendant's financial history and information. Documents relating to *all* the 2nd defendant's bank accounts, which would naturally include information personal to the 2nd defendant and unrelated to the 1st defendant's business, is, in my assessment, both irrelevant and unnecessary at this juncture.

37 Separately, it is clear from the passage quoted at [34] above that the plaintiff, by its own admission, currently has a "complete" cause of action

against the 1st defendant for the outstanding monies owed under the Agreement. As noted in the authorities canvassed above, where a plaintiff has an accrued cause of action against an identified defendant, pre-action discovery should not be utilised as a mechanism to obtain documents with respect to *other* potential causes of action. It follows from the above that pre-action discovery cannot be said to be necessary at this stage for the plaintiff to commence proceedings against the defendants since the plaintiff is already in a position to either apply to wind up the 1st defendant or bring proceedings against the 1st defendant under the Agreement. If in the course of those proceedings, fraud on the part of the 2nd defendant is disclosed, the plaintiff would then be in a position to commence an action under s 340(1) of the Companies Act against the 2nd defendant.

38 In summary, the plaintiff has not shown that the documents sought are either relevant or necessary for the commencement of proceedings against the defendants. In respect of the plaintiff's proposed action against the 2nd defendant under s 340(1) of the Companies Act, it is doubtful whether such an action is the sort of proceeding that an applicant may seek pre-action discovery in order to commence. In any case, s 340(1) already provides for a procedure to be complied with before civil liability for fraudulent trading can be imposed on an individual, *ie*, by applying to wind up the 1st defendant, or instituting a civil claim against the 1st defendant. If the plaintiff's ultimate aim is to cause the 2nd defendant to bear personal responsibility for the debts of the 1st defendant under s 340(1) of the Companies Act, the appropriate course of action is for the plaintiff to institute such proceedings and not to seek pre-action discovery. The court's caution in *Ng Giok Oh* at [7] that pre-action discovery is not "an instrument for private detectives snooping for action" applies squarely here.

Conclusion

39 For the reasons stated above, the application is dismissed. I will hear the parties on the issue of costs.

Zeslene Mao
Assistant Registrar

Jeremy Cheong and Rebecca Chia (IRB Law LLP) for the plaintiff;
The first defendant not represented;
The second defendant in person.