Prudential Assurance Co Singapore Pte Ltd
v
Tan Shou Yi Peter

[2018] SGHCR 4

High Court — Suit No 772 of 2016 (Summons No 5560 of 2017)
Justin Yeo AR
22 February 2018, 15 March 2018

Civil Procedure – Interrogatories

12 April 2018 Judgment reserved.

Justin Yeo AR:

1 This is an application under O 26 r 3(2) of the Rules of Court (Cap 322, R 5, Rev Ed 2014) ("Rules of Court") for the withdrawal of interrogatories served without order under O 26 rr 1(1) and 3 of the Rules of Court ("the Application"). The Application raises numerous issues in relation to the principles for administering interrogatories, including the use of interrogatories in relation to the authenticity of documentary evidence.

Background facts

2 Prudential Assurance Co Singapore Pte Ltd ("the Plaintiff") is a Singapore-incorporated company engaged in the life insurance business. Mr Tan Shou Yi Peter ("the Defendant") was formerly a senior financial services manager of the Plaintiff, in charge of a group known as the Peter Tan

Organisation ("PTO") which comprised about 500 agents and agency leaders of the Plaintiff.

3 The Plaintiff's claim against the Defendant in the present suit is in respect of the Defendant's alleged breaches of contractual non-solicitation obligations and fiduciary duties owed to the Plaintiff, by soliciting over 230 PTO agents and agency leaders to leave the Plaintiff and join a competitor known as Aviva Financial Advisers Pte Ltd. The Plaintiff alleges that the Defendant's acts of solicitation ("the Acts of Solicitation") consist of various representations and remarks made by the Defendant to the PTO agents and agency leaders on various occasions in May and June 2016, at a time when the Defendant was still contracted as an agent and agency leader of the Plaintiff. These representations and remarks allegedly caused the agents and agency leaders to leave the Plaintiff.

4 Aspects of the Acts of Solicitation have allegedly been captured in audio recordings disclosed by the Plaintiff in its list of documents dated 13 June 2017 ("the Audio Recordings"). The Defendant served a Notice of Non-Admission of Authenticity of Documents in respect of, *inter alia*, the Audio Recordings, and intends to dispute the authenticity of the Audio Recordings at trial ("the Authenticity Challenge").

5 On 20 November 2017, the Plaintiff served a set of 18 interrogatories ("the Interrogatories") on the Defendant, under O 26 rr 1(1) and 3 of the Rules of Court. 17 of these concerned the Audio Recordings ("the Audio Recordings Interrogatories"), while the last interrogatory related to the Defendant's pleaded position at paragraph 23(k)(vi) of the Defence and Counterclaim (Amendment No 2) ("the Final Interrogatory").

The Application

6 On 4 December 2017, the Defendant filed the Application, seeking an order that the Interrogatories be withdrawn. The Plaintiff filed its reply affidavit on 27 December 2017, enclosing an informal transcription of specific parts of the Audio Recordings which had been referred to in the Audio Recordings Interrogatories. The Defendant filed his reply affidavit on 17 January 2018, stating his concern that the Plaintiff's decision to "deliberately include extensive but unverified 'transcriptions'" of the Audio Recordings was "intended to unfairly influence and prejudice the views of the reader".[1] He further alleged that the Plaintiff's decision to "adopt selective quotes" from the Audio Recordings "without context and without listening to / transcribing the other portions" was "questionable".[2]

7 On 8 February 2018, the Plaintiff received the complete transcripts of the Audio Recordings, prepared by an external vendor, Epiq Singapore Pte Ltd ("the Transcripts"). The next day, the Plaintiff filed an application to seek leave for filing a further affidavit in the Application so as to exhibit the Transcripts ("the Transcripts Application"). The Transcripts Application was intended, amongst other things, to counteract the Defendant's allegations (as briefly quoted at [6] above).

8 On 22 February 2018, I heard the Transcripts Application and granted leave for the Plaintiff to use, rely on or refer to the affidavit enclosing the Transcripts at the hearing of the Application, and at any appeals therefrom. I

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1 Affidavit of Tan Shou Yi Peter (dated 17 January 2018), at para 7.

2 Affidavit of Tan Shou Yi Peter (dated 17 January 2018), at para 7.

heard the Application on the same day, and heard further submissions on 15 March 2018.

9 On 23 March 2018, Defendant's counsel sent a letter to the court, highlighting developments arising from the Plaintiff's filing of its 3rd Supplementary List of Documents that might be relevant to the Application. In gist, Defendant's counsel pointed out that the latest list of documents included correspondence between Plaintiff's counsel and a third party relating to proof of authenticity of the Audio Recordings, the provision of a cloned copy of a hard-disk drive for the purpose of analysing and ascertaining authenticity, and the Plaintiff's engagement of an expert to conduct forensic imaging of a separate hard-disk drive. Defendant's counsel submitted that the Plaintiff ought to have disclosed such correspondence for the purposes of the Application. Plaintiff's counsel responded on 26 March 2018, objecting to the Defendant's attempt to "re-open arguments" in the Application, and submitting that the arguments raised were in any event without basis. I did not see a need to rely on these arguments in coming to a decision on the Application.

The Law on Interrogatories

10 The interrogatory process finds its genesis as one of two forms of "discovery" practiced in the English Courts of Equity. Unlike the discovery of *documents* (which finds contemporary expression in O 24 of the Rules of Court), interrogatories concern the discovery of *facts*. Interrogatories are aimed at enabling the interrogating party to become aware of the position taken by the interrogated party in relation to specific facts, and may also be used to secure admissions on matters that would otherwise have to be proven at trial (see *Singapore Civil Procedure 2018* vol 1 (Foo Chee Hock JC gen ed) (Sweet &

Maxwell, 2018) ("*Singapore Civil Procedure*") at paragraphs 26/4/1 and 26/4/8 and *Singapore Court Practice 2017* (Jeffrey Pinsler gen ed) (LexisNexis, 2017) ("*Singapore Court Practice*") at paragraph 26/1/1); and see *Oversea-Chinese Banking Corp Ltd v Wright & Ors* [1989] 1 SLR(R) 551 ("*OCBC (HC)*") at [7], affirmed in *Wright Norman and another v Oversea-Chinese Banking Corp Ltd and another appeal* [1992] 2 SLR(R) 452 ("*OCBC (CA)*")).

11 As stipulated in O 26 r 1(1) of the Rules of Court, interrogatories will be allowed if they are "necessary" either for disposing fairly of a matter, or for saving costs:

> **Discovery by interrogatories (O. 26, r. 1)**
>
> 1.—(1) A party to any cause or matter may, in accordance with the following provisions of this Order, serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter which are necessary either —
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> (*a*) for disposing fairly of the cause or matter; or
>
> (*b*) for saving costs.

12 Case law has developed helpful guidance and principles upon which interrogatories may be allowed (see, *eg*, *OCBC (HC)* at [7] and [14], *OCBC (CA)* at [7], *Trek Technology (S) Pte Ltd v Ritronics Components (S) Pte Ltd* [2007] 1 SLR(R) 846 ("*Trek Technology*") at [5] to [8]; and see *Singapore Civil Procedure* at paragraph 26/4/13 and *Singapore Court Practice* at paragraph 26/1/3). The principles of particular relevance to the Application are touched on in the following paragraphs.

13 In brief, interrogatories are more readily allowed where:

(a) they direct the parties' attention to the central issues in contention at an early stage, thus reducing the need for counsel to focus time and effort on peripheral and uncontested matters;

(b) they have direct bearing on the issues in dispute, and will ease the subsequent passage of cross-examination by delineating the precise matters in contention;

(c) there would be real, substantial and irremediable prejudice if the interrogatories are refused (although these are not prerequisites to finding that interrogatories are necessary);

(d) they can be answered without difficulty and can potentially dispose of entire lines of questioning, or even the need to call certain witnesses; or

(e) the information sought, if introduced only in cross-examination, may catch opposing counsel unaware and create the need for adjournments and a flurry of interlocutory applications to address the new developments.

14 Interrogatories may more readily be refused where:

(a) they are oppressive in nature, in that they exceed the legitimate requirements of the circumstances at hand, or impose a burden on the interrogated party that is entirely disproportionate to the benefit to be gained by the interrogating party;

(b) they amount to an attempt to fish for information, in the hope of stumbling upon something that will support the interrogating party's case;

(c) they are of a more ancillary nature that are more appropriately sought in cross-examination;

(d) they concern matters which a witness will testify to at trial (see [21] and [22] below);

(e) they are intended merely to obtain the identities of witnesses and documents which the other party intends to produce (see [38] to [41] below); or

(f) they seek mere evidence which does not form any part of the material facts in dispute (see [39] below).

The Audio Recordings Interrogatories

15 I turn first to the Audio Recordings Interrogatories. Each of these interrogatories takes an identical form, as follows:

> Were you the person recorded as speaking in the [identified Audio Recording], at various parts thereof, including but not limited to the parts at [timestamps, *eg* 07:40 – 08:36, 10:12 – 11:54, *etc*] of the recording? If the answer is yes, please state the following:-
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> (a) When did this event as recorded in the said audio recording… take place? Please state the date, month and year.
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> (b) Where did this [event] take place? Please state the venue, city and country.
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> (c) Who were the other attendees (apart from yourself) at this [event]? In respect of each attendee, please state:
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> (i) his/her full name; and
>
> (ii) whether he/she was an agent or agency leader of the Plaintiff in your agency organisation, [PTO], at the material time of this [event].

16 The Audio Recordings Interrogatories may be broken into two parts. The first part queries if the Defendant was the person recorded as speaking at certain parts of the recording in question ("the Primary Queries"). The second part applies only where the Primary Queries are answered in the affirmative, and seeks details as to when and where the recorded events took place, as well as the identities of the attendees at the events ("the Secondary Queries").

Parties' Arguments

17 Defendant's counsel argued that the Audio Recordings Interrogatories were neither necessary for fair disposal of the matter nor the saving of costs, raising the following arguments:

(a) First, the Audio Recordings are unauthenticated and there is serious doubt as to their admissibility at trial. This is because the Plaintiff has been unwilling to identify the maker of the Audio Recordings, and the originals appear to have been deleted. Unauthenticated material lacks relevance (citing *Phipson on Evidence* (Hodge Malek *et al* ed) (Sweet & Maxwell, 18th Ed, 2013) ("*Phipson*") at paragraph 41-07), and irrelevant material cannot be necessary for the disposal of a matter (citing *Bayerische Hypo-und Vereinsbank AG v Asia Pacific Breweries (Singapore) Pte Ltd* [2004] 4 SLR(R) 39 ("*Bayerische*") at [37], albeit in the context of pre-action discovery).

(b) Second, the Audio Recordings Interrogatories are highly prejudicial to the Authenticity Challenge. They relate to the *contents* of the Audio Recordings themselves, thus effectively permitting the Plaintiff a "backdoor" approach to benefit from the contents of the recordings without first having to deal with the difficulties surrounding

their authenticity. Furthermore, there is reason to believe that the recordings may have been tampered with, or may even be combinations of different recordings. In this regard, the Defendant had engaged one Mr Samuel Chan ("Mr Chan") to conduct a "quick forensic analysis" of one of the Audio Recordings, and Mr Chan and identified in his preliminary report "potentially six separate breaks" in that recording. Answering the Audio Recordings Interrogatories would therefore prejudice the Defendant's ability to mount the Authenticity Challenge subsequently.[3]

(c) Third, as the questions in the Audio Recordings Interrogatories can be put to the Defendant at trial, it would not save costs to administer the interrogatories now. In *OCBC (HC)*, the High Court held that if an admission of fact can be proved by a witness who will be called at the trial, "interrogatories will not, as a rule, be allowed because it will not save but add to costs" (emphasis added) (*OCBC (HC)* at [7]). Furthermore, because the questions can (and will) be asked at trial, the withdrawal of these interrogatories would not occasion any real, substantial and irremediable prejudice to the Plaintiff.

(d) Fourth, there are practical difficulties in answering the Audio Recordings Interrogatories. As there are numerous voices in the Audio Recordings, it is "impossible" to answer the question of who the "person recorded as speaking" was.[4] Furthermore, before the interrogatories can

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3 Defendant's Written Submissions (dated 20 February 2018), at para 32.

4 Defendant's Written Submissions (dated 20 February 2018), at para 39.

(*cont'd on next page*)

be answered, experts have to be engaged to conduct checks on the Audio Recordings, so as to ascertain whether each recording is a recording of a single event or a combination of different events.[5] The experts' findings will also have to be cross-referenced with the evidence of the Defendant, the agency leaders and the agents.[6] All of these will involve immense expense on the part of the Defendant, which should be left for trial. If the Defendant is made to answer these questions now, he may incur costs that are eventually thrown away in the event that the Audio Recordings are found to be inadmissible at trial.

18 Plaintiff's counsel emphasised that the Audio Recordings Interrogatories were directed *solely* at dealing with the issue of *authenticity* of the Audio Recordings. He contended that it was precisely the Defendant's mounting of the Authenticity Challenge, coupled with his refusal to state the aspects of authenticity he was disputing, that necessitated these interrogatories. For instance, it was unclear whether the Defendant was contending that the recorded voice was not his, or that he did not speak the words in question, or that the other persons recorded as speaking were not present when he was speaking, and so on.[7] Plaintiff's counsel therefore argued that the Audio Recordings Interrogatories were necessary both for the fair disposal of the matter and saving costs, for the following reasons:

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5 Defendant's Written Submissions (dated 20 February 2018), at para 44.

6 Defendant's Written Submissions (dated 20 February 2018), at para 44.

7 Affidavit of Lee Wei Chuan (dated 27 December 2017), at para 18; Plaintiff's Written Submissions (dated 20 February 2018), at para 39.

(a) First, the Defendant had erroneously conflated the *admissibility* of documentary evidence with its *authenticity*; these are, in fact, separate and distinct issues (citing *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2006] 3 SLR(R) 769, where the Court of Appeal stated *in obiter* that issues relating to the tampering or manipulation of documentary evidence go to the weight of the evidence in question, rather than its admissibility).

(i) In relation to *admissibility*, the Defendant had not satisfactorily explained why the Audio Recordings would be inadmissible at trial, in the light of the various provisions of the Evidence Act (Cap 97, Rev Ed 1997).[8]

(ii) In relation to *authenticity*, the Defendant's attempts to cast doubt on the authenticity of the Audio Recordings were specious. The Defendant was clearly aware that one Ms Wendy Ho ("Ms Ho") was the maker of the original Audio Recordings,[9] as the Defendant had himself taken out a specific discovery application requesting for documents between Ms Ho and other persons in relation to the creation of the Audio Recordings.[10] Furthermore, Mr Chan's "preliminary report" should be disregarded as it was not adduced in accordance with the requirements for expert evidence as prescribed in O 40A r 3 of the Rules of Court. The Defendant had also failed to explain how

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8 Plaintiff's Written Reply Submissions (dated 21 February 2018), at para 2.

9 Plaintiff's Written Reply Submissions (dated 21 February 2018), at para 3(a).

10 Plaintiff's Written Reply Submissions (dated 21 February 2018), at para 3(b).

> Mr Chan – as an "art director" or "multimedia consultant" – had the requisite qualifications to provide an expert opinion on forensic analysis of the Audio Recordings. Mr Chan's report also contained no explanation of how the analysis was carried out. Furthermore, Mr Chan had purportedly analysed only one of the 17 Audio Recordings, and as such there is no basis to generalise his opinion to the other 16 recordings.

(b) Second, the Primary Queries seek admissions from the Defendant that he was the person recorded as speaking in the Audio Recordings, while the Secondary Queries seek evidence on the provenance of the Audio Recordings. These are valid methods of proving authenticity (citing *Phipson* at paragraph 41-07).

(c) Third, the Audio Recordings Interrogatories have a crucial bearing on how the parties' cases are to be run, and have an important impact on the factual and expert evidence to be led. In relation to the Primary Queries, depending on the Defendant's position (see [18] above), the Plaintiff and the court would have to be concerned about very different types of evidence.

(d) Fourth, any difficulties that the Defendant might have encountered in relation to the fact that there were numerous voices (see [17(d)] above) have been entirely removed now that the Transcripts have been provided. In addition, a table has been provided to the Defendant to assist in identifying the precise words and voice in question.

Decision on the Audio Recordings Interrogatories

19 The Audio Recordings are allegedly auditory records of the Defendant's discussions with the Plaintiff's agency leaders and agents at certain meetings, during which the Defendant performed the Acts of Solicitation. Given the centrality of the Audio Recordings to the success (or otherwise) of the Plaintiff's claim, it is unsurprising that the Application was rigorously contested; the Authenticity Challenge will also, in all likelihood, be fiercely fought at trial.

20 I first deal with Defendant's counsel's fundamental objection to interrogatories being administered in relation to documentary evidence that is subject to an authenticity challenge at trial. In my view, the fact that authenticity has been disputed is not of itself a bar to interrogatories concerning that document, particularly where the interrogatories are aimed precisely at narrowing the issues in relation to the authenticity challenge. Interrogatories administered in this vein can in fact help to significantly reduce costs and facilitate the fair disposal of the matter. While no local case law was cited to me on this point, Plaintiff's counsel cited *Swain v Hest Australia Ltd v Anor* [2003] TASSC 104 ("*Swain*"), where the Supreme Court of Tasmania observed that interrogatories can be issued in relation to authenticity in the event that authenticity is disputed (*Swain* at [10]). Defendant's counsel did not disagree with the proposition in *Swain*.

21 I next deal with Defendant's counsel's objection to the Audio Recordings Interrogatories on the basis that these seek admissions of fact from a witness who would be attending trial (*viz*, the Defendant), and as such should not be allowed "as a rule" (citing *OCBC (HC)* at [7]; see [17(c)] above). In my view, the proposition in *OCBC(HC)* was primarily motivated by the court's

concern to avoid additional costs occasioned by interrogating trial witnesses prior to the trial – indeed, the court had explained that the rule was premised on the understanding that such interrogatories would "not save but add to costs" (see *OCBC (HC)* at [7]). The proposition ought not be interpreted as an *absolute prohibition* of interrogatories against all persons who would be witnesses at trial, regardless of the circumstances at hand. In particular, the proposition should not be taken to preclude the administering of interrogatories, where allowing the same would be entirely in line with O 26 r 1(1) of the Rules of Court, *viz*, necessary for the fair disposal of the matter or for saving costs.

22 In this regard, it is pertinent that in the subsequent case of *Foo Ko Hing v Foo Chee Heng* [2002] 1 SLR(R) 664 ("*Foo Ko Hing*"), the High Court allowed the administration of interrogatories on a non-party witness (pursuant to O 26A r 1 of the Rules of Court) notwithstanding that he would be giving oral testimony at trial. The court's rationale for doing so was to avoid disruptions to the trial, in view that the witness in question was not willing to provide an affidavit of evidence-in-chief (*Foo Ko Hing* at [11]). While the *OCBC (HC)* decision was not expressly referred to in *Foo Ko Hing*, it has been observed that *Foo Ko Hing* demonstrates that the proposition in *OCBC (HC)* is not an "immutable" rule (see *Singapore Civil Procedure* at paragraph 26/4/6). *Foo Ko Hing* therefore illustrates that there may well be occasions where the requirements for the administering of interrogatories could be met even if the these are to be administered on a witness who would be attending trial.

The Primary Queries

23 I find that the Primary Queries are necessary for the fair disposal of the matter and for the saving of costs, for four reasons.

24 First, I recognise that the Defendant will be called at trial and that the Primary Queries may be put to him at that time. However, allowing the Primary Queries now would potentially dispose of entire lines of questioning and expert inquiry. The answers to the Primary Queries will provide clarity, in advance of trial, on the precise dispute in relation to an important aspect of authenticity that may otherwise involve the furnishing of expert evidence. Without the information sought in the Primary Queries, the Plaintiff would be compelled to prepare a large range of evidence (including expert evidence) relating to the identity of the relevant speaker in the Audio Recordings. Waiting until trial for such information to be provided would mean that costs would in all likelihood already have been incurred in attempting to prove that the Defendant is indeed the person recorded as speaking, particularly given the importance of the Audio Recordings to the Plaintiff's case. It would therefore be more helpful for the answers to be provided now, so as to avoid incurring costs to prove aspects of authenticity that the Defendant does not intend to dispute at all.

25 Second, Defendant's counsel sought to distinguish *Foo Ko Hing* on the basis that, unlike the witness in that case, the Defendant would be furnishing an affidavit of evidence-in-chief in the present suit. However, it must be kept in mind that the Defendant has consistently avoided taking any position at all on the Audio Recordings; indeed, he has repeatedly insisted that all issues of authenticity should be reserved for trial. As such, there is little reason to believe that he would offer the relevant information in his affidavit of evidence-in-chief. Furthermore, provision of information only in the affidavit of evidence-in-chief would be too late, for the reasons mentioned in [24] above.

26 Third, while the information sought by way of the Primary Queries may potentially be obtained from other witnesses (such as Ms Ho or any other person whom the Plaintiff believes was at the event in question), the juridical nature of information obtained from these third parties would be fundamentally different from that obtained directly by way of the Primary Queries. In particular, the Defendant's responses to the Primary Queries may well be in the nature of *admissions*. Without knowledge of the Defendant's position on the Primary Queries, regardless of the views of the third parties in relation to the Primary Queries, the Plaintiff would still be compelled to adduce evidence to prove that the recorded voice belongs to the Defendant.

27 Fourth, I am not convinced that the Defendant would face – in the words of Defendant's counsel – "insurmountable difficulties" in answering the Primary Queries, or that allowing such interrogatories would cause prejudice to the Authenticity Challenge. The voice in question has been clearly pinpointed by the way of timestamps, and the clarity of the Primary Queries has been further enhanced with the provision of the Transcripts. It also bears mention that the Defendant is neither required nor expected to consult experts and to undertake forensic studies of the Audio Recordings before responding to the Primary Queries. What he has to do is to respond factually, to the best of his knowledge, whether he is the person recorded as speaking in the recordings. For instance, if he honestly believes the voice to be his but that his speech had been manipulated to misrepresent what had actually transpired, it is open to him to qualify his response accordingly. There is no prejudice to the Authenticity Challenge – the challenge remains very much alive at trial, save that it will be limited (and rightly so) to the aspects of authenticity which the Defendant genuinely intends to challenge.

28 As such, the Defendant has not satisfied his burden of showing that the Primary Queries fall short of the requirements in O 26 r 1(1) of the Rules of Court. I therefore decline to order the withdrawal of the Primary Queries.

The Secondary Queries

29 In contrast, I do not think that the Secondary Queries are necessary, at this time, for the fair disposal of the matter, or the saving of costs.

30 First, it must be kept in mind that it is the Plaintiff's own case that the Audio Recordings capture the Defendant's Acts of Solicitation. It would therefore be surprising if the Plaintiff has no information, or no access to any information, about the events captured in the Audio Recordings. The Plaintiff has already stated that it knows Ms Ho to be the maker of the Audio Recordings, and no evidence or argument has been proffered as to why the relevant information cannot be obtained from Ms Ho. Unlike the Primary Queries where any admission in relation to the identification of the Defendant's voice may result in significant costs saving (see [26] above), there is far less basis for believing that the Secondary Queries are similarly necessary in relation to establishing the authenticity of the Audio Recordings.

31 Second, while Plaintiff's counsel emphasised that the Secondary Queries seek to establish the chain of custody or provenance of the Audio Recordings, it is not apparent how an admission in the context of the Secondary Queries would go towards these authenticity-related issues at all. For instance, in relation to the queries relating to the "date, month and year" and "venue, city and country" of the events captured in the Audio Recordings, it is unclear as to how these relate to proving the chain of custody or provenance of the

recordings. Likewise, the queries relating to the identity of the attendees at the recorded events do not directly relate to authenticity – indeed, these queries are not even linked to the voices captured in the Audio Recordings, and extend instead to all "other attendees" at the event. Viewed holistically, the Secondary Queries appear to be attempts to fish for information which may assist the Plaintiff in proving its own case or identifying further witnesses. They also appear to seek information of a more ancillary nature, which may be more appropriately situated in the process of cross-examination than interrogatories.

32 For the foregoing reasons, I am of the view that the Secondary Queries are neither necessary for the fair disposal of the matter nor for saving costs. As such, I order that the Secondary Queries be withdrawn.

The Final Interrogatory

33 The Final Interrogatory relates to paragraph 23(k)(vi) of the Defence and Counterclaim (Amendment No 2), which sets out part of the Defendant's pleaded response to the particulars of the Acts of Solicitation as pleaded in the Statement of Claim. The Final Interrogatory is as follows:

> On the Defendant's pleaded position at paragraph 23(k)(vi) of the Defence and Counterclaim (Amendment No. 2) dated 5 May 2017… that "*the Defendant did not meet or speak with any of the agents… in PTO (other than the Attendee [agency leaders]) about his consideration and/or intention to either retire or be a consultant. The Defendant also cautioned the [agency leaders] in PTO against speaking with their agents about these issues*":-
>
> (a) Who were the [agency leaders] whom you had "*cautioned*" against speaking with their agents about "*these issues*"? Please state:
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> (i) his/her full name; and
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> (ii) whether he/she was an agent or agency leader of the Plaintiff in… PTO, at the

> material time when you "*cautioned*" him/her.
>
> (b) When did you caution the [agency leaders] against speaking with their agents about "these issues"? Please state the date(s), month(s) and year(s).
>
> [emphasis in original]

34 For completeness, the information sought in the Final Interrogatory had previously been requested by the Plaintiff by way of a request for further and better particulars, but was refused by the Defendant on the basis that the requests were "unnecessary, irrelevant, immaterial and / or a request for evidence".[11]

Parties' Arguments

35 Defendant's counsel contended that the Final Interrogatory ought to be withdrawn, raising three main arguments:

(a) First, the Final Interrogatory sought the identities of the "cautioned" agency leaders, which were not facts in dispute. Instead, this interrogatory was the Plaintiff's attempt to gain evidence on whether the "cautioned" agency leaders had been solicited by the Defendant. As such, it was the content of the "cautioned" agency leaders' communications with the Defendant that was in dispute, rather than the identities of these agency leaders. In other words, the request sought mere evidence of the facts in dispute, which is not a permissible use of interrogatories (citing *Marriott v Chamberlain* (1886) 17 QBD 154 ("*Marriott*") at 163).

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[11] Affidavit of Lee Wei Chuan (dated 27 December 2017), at 100 and 131.

(b) Second, the Final Interrogatory sought merely the identities of witnesses to be called, which is also not a permissible use of interrogatories (*Marriott* at 163).

(c) Third, the Final Interrogatory consisted entirely of questions that could be asked of the Defendant at trial. Withdrawal of the interrogatory would therefore save costs, and would not cause substantial or irremediable prejudice to the Plaintiff.

36 Plaintiff's counsel responded with the following counter-arguments:

(a) First, the Defendant had previously refused to provide further and better particulars on the matters sought in the Final Interrogatory (see [34] above). Insofar as the Defendant's reasons for resisting the Final Interrogatory were on the basis that these were requests for evidence, such an objection would not be valid since the issuance of an interrogatory is the very mechanism intended for eliciting evidence.

(b) Second, unlike in *Marriott* where the Plaintiff had sworn that he would be calling the relevant witnesses at trial, in the present case, the Defendant has not given any assurance that he would indeed be calling all the "cautioned" agency leaders at trial. In any event, even if such assurance was given, this would not of itself be sufficient reason to exempt the plaintiff from disclosing their names (citing *Marriott* at 161; see [41] below).

(c) Third, the Final Interrogatory was not intended to seek the identities of the witnesses to be called by the Defendant. Instead, the identities of the "cautioned" agency leaders were material to a key

disputed matter, *viz*, whether the Defendant had solicited the agency leaders, or had in fact "cautioned" them not to contact the agents. On the authority of *Marriott*, such an interrogatory should be permitted as it seeks evidence that is material to a fact in dispute.

Decision on the Final Interrogatory

37 As both sets of counsel relied heavily on *Marriott* for their respective submissions, it is useful to first consider the facts and holdings in that case.

38 The facts of *Marriott* are as follows. The plaintiff had stated in the course of his election campaign that an informant had showed him a copy of a document signed by the defendant, and further claimed that the document had been sent to various recipients. The defendant published a letter refuting these allegations, asserting that the allegations were fabrications and that the plaintiff was a "false witness". The plaintiff sued the defendant on the basis that the published letter was libellous in nature. In gist, the plaintiff asserted that he had in fact seen a copy of the document, and that the original documents were in the hands of certain known persons. The defendant pleaded the defence of justification, on the basis that the plaintiff's allegations were fabrications because the document did not actually exist. In the course of the proceedings, the defendant administered interrogatories seeking the name of the informant as well as the names and addresses of the alleged recipients of the document. The plaintiff refused to answer the interrogatories on the ground that he intended to call these persons as his witnesses at trial.

39 The court held that interrogatories requesting information forming "a substantial part of the facts material to the issue" would be allowed (*Marriott* at

162). It further held that the right to interrogate was not confined to the "facts directly in issue", but extended to any facts the existence or non-existence of which was relevant to the existence or non-existence of the facts directly in issue (*Marriott* at 163). However, interrogatories seeking merely to identify the witnesses to be called by another party, or "mere evidence" of the facts in dispute which "form[ed] no part of the facts themselves", would be refused (*Marriott* at 163).

40 On the facts, the court observed that it would be material for the defendant to show that the document allegedly signed by him did not exist, or that no copy of that document ever existed. If the defendant succeeded in proving these points, his defence of justification would succeed. On the other hand, it would be material for the plaintiff to prove the existence of the document, the existence of a copy of the document, and that the copy had been shown to him. These facts, if proven, would be material in disposing of the defence of justification. The court found that the information requested formed a "substantial part" of the material facts of the case, for the following reasons:

(a) First, the existence or non-existence of the original documents was "a very material fact with regard to the inference that may be drawn from it as to the fact in issue" (*Marriott* at 162). Since the plaintiff had stated that the original documents were in the hands of certain persons, the identities of those persons were material to the fact of the existence of such documents.

(b) Second, since the plaintiff had claimed that an informant had shown him a copy of the document, the existence or non-existence of the copy of the document was material to the issue of whether the

plaintiff's allegations were fabrications. The identity of the informant was a "substantial portion" of the fact that a copy of the document existed (*Marriott* at 163).

41 In the circumstances, the court found the plaintiff bound to answer the interrogatories. The fact that the plaintiff intended to call the alleged informant and recipients as witnesses did not exempt him from such an obligation (*Marriott* at 161).

42 I turn now to the Application. In my view, the identities of the "cautioned" agency leaders do not go towards any material fact in dispute. The reference to the Defendant's "caution[ing]" of certain agency leaders in the Defence merely sets out the Defendant's position on his conversations with these agency leaders. Whether this fact is successfully established or otherwise would not have a direct impact on the material question of whether the Defendant was responsible for the Acts of Solicitation. Regardless of whether the Defendant had in fact "cautioned" certain agency leaders, the key issue of whether he had solicited them remains a live issue to be determined.

43 The Final Interrogatory therefore does not appear to be material to the case at hand, and would not dispose of the matter one way or another. It appears instead to be an attempt to seek evidence that does not form any substantial part of the material facts in dispute. It follows that the Final Interrogatory is neither necessary for the fair disposal of the matter nor for saving costs. As such, I order that the Final Interrogatory be withdrawn.

Conclusion

44 For the foregoing reasons, I order that the Secondary Queries and the Final Interrogatory be withdrawn, but decline to so order in relation to the Primary Queries. I will hear parties on costs.

Justin Yeo
Assistant Registrar

Mr K Muralidharan Pillai and Ms Andrea Tan (Rajah & Tann Singapore LLP) for the Plaintiff;
Mr Jonathan Tang and Ms Nanthini Vijayakumar (TSMP Law Corporation) for the Defendant.