IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 48

Civil Appeal No 66 of 2021

Between

Dr Goh Seng Heng

… *Appellant*

And

Wang Xiaopu

… *Respondent*

In the matter of HC/Suit No 686 of 2015

Between

Wang Xiaopu

… *Plaintiff*

And

(1) Dr Goh Seng Heng
(2) Dr Goh Ming Li Michelle

… *Defendants*

EX TEMPORE JUDGMENT

[Contempt of Court — Sentencing]

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Andrew Phang Boon Leong JCA (delivering the judgment of the court *ex tempore*):

Introduction

1 CA/CA 66/2021 is the appellant's appeal against the decision of the Judge of the General Division of the High Court (the "Judge") in HC/SUM 5041/2020, which was the respondent's application for an order of committal against the appellant. The appellant had been ordered, in HC/ORC 3219/2020 ("ORC 3219"), to account for funds which had been paid into a specific account in China (the "Account"). In his decision in *Wang Xiaopu v Goh Seng Heng and another* [2021] SGHC 282 (the "Judgment"), the Judge found that the appellant had intentionally withheld information from the respondent in breach of ORC 3219, and had aggravated this contempt by lying that he could not recall the information. The Judge therefore imposed a sentence of seven days' imprisonment on the appellant.

2 In the present appeal, the appellant does not dispute the Judge's decision that he is guilty of contempt. The sole issue in question is whether the Judge erred in handing down the sentence he did. The appellant contends that the appropriate sentence is a fine of $25,000–$30,000.

3 In connection with this, the appellant makes the following arguments:

(a) First, the Judge erred in failing to take into account the appellant's best efforts to comply with ORC 3219;

(b) Second, the Judge erred in failing to take into account the context in which the appellant had said he was "unable to recall";

(c) Third, there are a number of mitigating factors in the appellant's favour; and

(d) Fourth, a sentence of imprisonment is not in keeping with precedents in this area of law.

4 In our view, the appellant has not made out any of these arguments. We therefore dismiss the appeal.

The appellant's best efforts

5 The appellant's first argument is that the Judge failed to consider his efforts to comply with ORC 3219. To consider the validity of this argument, we shall recount briefly the history of the appellant's responses to ORC 3219.

6 First, in response to a query from the respondent's counsel, the appellant filed an affidavit on 20 July 2020 (the "July 2020 Affidavit"). In this affidavit, the appellant stated in respect of the Account that:

> The account has been closed for several years. As I am unable to recall and I do not anymore have in my possession any physical records of past bank statements of the account, I have written to the bank to help in tracing my past statements. …

7 On 27 August 2020, the respondent's counsel learned from the Official Assignee's office that the appellant had instead informed the Official Assignee that all the money in the Account had been "used to pay for [his] business obligations, debts and investment losses [he] incurred in China". The appellant had been declared bankrupt in March 2020. The respondent's counsel therefore sought clarification from the appellant as to what had happened to the money in the Account. In response, the appellant filed a second affidavit on 28 August 2020 (the "August 2020 Affidavit"), stating that:

> I cannot remember nor recall. It has been too many years ago and I have since retired from active professional and corporate life, being over 65 and diabetic with poor and failing memory.

8 There followed further attempts by the respondent's counsel to obtain information from the appellant, and continued assertions by the appellant that he had forgotten. In one such assertion, on 22 September 2020, he claimed that the sums in question had been "expended to Chinese businessmen whom [he] owed financial obligations", though he still could not recall the details.

9 Thereafter, in bankruptcy examination proceedings in April 2021, the respondent said – for the first time – that he had a gambling habit, and that he had lost the entirety of the funds in the Account through gambling in Macau. The "Chinese businessmen" he said he had owed financial obligations to were supposedly casino junkets instead.

10 With this context in mind, we can now evaluate the appellant's arguments as to his best efforts. The first limb of his argument is that he had proactively responded to the respondent's counsel's queries. However, as the

Judge noted, there were in fact numerous instances where the appellant failed to display any initiative, or in fact gave disingenuous answers to the respondent (see the Judgment at [33]–[38]). In particular, the Judge took a very different view of what the appellant seeks now to characterise as "proactive" responses to the respondent's counsel: the Judge considered that the appellant acted with so little urgency that the respondent "had to send *six* reminders to [the appellant]", with "nothing meaningful" forthcoming (see the Judgment at [38]). Indeed, while the appellant did file the July 2020 and August 2020 affidavits in response to the respondent's queries, these affidavits stated that he was "unable to recall" and disclosed little of help to the respondent in relation to the Account.

11 Second, we do not accept the appellant's arguments that he had, through his email of 22 September 2020, clarified the situation by explaining that he had expended the funds in the Account "to Chinese businessmen whom [he] owed financial obligations". His later evidence in April 2021 and at the committal proceedings was that the funds in the Account had in fact been spent gambling in Macau. Although the two statements are not strictly speaking inconsistent, the fact remains that there is a plain disingenuousness between them. If the funds in the Account had indeed been spent gambling in Macau, then the response involving Chinese businessmen would have been of little use to the respondent, and would have been liable to send the respondent on a wild goose chase searching for these supposed Chinese businessmen rather than Macanese casinos. Indeed, in a response by the respondent's counsel dated 24 September 2020, the respondent sought to enquire as to the identities of the Chinese businessmen.

12 Finally, the appellant also argues that he has taken numerous steps to retrieve documents to enable him to provide accounts. We note that the Judge did consider these actions, though he ultimately deemed them not to have purged the appellant's contempt (see the Judgment at [40]).

13 In the circumstances, it cannot be said that the Judge had erred in failing to consider the appellant's best efforts: the Judge did consider them, and if he did not do so in the glowing terms in which the appellant now seeks to portray them, that is only because those glowing terms are unfounded in fact.

The appellant's statements that he was "unable to recall"

14 The second main argument which the appellant mounts is that the Judge erred in failing to appreciate the context of his statement that he was "unable to recall". In particular, he focuses on the statement given in his July 2020 affidavit concerning the Account (see [6] above). He submits that the proper interpretation of this statement is that he was not stating that he did not recall the general event of having spent the money in the Account; rather, he was unable to recall the *details* of his spending.

15 This interpretation, however, is undermined by his August 2020 affidavit. In that affidavit, he once again avowed that he "cannot remember nor recall", *despite* having – just the day before – informed the Official Assignee that he had used the funds in the Account to pay off obligations, debts and investment losses in China.

16 Even if the benefit of the doubt were once again to be extended to the appellant in respect of the August 2020 affidavit, in that he should be understood to have meant that he could not recall the *details*, the Judge's point remains: why did he not at least tell them about the broad strokes of his losses, whether to Chinese ventures or gambling in Macau? That he found the respondent's counsel to be "adversarial" was, as the Judge put it, "not a legitimate defence" (see the Judgment at [27]). In our view, the Judge did not err in dismissing this as irrelevant. In an account, all information should be given, even if incomplete;

as the Judge aptly put it, "it is antithetical to the accounting process to allow the obligor to pick and choose how and when he or she wishes to comply" (see the Judgment at [27]).

17 Indeed, when placing the statements of the July 2020 and August 2020 affidavits in the *overall* context of the appellant's non-compliance, it is plain that the Judge was entitled to conclude, as he did, that those statements were clear lies. The appellant's story, as disclosed on the documents, evolved from an inability to recall, to having spent the money in the Account paying off Chinese debts, to actually having spent the money in the Account gambling in Macau. Two things are worthy of note here. The first is that – as the Judge found – the appellant has yet to purge his contempt: notably, he has not furnished evidence showing that he had in fact lost the money in the Account gambling, or that he was indeed someone with such a habit that it was feasible for him to so lose the money in the Account (see the Judgment at [40]). The second is that, from the grant of ORC 3219 in June 2020, it took the appellant ten months (up to the examination proceedings in April 2021) to present this incomplete picture to the respondent. We hold that the Judge was entitled to find, given this history of vagueness and non-compliance, that the respondent had in his July 2020 and August 2020 affidavits *deliberately* given the impression that he was "unable to recall" *what happened to the funds in the Account* and so *lied*. The Judge did not err by failing to appreciate the context of the appellant's statements.

Mitigating factors

18 The appellant also raises a series of mitigating factors, none of which is persuasive.

19 First, he states that this contempt is his first offence. However, it is trite that while the presence of relevant antecedents is aggravating, a lack of such antecedents is of no mitigating value.

20 Second, he submits that he had breached only one order of court, namely ORC 3219. However, it is difficult to see how this is in any way a mitigating circumstance. What matters in the present case is that ORC 3219 was persistently breached. The appellant did not avail himself of the numerous opportunities available to him to come clean. Further, as the Judge found, the contempt was deliberate and has not been purged (see the Judgment at [40] and [42]).

21 Third, he states that he had not missed any court hearings in respect of ORC 3219 and that he had always appeared in court when required, whether by himself or through counsel. Court attendance is an obligation, and the fact that a litigant shows up in court should not in any way discount the severity of any other disobedience of the court's orders on his part.

22 Fourth, the appellant states that he was not legally represented at the time he prepared the July 2020 and August 2020 affidavits. The respondent argues that this is untrue, in so far as the July 2020 affidavit is concerned: the appellant's legal team only discharged itself on 12 August 2020. Nonetheless, even if the appellant had indeed ceased consulting his legal team even for the July 2020 affidavit, we do not see how this would be relevant. This was not a case of a confused and inexperienced litigant failing to comprehend a complicated court order, resulting in inadvertent disobedience. Rather, as the Judge found, the appellant had deliberately lied in the face of a direct order of court (see the Judgment at [42]).

23 Fifth, the appellant suggests that the delay in his response to the respondent was due to delays on the bank's end in relaying information on the Account to him. However, as the respondent rightly points out, the issue at the heart of the appellant's contempt was his failure to disclose all the information available to him at the earliest possible time. Notwithstanding his inability to access the details of the Account, his version of events as to the gambling was only revealed much later, and he can blame no one but himself for that.

Precedents

24 Finally, the appellant cites three precedents to suggest that his punishment of seven days' imprisonment is excessive: *Ho Seow Wan v Ho Poey Wee and others* [2015] SGHC 304 ("*Ho Seow Wan*"); *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng and another* [2021] SGHC 149 ("*Shanghai Afute*"); and *Rohrlach, Nicholas Robert Adam v Qantas Airways Ltd and another* [2021] SGHC 281 ("*Rohrlach*"). The appellant argues that these cases indicate that a fine of $25,000–$30,000 would be sufficient. However, the appellant has not explained the relevance of these precedents.

25 *Ho Seow Wan* involved two contemnors' breach of a court order regarding the affairs of a company. The contemnors were fined $25,000 and $20,000 respectively. The court found to be aggravating factors the fact that the contemnors had deliberately breached the court order, and the fact that as directors of the company a higher standard of care had to be expected from them. However, this was weighed against the "strong" mitigating factors that the breaches had been committed to ensure that the company's business could continue expediently, and that the plaintiff had been using the court order as a means to "get back" at the defendants (at [12]–[16]).

26 *Shanghai Afute* concerned a contemnor's breach of an injunction restraining him from using various confidential recipes. The court weighed the contemnor's apparent attempts at moving away from the recipes against the prejudice caused to the plaintiff and the deliberation shown by the contemnor in moving away from the confidential recipes only gradually. Ultimately, it considered that imprisonment was unnecessary, and imposed only a fine of $30,000 (at [45]).

27 *Rohrlach* involved a contemnor's breaches of an injunction restraining him from involving himself in the business of a company. The court found that the contemnor had acted deliberately, without external pressure or influence, and with high culpability. However, it was not clear what prejudice had been occasioned to the plaintiff. In the circumstances, the court imposed a fine of $25,000.

28 The present case is distinguishable from these cases. As the Judge found, the most prominent factors in relation to the sentence to be imposed on the appellant were the prejudice to the respondent and the protracted and cynical manner of the appellant's contempt (see the Judgment at [42]). This elevates the seriousness of the conduct in the present case above that in *Rohrlach*, where no prejudice had been occasioned to the plaintiff; and above that in *Ho Seow Wan* and *Shanghai Afute*, where the contempt, while deliberate, had not been as aggravated, and had in any event been tempered by mitigating factors. Further, as the respondent points out, a mere fine would not have a punitive impact on the appellant, who is already bankrupt. We therefore hold that the term of seven days' imprisonment is not manifestly excessive.

Conclusion

29 We dismiss this appeal against sentence. The appellant has not shown any error in the Judge's reasoning, and has not raised any valid mitigating factors at all.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Chu Hua Yi, Goh Jia Jie and Tan Jinwen Mark (FC Legal Asia LLC) for the appellant;
Jimmy Yim Wing Kuen SC, Lee Soong Yan Kevin, Dierdre Grace Morgan and Chloe Shobhana Ajit (Drew & Napier LLC) for the respondent.