

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2024] SGHC 119

Originating Summons No 762 of 2017
(Summonses Nos 3513 of 2022 and 3256 of 2023)

Between

Hilton International Manage
(Maldives) Pvt Ltd

... Plaintiff

And

Sun Travels & Tours Pvt Ltd

... Defendant

GROUNDINGS OF DECISION

[Contempt Of Court — Civil contempt]
[Contempt Of Court — Sentencing]

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Hilton International Manage (Maldives) Pvt Ltd

v

Sun Travels & Tours Pvt Ltd

[2024] SGHC 119

General Division of the High Court — Originating Summons No 762 of 2017
(Summonses Nos 3513 of 2022 and 3256 of 2023)

Chua Lee Ming J

17, 21 July, 27 October, 27 November 2023, 26 and 28 February 2024

9 May 2024

Chua Lee Ming J:

Introduction

1 In 2015, a Singapore-seated arbitral tribunal issued a partial award and a final award (the “Awards”) in favour of the plaintiff, Hilton International Manage (Maldives) Pvt Ltd (“Hilton”) against the defendant, Sun Travels & Tours Pvt Ltd (“Sun Travels”). In 2017, Hilton obtained leave to enforce the Awards and subsequently entered judgment on the Awards in Singapore (the “Judgment”). On 15 February 2021, a Singapore court ordered Sun Travels to pay the amounts due under the Judgment within three months (the “Time-Fixing Order”). Sun Travels did not comply with the Time-Fixing Order.

2 Pursuant to leave granted by the court, in 2022, Hilton filed HC/SUM 3513/2022 (“SUM 3513”) seeking orders of committal against Sun Travels and its Chairman and Managing Director, Mr Ahmed Siyam Mohamed (“Siyam”),

in relation to Sun Travels' failure and/or refusal to comply with the Time-Fixing Order. Hilton alleged that Sun Travels had intentionally breached the Time-Fixing Order and had therefore committed contempt of court under s 4(1)(a) of the Administration of Justice (Protection) Act 2016 (2020 Rev Ed) ("AJPA"). Hilton's case against Siyam was that, as a director and/or officer of Sun Travels who was fully involved in Sun Travels' decision not to comply with the Time-Fixing Order, he was guilty of the same contempt of court as Sun Travels pursuant to s 6(2) of the AJPA.

3 I found Sun Travels and Siyam to be in contempt of court and imposed a fine of \$100,000 against Sun Travels and an imprisonment term of one year against Siyam. However, I suspended the imprisonment term against Siyam for three months. If the amounts due under the Judgment were paid in full within the three-month period, the imprisonment term against Siyam was to be substituted with a fine of \$100,000; otherwise, Siyam was to commence serving his term of imprisonment.

4 Siyam was subsequently granted extensions of time with a final extension to 20 March 2024. The amounts due under the Judgment were paid in full before 20 March 2024 and the imprisonment term imposed on Siyam was thus substituted with a fine of \$100,000, which was paid.

The factual background

5 Sun Travels, a company incorporated in the Maldives, was a resort operator that owned the Iru Fushi Beach & Spa Resort in the Maldives in Medhafushi, Noonu Atoll ("the Resort"). Hilton was a company incorporated in the Maldives, which was affiliated with a large hospitality company operating hotels and resorts worldwide. Sun Travels and Hilton were parties to a hotel

management agreement under which Sun Travels agreed to let Hilton manage the Resort. This agreement was eventually terminated by Sun Travels.

6 In 2013, Hilton commenced arbitration proceedings pursuant to an arbitration clause in the hotel management agreement. Hilton claimed that the termination was a wrongful repudiation of the agreement. The Singapore-seated arbitral tribunal (the “Tribunal”) issued the Awards in 2015. Under the Awards, Sun Travels had to pay Hilton US\$599,095.66 (pre-termination claims), £1,051,230.10 (legal and expert’s fees and expenses), US\$20,945,000 (damages), interest and fees and expenses in respect of the arbitration proceedings. Sun Travels did not pay the amounts in the Awards.

Proceedings in the Maldives

7 In December 2015, Hilton commenced enforcement proceedings in the Maldives Civil Court. Sun Travels resisted the enforcement proceedings. On 28 September 2016, the division of the Maldives Civil Court that heard Hilton’s enforcement application ruled that the enforcement proceedings were beyond its jurisdiction and that the Awards had to be enforced by the Judgment Enforcement Division of the Civil Court.

8 Hilton transferred the enforcement proceedings to the Judgment Enforcement Division of the Maldives Civil Court. On 29 November 2016, the Judgment Enforcement Division of the Maldives Civil Court ruled that the enforcement proceedings could not proceed until the Maldives High Court had decided on the enforcement of the Awards.

9 Hilton appealed to the Maldives High Court. On 20 April 2017, the Maldives High Court upheld Hilton’s appeal and overruled the decision of the

Judgment Enforcement Division of the Maldives Civil Court. The Maldives High Court held that the Civil Court had jurisdiction to enforce the Awards.

10 Hilton then re-commenced enforcement proceedings in the Maldives Civil Court (the “Second Maldivian Enforcement Proceedings”). Again, Sun Travels resisted Hilton’s enforcement application.

11 In the meantime, on 17 October 2016, Sun Travels commenced a separate civil claim against Hilton seeking damages for fraudulent misrepresentation and breach of the hotel management agreement (“Sun Travels’ Civil Claim”). Sun Travels’ Civil Claim was based on the same matters that had been considered and dismissed by the Tribunal. On 9 March 2017, the Maldives Civil Court ruled in favour of Sun Travels and ordered Hilton to pay US\$16,671,000 in damages. Hilton filed an appeal to the Maldives High Court.

12 On 22 June 2017, the Maldives Civil Court that was handling the Second Maldivian Enforcement Proceedings noted the decision in Sun Travels’ Civil Claim and the pending appeal and ruled that Hilton’s application in the Second Maldivian Enforcement Proceedings could not be “entertained ... for the time being”.

13 In July 2020, Hilton succeeded in its appeal against the Maldives Civil Court’s decision on Sun Travels’ Civil Claim. The Maldives High Court reversed the Civil Court’s decision. Sun Travels’ appeal against the Maldives High Court’s decision was dismissed by the Maldives Supreme Court in August 2021.

14 In August 2020, Hilton commenced a third set of enforcement proceedings in the Maldives Civil Court. In September 2020, the Maldives Civil

Court issued a freezing injunction over Sun Travels' bank accounts in Maldives. Sun Travels' appeal against the freezing injunction was dismissed by the Maldives High Court in December 2021.

15 In November 2020, the Maldives Civil Court dismissed Sun Travels' objections to the enforceability of the Awards. In March 2021, the Maldives High Court dismissed Sun Travels' appeal against the Maldives Civil Court's decision. In August 2021, the Maldives Supreme Court dismissed Sun Travels' appeal against the Maldives High Court's decision.

16 On 19 December 2021, the Maldives Civil Court issued an order allowing enforcement of the Awards. Sun Travels appealed and on 7 July 2022, the Maldives High Court ruled that the enforcement order was void on the basis that there was no distinct order recognising the Awards. Hilton then applied on 17 July 2022 to the Maldives Civil Court for a recognition order for the Awards. The recognition order was granted by the Maldives Civil Court on 5 February 2023.

Proceedings in Singapore

17 In July 2017, Hilton commenced HC/OS 845/2017 ("OS 845") for injunctive and declaratory relief in response to Sun Travels' Civil Claim. The Singapore High Court:

- (a) granted an injunction restraining Sun Travels from taking any steps in reliance on the Maldives Civil Court's decision on Sun Travels' Civil Claim; and
- (b) declared that (i) the Awards are final, valid and binding on the parties; and (ii) Sun's claim against Hilton in respect of disputes that had

arisen out of or in connection with the hotel management agreement and any consequential proceedings (including appeals) would be in breach of the arbitration agreement contained in the hotel management agreement.

See Hilton International Manage (Maldives) Pvt Ltd v Sun Travels & Tours Pvt Ltd [2018] SGHC 56.

18 Sun Travels appealed against the High Court’s decision in OS 845. The Court of Appeal set aside the injunction but upheld the declarations: *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732.

19 Separately, also in July 2017, Hilton obtained leave of court to enforce the Awards in the same manner as a judgment of the Singapore High Court. Sun Travels did not apply to set aside the order granting leave to enforce the Awards. On 13 April 2018, the Judgment was entered against Sun Travels. Hilton then obtained an order for the examination of judgment debtor (“EJD”). Pursuant to the EJD proceedings, a number of questions were directed to Siyam in preparation for his oral examination. Sun Travels objected to questions relating to its assets in the Maldives on the ground that the Judgment could not be enforced in the Maldives at the relevant time. The learned Assistant Registrar (“AR”) held that Hilton was entitled to ask questions concerning the assets of the appellant located in the Maldives. This was upheld by the High Court in December 2019 and the Court of Appeal in July 2020: see *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2020] 4 SLR 776 and *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2020] 2 SLR 725 respectively.

20 The Time-Fixing Order was made by the AR on 15 February 2021. The Time-Fixing Order required Sun Travels to pay all sums due and owing (including any interest) under (among other things) the Judgment (the “Judgment Debt”) by 15 May 2021. Sun Travels’ appeal against the Time-Fixing Order was dismissed by the High Court in May 2021. Sun Travels sought leave to appeal against the High Court’s decision but the Court of Appeal dismissed Sun Travels’ application on 10 June 2021.

21 On 16 August 2022, Hilton applied for leave to commence committal proceedings against Sun Travels and Siyam. On 6 September 2022, I granted Hilton leave to do so. On 20 September 2022, Hilton applied in SUM 3513 for Sun Travels to be fined for its contempt of court in failing and/or refusing to comply with the Time-Fixing Order, and for Siyam to be committed to prison and/or fined for the contempt of court arising from Sun Travels’ failure and/or refusal to comply with the Time-Fixing Order.

22 On 7 July 2023, Sun Travels filed HC/SUM 2027/2023 (“SUM 2027”) in which it applied for leave to adduce additional evidence for the hearing in SUM 3513. As Hilton consented to SUM 2027, Sun Travels was granted leave to adduce the additional evidence.

Liability for contempt of court – parties’ submissions and the issues

Sun Travels’ liability

23 Section 4(1)(a) of the AJPA states:

**Contempt by disobedience of court order or undertaking,
etc.**

4.—(1) Any person who —

- (a) intentionally disobeys or breaches any judgment, decree, direction, order, writ or other process of a court; or
- (b) intentionally breaches any undertaking given to a court

commits a contempt of court.

...

The standard of proof for establishing contempt of court is that of beyond reasonable doubt: s 28 of the AJPA.

24 It was undisputed that Sun Travels did not pay the amounts due under the Judgment and had therefore breached the Time-Fixing Order. It was also undisputed that Sun Travels would not be liable for contempt of court if Sun Travels' non-compliance with the Time-Fixing Order was due to its impecuniosity (see also, *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 (“*Moh Kah Hong*”) at [92]).

25 Sun Travels and Siyam submitted that Sun Travels' breach of the Time-Fixing Order was not wilful and that its failure to comply with the Time-Fixing Order was due to its impecuniosity.

26 Hilton submitted that Sun Travels' reliance on its alleged impecuniosity was an abuse of process as it was inconsistent with a prior position that it had taken when resisting the application for the Time-Fixing Order. Hilton also submitted that in any event, Sun Travels' continuing breach of the Time-Fixing Order was deliberate and not due to impecuniosity.

Siyam's liability

27 Section 6(2) of the AJPA states:

(2) Where a corporation commits contempt of court under this Act, a person —

(a) who is —

- (i) an officer of the corporation ...; or
- (ii) an individual who is involved in the management of the corporation and is in a position to influence the conduct of the corporation in relation to the commission of the contempt of court; and

(b) who —

- (i) consented or connived, or conspired with others, to effect the commission of the contempt of court;
- (ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the contempt of court by the corporation; or
- (iii) knew or ought reasonably to have known that the contempt of court by the corporation (or contempt of court of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that contempt of court,

shall be guilty of the same contempt of court as is the corporation, and shall be liable on being found guilty of contempt of court to be punished accordingly.

28 It was not disputed that Siyam, as the Chairman and Managing Director of Sun Travels, was an officer of Sun Travels.

29 Siyam submitted that even if a committal order against Sun Travels was warranted, such an order should not be made against him as (a) he was not the alter ego of Sun Travels, and (b) he had acted in accordance with management advice and caused Sun Travels to take reasonable steps to comply with the Awards.

30 Hilton submitted that Siyam was fully involved in Sun Travels' decision not to comply with the Time-Fixing Order and that his conduct therefore satisfied the requirements in s 6(2)(b) of the AJPA.

The issues

31 The issues before me were:

- (a) Whether Sun Travels' reliance on impecuniosity was an abuse of process?
- (b) Whether Sun Travels' non-compliance with the Time-Fixing Order was due to impecuniosity?
- (c) Whether Siyam's conduct fell within the scope of s 6(2)(b) of the AJPA?
- (d) What were the appropriate sentences if Sun Travels and/or Siyam were liable for contempt of court?

Whether Sun Travels' reliance on its alleged impecuniosity was an abuse of process

32 During the hearing of Hilton's application for the Time-Fixing Order before the AR (see [20] above), Sun Travels took the position that its decision not to make payment in respect of the Awards was "entirely due to the ongoing Maldivian proceedings". Sun Travels did not deny that its decision not to make payment was a deliberate one and not forced by reasons of financial inability to pay.

33 In its appeal to the High Court against the Time-Fixing Order, Sun Travels sought to rely on impecuniosity. The High Court held that having elected not to raise impecuniosity before the AR, it was an abuse of process for Sun Travels to raise impecuniosity and to seek to adduce new evidence of such impecuniosity in the appeal. The High Court dismissed the appeal.

34 The Court of Appeal dismissed Sun Travels' application for leave to appeal against the High Court's decision. The Court of Appeal agreed with the High Court that Sun Travels' attempt to rework its litigation strategy by adopting an inconsistent position in its appeal to the High Court was an abuse of process. The Court of Appeal was also of the view that Sun Travels' reason for not raising the argument of impecuniosity before the AR (*ie*, that it was embarrassing to admit impecuniosity) rang hollow.

35 Before me, Hilton argued that Sun Travels' continued reliance on its alleged impecuniosity was an abuse of process in view of the position it had taken before the AR in respect of Hilton's application for the Time-Fixing Order. I disagreed with Hilton's submission.

36 Sun Travels did not contest the application for the Time-Fixing Order on the ground of impecuniosity. It subsequently sought to do so in its appeal against the Time-Fixing Order. In other words, Sun Travels had sought to rely on a ground in the appeal that it had not raised before the AR and that was inconsistent with its position before the AR. It was in that context that its attempt to rely on impecuniosity during the appeal was held to be an abuse of process.

37 The application for committal before me was for committal on the ground of non-compliance with the Time-Fixing Order. This was a different

application altogether. In my view, it was not an abuse of process for Sun Travels to argue that it did not comply with the Time-Fixing Order because of its impecuniosity. That said, the position taken by Sun Travels before the AR, during the hearing of the application for the Time-Fixing Order, was a relevant factor to be considered in deciding whether Sun Travels' failure to comply with the Time-Fixing Order was in fact due to impecuniosity.

Whether Sun Travels' non-compliance was due to impecuniosity

38 In my judgment, the evidence proved beyond reasonable doubt that Sun Travels' non-compliance with the Time-Fixing Order was intentional and not due to its impecuniosity.

39 I agreed with Hilton that Sun Travels had the means to pay the Judgment Debt but chose not to do so. Based on Sun Travels' financial statements for 2021 ("2021 FS"), its net asset position was US\$25,350,880 as of 31 December 2021. This figure was based on the Resort and the leasehold interest in the land on which the Resort was situated being valued at its book value of around US\$76m. Hilton submitted that the property was worth substantially more than that. Hilton's expert's valuation report (the "HVS Report") valued the property at US\$202m as of 1 January 2022.

40 Sun Travels challenged the HVS Report but did not itself adduce any valuation report. Sun Travels argued that (a) the HVS Report was prepared on a "desktop" basis (*ie*, without conducting an inspection of the Resort either physically or virtually) and based on information and documents provided by Hilton, (b) the projection of the Resort's gross operating profit in the HVS Report was unrealistic and unduly optimistic, and (c) Hilton's expert had carried out a valuation in 2017 at Sun Travels' request and valued the property at

US\$153m and the value of the property would have reduced as the remaining duration on the lease became shorter.

41 I was mindful that although Sun Travels had not produced any valuation report, the HVS Report was not to be accepted unquestioningly. Nevertheless, in my view, Sun Travels had not shown sufficient reason (apart from its own views) to reject the HVS Report. Sun Travels did not adduce any expert evidence to challenge the projections of gross operating profits in the HVS Report. As for the fact that the property was valued at US\$153m in 2017, that did not necessarily mean that the valuation of US\$202m (as of 1 January 2022) was therefore incorrect. The remaining duration of the lease was but one factor in the valuation. There was no reason to think that the expert was not aware of the earlier valuation that the same expert had done in 2017; both valuation reports were signed off by the same managing partner. In any event, it was clear that the value of the property was substantially more than its book value.

42 Sun Travels next submitted that it had insufficient cash flow to pay the Judgment Debt. I agreed with Hilton that any difficulty that Sun Travels had with its cash flow was not a defence. Sun Travels' cash flow difficulties did not mean that it was therefore impecunious. As stated above, Sun Travels had net assets that were sufficient to satisfy the Judgment Debt. The substance of Sun Travels' submission was that it was entitled to keep its business alive instead of liquidating its assets to pay Hilton. I agreed with Hilton that Sun Travels was not entitled to prioritise the continuity of its own business over its obligation to comply with the Time-Fixing Order.

43 Sun Travels also submitted that it was unable to obtain further financing or to liquidate its assets because the Resort was encumbered by mortgages to

the Government of the Maldives and the Bank of Maldives. In my view, there was insufficient evidence that Sun Travels had made serious and genuine efforts in this regard and had been unable to obtain further financing or liquidate its assets because of the mortgages. In fact, as Hilton pointed out, Sun Travels had managed to obtain additional loan facilities exceeding US\$4m (which was not used to pay Hilton) in July 2021, some five months after the Time-Fixing Order was made. Further, by September 2022, the loan of US\$127.5m (in respect of which the Resort had been mortgaged to the Government of the Maldives) had been reduced to US\$95.6m.

44 The position that Sun Travels took during the hearing of Hilton’s application for the Time-Fixing Order before the AR (see [32] above) supported the conclusion that Sun Travels was not impecunious. Had it been impecunious, it would surely have raised that in its objections to the application. The Court of Appeal was of the view that Sun Travels’ explanation as to why it did not do so rang hollow (see [34] above).

45 In addition, I agreed with Hilton that the evidence showed that Sun Travels had consistently shown no intention of satisfying the Judgment Debt.

(a) Sun Travels had consistently resisted Hilton’s attempts to enforce the Awards in the Maldives and in Singapore.

(b) During the hearing of the application for the Time-Fixing Order before the AR, Sun Travels even argued that it was entitled to disregard the Judgment because of the ongoing Maldivian proceedings, an argument which the AR dismissed as “unreasonable in the extreme”.

(c) Sun Travels attempted (by way of the Sun Travels' Civil Claim) to relitigate matters that had been resolved by the Awards.

(d) In its 2021 FS, Sun Travels expressly stated that “the Awards are not a judgement debt against the Company” and “the Company believes that the [payment order made by the Maldives Civil Court on 19 December 2021 enforcing the Awards] was premature and erroneous in law”. As Hilton submitted, this was irreconcilable with Sun Travels' claim that it genuinely attempted to comply with the Time-Fixing Order.

(e) Sun Travels' Chief Financial Officer stated on affidavit that even if Sun Travels had surplus from its revenue, it could not deploy all of it to satisfy the Judgment Debt and would have had to use the same to keep the business operations running. Sun Travels had net profits after tax of around US\$4.1m in 2021; instead of making partial payment to Hilton, Sun Travels chose instead to apply the profits to other purposes including the upkeep and maintenance of the Resort and its working capital.

46 In my judgment, Sun Travels' failure to comply with the Time-Fixing Order was intentional and not due to impecuniosity. Accordingly, I found that Sun Travels had committed a contempt of court.

Whether Siyam's conduct fell within the scope of s 6(2)(b) of the AJPA

47 As stated earlier, it was undisputed that Siyam was an officer of Sun Travels and thus, he satisfied s 6(2)(a) of the AJPA.

48 Under s 6(2)(b) of the AJPA, Siyam was guilty of the same contempt of court as Sun Travels if he:

- (a) consented or connived, or conspired with others, to effect the commission of the contempt of court;
- (b) was in any other way, whether by act or omission, knowingly concerned in, or was party to, the commission of the contempt of court by the corporation; or
- (c) knew or ought reasonably to have known that the contempt of court by Sun Travels would be or was being committed and failed to take all reasonable steps to prevent or stop the commission of that contempt of court.

49 In my view, Siyam's submission that he was not the alter ego of Sun Travels was irrelevant. He was guilty of the same contempt of court as Sun Travels if his conduct satisfied any of the limbs in s 6(2)(b) of the AJPA. Section 6(2) of the AJPA did not require proof that Siyam was the alter ego of Sun Travels.

50 It was clear that, as Hilton submitted, Siyam was fully involved in Sun Travels' decision not to comply with the Time-Fixing Order. Siyam had consented to or was otherwise party to Sun Travels' decision not to comply with the Time-Fixing Order. On Siyam's own evidence, he was ultimately the person who decided how Sun Travels should proceed. Siyam's defence was that he had acted in accordance with management advice and caused Sun Travels to take reasonable steps to comply with the Awards. I rejected Siyam's defence. The fact remained that he had consented to or was party to Sun Travels' decision not to comply with the Time-Fixing Order. The fact that his consent was based on management advice was not a defence under s 6(2) of the AJPA.

51 I therefore found Siyam guilty of the same contempt of court as Sun Travels.

The appropriate sentences

52 The punishment for contempt of court in this case was a fine not exceeding \$100,000 or imprisonment for a term not exceeding three years or both: s 12(1)(a) of the AJPA.

53 In *Mok Kah Hong*, the Court of Appeal held (at [103]) that in most cases involving continuing breaches, the sentence imposed would include both punitive and coercive elements, whereas in cases involving one-off breaches, the coercive element was not likely to feature at all and the overriding sentencing principle was one of punishment.

54 The Court of Appeal (at [104]) also endorsed the following factors as providing “a useful framework for courts to analyse the relevant facts in order to arrive at an appropriate sentence”, citing *Crystal Mews Ltd v Metterick and others* [2006] EWHC 3087 (Ch) at [13]:

- (a) whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;
- (b) the extent to which the contemnor has acted under pressure;
- (c) whether the breach of the order was deliberate or unintentional;
- (d) the degree of culpability;
- (e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;

- (f) whether the contemnor appreciates the seriousness of the deliberate breach; and
- (g) whether the contemnor has co-operated.

I agreed with Hilton that these factors remain applicable to sentencing for contempt of court under the AJPA although *Mok Kah Hong* was decided before the AJPA was enacted.

55 In the present case, Hilton had been denied the benefit of the Awards for some eight years. The breach of the Time-Fixing Order itself was a continuing breach that had lasted for more than two years. The decision not to comply with the Time-Fixing Order was not caused by any third parties. Instead, Sun Travels and Siyam had shown a deliberate and blatant disregard for the Time-Fixing Order. Further, far from co-operating, Sun Travels and Siyam had challenged the Time-Fixing Order in the High Court and the Court of Appeal by making arguments based on impecuniosity, an attempt that both the High Court and Court of Appeal found to be an abuse of the process of the court.

56 I rejected Sun Travels' and Siyam's submissions that a fine of \$25,000 would suffice. In my view, that was wholly inadequate given the facts. Sun Travels' and Siyam's conduct was egregious. I agreed with Hilton that the maximum fine of \$100,000 should be imposed on Sun Travels.

57 As for Siyam, I agreed with Hilton that a sentence of one year's imprisonment should be imposed on Siyam. Given the facts of this case, a fine alone was not an adequate deterrent. However, taking into consideration the coercive element (see [53] above), I suspended the sentence of imprisonment for three months for Siyam to remedy the situation and procure payment to

Hilton of the amounts due under the Judgment. If payment was made, the imprisonment term would be substituted with a fine of \$100,000.

58 Hilton submitted that Siyam should be ordered to surrender his passport in the meantime as he was a flight risk. I agreed and ordered Siyam to surrender his passport and not to leave Singapore without the court's approval. However, it then came to light that Siyam had travelled to Singapore on a diplomatic passport. I re-convened on the same day and revoked my orders against Siyam pending further submissions by the parties as to the ramifications (if any) of the fact that Siyam held a diplomatic passport.

59 At the subsequent hearing on 21 July 2023, it was clarified that Siyam was an incumbent Member of Parliament in the Maldives and one of the five longest-serving Members of Parliament who may assume the role of Speaker of Parliament in the official Speaker's absence. He was also the Honorary Consul of Romania and the Head of the Consulate of Romania in the Maldives as well as the Honorary Consul of the Republic of Korea in the Maldives. However, it was not disputed that he did not enjoy diplomatic immunity under the Vienna Convention on Diplomatic Relations ("VCDR"), the relevant provisions of which are in force in Singapore pursuant to s 3 of the Diplomatic and Consular Relations Act 2005 (2020 Rev Ed), for the following reasons:

- (a) he was not a diplomatic agent (as defined in Art 1 of the VCDR) of the Maldives in Singapore as he was not the head or a member of the diplomatic staff of the mission of the Maldives in Singapore; and
- (b) he was not a diplomatic agent of the Maldives in any other State, and in any event, in such a capacity, diplomatic immunity applied only if he was in Singapore while proceeding to take up or to return to his

post, or when returning to his own country, which he was not (Art 40(1) of the VCDR).

60 As Siyam did not enjoy diplomatic immunity, I imposed the same sentence (see [57] above) on him. However, I decided that it was unnecessary for me to require him to surrender his passport. In my view, the high offices held by Siyam was sufficient reason (in the absence of evidence suggesting otherwise) to believe that he would return to Singapore to serve his sentence of imprisonment if he failed to procure payment of the Judgment Debt to Hilton.

Subsequent events

61 The three-month period for Siyam to procure payment of the amounts due under the Judgment to Hilton was due to expire on 21 October 2023. On 19 October 2023, Sun Travels and Siyam applied for an extension of time until 21 April 2024. I heard the application on 27 October 2023. Siyam argued that despite his best efforts, Siyam was unable to raise the funds for Sun Travels to pay Hilton. I rejected Siyam's argument. Siyam's or Sun Travels' ability to make payment was irrelevant at this stage of the proceedings. Both Siyam and Sun Travels had been found guilty of contempt of court and were sentenced accordingly. Siyam was sentenced to an imprisonment term of one year. That sentence was suspended to give him an opportunity to procure payment to be made to Hilton and thereby avoid having to serve the imprisonment term. If he could not procure payment to be made, then he would have to serve the imprisonment term. The reason for his inability to procure payment to be made was irrelevant. However, as Hilton had no objections to an extension of one month, I granted an extension of time until 27 November 2023.

62 On 26 November 2023, Sun Travels made partial payment of US\$5m to Hilton. On 27 November 2023, Sun Travels and Siyam again sought an extension of time until April 2024. Hilton agreed to an extension until the end of January 2024 if Sun Travels made a further payment of US\$5m by 15 December 2023. I therefore granted an extension of time until 26 December 2023 and if payment of another US\$5m was made by then, a further extension would be granted until 31 January 2024.

63 Sun Travels paid US\$4m on 25 February 2024, and Sun Travels and Siyam sought a final extension until 20 March 2024. As Sun Travels was making efforts to pay Hilton, I granted Siyam a final extension until 20 March 2024. By the end of 18 March 2024, Sun Travels paid Hilton the balance outstanding on the Judgment. Accordingly, the sentence of imprisonment against Siyam was substituted with a fine of \$100,000, which Siyam paid.

Whether the hearing should be treated as a public hearing

64 Order 52 r 5(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) provides that an application for an order of committal shall be heard in open court but the court may sit in private in certain specified cases, including where it appears to the court that in the interests of the administration of justice the application should be heard in private.

65 Section 22 of the International Arbitration Act 1994 (Cap 143A, 2002 Rev Ed) (“IAA”) provides that “proceedings under this Act” are to be heard otherwise than in open court.

66 Sun Travels and Siyam submitted that the present proceedings touched on arbitral awards and therefore ought to be treated as being heard in private.

Hilton objected. I agreed with Hilton that there was no reason for the committal proceedings to be heard in private in this case. The committal proceedings were not proceedings under the IAA. In any event, the Awards were already in the public domain as a result of two judgments by the High Court and two by the Court of Appeal (see [17]–[19] above).

Conclusion

67 For the reasons stated above, I found that both Sun Travels and Siyam had committed contempt of court. I ordered Sun Travels to pay a fine of \$100,000. I imposed a sentence of one year’s imprisonment on Siyam, which was suspended for three months (subsequently extended until 20 March 2024) for him to procure payment to Hilton of the amounts due under the Judgment. If payment was made, the imprisonment term was to be substituted with a fine of \$100,000. As payment in full was made to Hilton before 20 March 2024, the sentence of imprisonment was substituted with a fine of \$100,000.

68 I made the following costs orders:

- (a) Sun Travels and Siyam were to pay Hilton:
 - (i) costs fixed at \$5,000 in connection with Hilton’s application for leave to commence committal proceedings,
 - (ii) costs fixed at \$5,000 in connection with their application for leave to adduce further evidence,
 - (iii) costs fixed at \$16,000 in connection with the committal proceedings, and

(iv) costs fixed at \$6,000 in connection with their application for extension of time,

with disbursements to be fixed by me, if not agreed.

(b) Each party was to bear its own costs in respect of the hearing on 21 July 2023 on the issue of the ramifications of the fact that Siyam held a diplomatic passport.

Chua Lee Ming
Judge of the High Court

Toby Landau KC (instructed), Poon Kin Mun Kelvin SC, David Isidore Tan Huang Loong and Jasmine Thng Khai Fang (Rajah & Tann Singapore LLP) for the plaintiff;
Mahesh Rai s/o Vedprakash Rai, Loo Chuan Shen Don and Soon Ser Jia, Clarissa (Drew & Napier LLC) for the defendant.
