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“Plain and Obvious”
Test Applies in
Applications for
Production of
Requested
Documents Under
Rules of Court 2021

*Lutfi Salim bin Talib and
another v British and Malayan
Trustees Ltd [2024] SGHC 85*

1 April 2024

LEGAL
UPDATE

In this Update

In *Lutfi Salim bin Talib and another v British and Malayan Trustees Ltd* [2024] SGHC 85, the High Court held that the court should not go behind filed affidavits for the purposes of deciding an application under O 11 r 3(1) of the Rules of Court 2021 unless it is plain and obvious from objective evidence before court that the requested documents exist or existed, must be or have been in the respondent's possession or control, or are not protected from production.

Director Lin Shumin, Associates Shaun Cheng and Song Yihang acted for the Claimants in this matter.

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INTRODUCTION

In *Lutfi Salim bin Talib and another v British and Malayan Trustees Ltd* [2024] SGHC 85, the High Court held that the court should not go behind filed affidavits for the purposes of deciding an application under O 11 r 3(1) of the Rules of Court 2021 unless it is *plain and obvious* from the documents that have been produced, the respondent's affidavits or pleadings, or some other objective evidence before court that the requested documents exist / existed, must be / have been in the respondent's possession or control, or are not protected from production.

Director Lin Shumin, Associates Shaun Cheng and Song Yihang acted for the Claimants in this matter.

BACKGROUND

From 1900 to 1935, Mr Shaik Sallim bin Mohamed bin Sallim bin Talib lived in Singapore and amassed a portfolio of immovable properties in Singapore. By way of an indenture of settlement dated 10 September 1912 and various other supplemental indentures, the Settlor made provisions for the distribution of the income and capital monies from these immovable properties amongst his children and their descendants upon his passing ("**Settlement**").

A dispute arose between the Claimants and the British and Malayan Trustees Ltd (the trustee of the Trust since 31 March 1989) ("**Defendant**") concerning the interpretation of certain provisions of the Indenture.

In February 2019, the Defendant commenced proceedings to seek the court's determination on the interpretation of the Indenture. In November 2019, the court decided in favour of the Claimants' interpretation.

In April 2023, the Claimants commenced the present action against the Defendant, claiming that the Defendant had breached, among others, its duty to distribute the trust funds in accordance with the terms of the Settlement.

The Claimants and the Defendant exchanged their respective lists of documents pursuant to O11 r 2 of the Rules of Court 2021. Subsequently, the Claimants applied under O 11 r 3 of the Rules of Court 2021 for an order that the Defendant provide documents described in categories 3, 6, 7 and 8.

The Assistant Registrar agreed with the Claimants' argument that there was "a reasonable suspicion" that the documents described in categories 3 and 6 existed and therefore ordered the Defendant to produce those documents. The Assistant also agreed with the Claimants that the joint interest

exception to legal privilege applied and ordered the production of the documents described in category 7.

The Defendant filed an appeal against the Assistant Registrar's decision.

HIGH COURT'S DECISION

The High Court held that the Defendant's affidavit ought to be treated as conclusive since it could not be said that it was plain and obvious that there were further documents that had not been produced. The High Court therefore allowed the appeal against the Assistant Registrar's decision in respect of the documents in categories 3 and 6.

While the High Court acknowledged the string of local case law which stood for the proposition that an affidavit in respect of discovery of documents is not conclusive if there is a reasonable suspicion that further discoverable documents exist, the High Court noted that such case law was under the previous versions of the Rules of Court. The High Court held that this "reasonable suspicion" test did not apply under O 11 r 3 of the Rules of Court 2021.

KEYPOINT

For the purposes of deciding an application under O 11 r 3(1) of the Rules of Court 2021, the court should not go behind the affidavits unless it is plain and obvious from the documents that have been produced, the respondent's affidavits or pleadings, or some other objective evidence before the court, that the requested (a) must exist or have existed; (b) must be or have been in the respondent's possession or control; or (c) are not protected from production.

The Court reasoned that this higher threshold of "plain and obvious" is consistent with the Ideals in O 3 r 1 of the Rules of Court 2021, in particular, expeditious proceedings, cost-effective work and efficient use of court resources. It is also consistent with the aim of preventing parties from engaging in unnecessary requests and applications.

The High Court agreed with the Claimants that the documents described in category 7 related to legal advice obtained by the Defendant for the purposes of the administration of the Trust and was therefore the benefit of the Trust as a whole. The High Court dismissed the Defendant's appeal against the Assistant Registrar's decision in respect of those documents as the Claimants had a joint interest in the documents and were entitled to an order for production of the same.

COMMENTARY

The Court's step in making new law on the test for specific production of documents demonstrates its clear intent to streamline the conduct of litigation disputes in Singapore. This applies particularly to the document production process, which can be protracted and costly in some cases. In light of the new guidance, parties who believe that document production has been incomplete would be well advised to strategically consider their options, and whether such challenges could be better made at a later point in time.

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