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High Court
Reaffirms Principle
that Parties are
Entitled to the
Production of
Documents
Referred to in
Pleadings

*Interactive Digital Finance
Ltd and another v Credit
Suisse AG and another [2023]
SGHC 198*

31 July 2023

**LEGAL
UPDATE**

In this Update

In the recent decision of *Interactive Digital Finance Ltd and another v Credit Suisse AG and another* [2023] SGHC 198, the High Court held that the Rules of Court 2021 gave the Assistant Registrar the power to make an order at a case conference for the production of documents referred to in the pleadings, without requiring an application to be made and before the Single Application Pending Trial. A document would be considered to have been referred to if it has been explicitly referred to or directly alluded to, but not if it was merely referred to by inference.

Our update discusses the High Court's reasoning in this decision.

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INTRODUCTION

In the recent decision of *Interactive Digital Finance Ltd and another v Credit Suisse AG and another* [2023] SGHC 198, the High Court held that the Rules of Court 2021 (“**2021 Rules**”) gave the Assistant Registrar the power to make an order at a case conference for the production of documents referred to in the pleadings, without requiring an application to be made and before the Single Application Pending Trial (“**SAPT**”). A document would be considered to have been referred to if it has been explicitly referred to or directly alluded to, but not if it was merely referred to by inference.

Our update discusses the High Court’s reasoning in this decision.

BACKGROUND

Prior to filing its defence, the 1st Defendant filed and served a notice on the Claimants for them to produce documents purportedly referred to in the Claimants’ statement of claim (“**NTP**”). The NTP was in the form prescribed under the Rules of Court (Cap 322, R5, 2014 Rev Ed) (“**2014 Rules**”).

At a case conference, the Assistant Registrar directed the Claimants to produce to the 1st Defendant any document that was referred to in the statement of claim and that was subject to the claim against the 1st Defendant. The Assistant Registrar also extended the deadline for the 1st Defendant to file its defence.

The Claimants appealed against the Assistant Registrar’s order. The Claimants submitted that: (a) the Assistant Registrar’s order was wrong because the NTP procedure under the 2014 Rules was no longer applicable under the 2021 Rules; (b) an application for production of documents has to be made as part of the SAPT and may be made outside of the SAPT only at the court’s direction or with the court’s approval; and (c) the Assistant Registrar’s order was inconsistent with the principles and the Ideals in the 2021 Rules. The Claimants further submitted that three of the requests pertained to documents that were not referred to in the statement of claim.

THE HIGH COURT’S DECISION

The Court dismissed the Claimants’ appeal. The Court held that the principle underlying the NTP procedure in the 2014 Rules was that the requesting party should be conferred the same advantage as if the documents referred to had been fully set out in the pleadings. This principle was sound and remained relevant under the 2021 Rules. The reference in pleadings to documents, in and of itself, was a form of “disclosure” of the documents and such documents therefore formed part of the pleaded case. It was logical and in the interests of justice that if requested by the other

party, such documents should be produced. Generally speaking, a party was entitled to the production of documents that were referred to in the statement of claim or defence, before it filed its defence or reply.

The Court held that O 3 r2(2) of the 2021 Rules gave the Assistant Registrar the power to make the order, at a case conference, for the production of documents that were referred to in the pleadings. This was necessary to ensure that justice was done, and was consistent with the Ideals, in particular those relating to expeditious proceedings and fair and practical results suited to the needs of the parties. It was not necessary to require the 1st Defendant to file an application or to seek the Court's direction or approval to make the application before the SAPT. A party that requires production of documents referred to in pleadings needs only to make a written request. The party requested should produce such documents unless it is disputed that the documents requested are documents that are referred to in the relevant pleadings.

KEYPOINT

A party that requires production of documents referred to in pleadings needs only to make a written request. The party requested should produce such documents unless it disputes that the documents are referred to in the pleadings.

As regards three categories of the documents requested, the Court agreed with the Claimants that the documents were not referred to in the statement of claim. The Court held that a document would be considered to have been referred to if it has been explicitly referred to or directly alluded to, but not if it was merely referred to by inference. A document would be directly alluded to if reference is made to the contents of the documents (as opposed to merely the effect of the document) or if the words used, on their fair meaning, convey the act of making the document itself (as opposed to a mere reference to a transaction).

The 1st Defendant had sought records of communications by which the 1st Defendant was alleged to have provided certain reports to the Claimants. The Court held that the statement of claim did not make explicit reference to the documents sought, nor was there any direct allusion to the documents. There were merely references to transactions and the documents sought were referred to only by inference. The Court held that this was not sufficient for the purposes of the principle relating to the production of documents that were referred to in the pleadings.

COMMENTARY

In preparing pleadings, parties should be mindful that the documents that they choose to refer to in their pleadings will need to be produced upon written request by another party. This may take place at an early stage of the proceedings, before the other party files its defence or reply.

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