

Parties Remain Entitled to Documents Referred to in Pleadings Before Single Application Pending Trial, Singapore High Court Rules

In *Interactive Digital Finance Ltd and another v Credit Suisse AG and another* [2023] SGHC 198, the General Division of the Singapore High Court (**High Court**) reaffirmed the principle that parties are entitled to documents that are referred to in pleadings. The High Court clarified that, despite the removal of the notice to produce (**NTP**) procedure from the Rules of Court 2021 (**2021 Rules**), taking into account the ideals in Order 3 of the 2021 Rules (**Ideals**), a party remains entitled to request production of documents referred to in pleadings. The court has the power to order the production of the documents even before the Single Application Pending Trial (**SAPT**); such power is derived from Order 11 rule 4 of the 2021 Rules.

Our Daniel Chan and Lim Yuan Jing acted for the first defendant, Credit Suisse AG.

Background

The claimants, Interactive Digital Finance Limited and Tiah Thee Kian, filed their statement of claim (**SOC**) against the first defendant, Credit Suisse AG (**Credit Suisse**), and the second defendant, Luckin Coffee Inc, in a High Court action. Prior to filing its defence, Credit Suisse filed and served an NTP requesting documents referred to in the SOC (**Documents**). The claimants declined to produce the Documents. Following the claimants' refusal, Credit Suisse wrote to the court requesting directions for the production of the Documents. The court held a case conference during which the assistant registrar (**AR**) directed the claimants to produce the Documents. The claimants appealed against the AR's decision.

The High Court's Decision

The Honourable Justice Chua Lee Ming (**High Court Judge**) dismissed the claimants' appeal. The High Court Judge held that, although there was no express provision in the 2021 Rules, the AR's decision to order the claimants to produce the Documents was justified. In reaching his decision, the High Court Judge reasoned as follows:

- (a) The AR's power to make the order was derived from Order 11 rule 4 of the 2021 Rules which allows the court to order production of documents at any time. The production of documents referred to in pleadings warranted a different treatment such that they ought to be produced even before the SAPT under Order 9 rule 9 of the 2021 Rules. The principle underlying the NTP procedure, as set out in *SK Shipping Co Ltd v IOF Pte Ltd* [2012] SGHCR 14, 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 remains relevant under the 2021 Rules despite the omission of the NTP procedure from the 2021 Rules. The reference to documents in pleadings was, in and of itself, an effective disclosure of the documents, and it was therefore logical and in the interests of justice that such documents ought to be produced to allow the other party to know the pleaded case against him.
- (b) The AR also had the power to make the order for the production of the Documents to ensure that justice was done or to prevent an abuse of the process of the court pursuant to Order 3 rule 2(2) of the 2021 Rules and the Ideals. Here, it was necessary to order the production of the Documents to

ensure that justice was done, and it was consistent with the Ideals, in particular those relating to expeditious proceedings and fair and practical results suited to the needs of the parties.

- (c) In light of the aforementioned principles, a party that requires production of documents referred to in pleadings needs only to make a written request, and in response, 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.

The High Court Judge noted that his decision was limited to requests for the production of documents referred to in the pleadings only, and did not otherwise detract from the operation of the SAPT procedure. In respect of the documents which Credit Suisse claimed were referred to in the SOC and which were the subject matter of the appeal, the High Court Judge found that there was no explicit reference to the documents sought, nor any direct allusion thereto. Accordingly, there was no sufficient basis for the documents requested to be disclosed to Credit Suisse.

Concluding Observations

The High Court Judge's written grounds provide welcome clarity on the continued relevance and applicability of the principle that documents referred to in pleadings form a part of the pleaded case which the other party is entitled to know, and address any lingering uncertainty in this regard following the omission of the NTP procedure from the 2021 Rules.

It is now clear that a party remains entitled to request production of documents referred to in pleadings, such entitlement being consistent with the Ideals espoused under the 2021 Rules, especially those relating to fair access to justice, expeditious proceedings, and achieving fair and practical results suited to the needs of the parties.

This case is also a useful illustration of how positive practical outcomes may be achieved from the courts' emphasis on the Ideals, and the importance of ensuring that each party's conduct in matters under the purview of the 2021 Rules is underpinned by compliance with the Ideals.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following Partner:



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