

Case Update

12 September 2024

Alliance Divine Impex Pte Ltd v Arulappan Tony (DBS Bank Ltd, non-party) [2024] SGHC 227

Introduction

In its recent decision in *Alliance Divine Impex Pte Ltd v Arulappan Tony (DBS Bank Ltd, non-party)* [2024] SGHC 227 (“**Alliance Divine**”), the High Court of Singapore confirmed that a party can obtain bank statements directly from a bank under s 175(1) of the Evidence Act 1893 (the “**EA**”) for the purpose of formulating tortious claims against a prospective defendant.

However, the court emphasised that s 175(1) of the EA itself did not provide a substantive basis for a party to seek disclosure from a bank. Instead, a party seeking disclosure under s 175(1) had to demonstrate that it had a substantive right to the documents *independent* of s 175(1).

Therefore, parties seeking to obtain disclosure of banking documents of a prospective defendant directly from such defendant’s bank would be well-advised to seek legal assistance to ensure they can show a substantive right to disclosure, independent of s 175(1) of the EA, prior to making such an application.

Relevant Background

In *Alliance Divine*, the applicant was a meat supplier seeking to make claims in conversion and unjust enrichment against its former sales manager, i.e. the respondent. Apart from a significant shortfall in its inventory, the applicant had discovered numerous unauthorised invoices which purportedly showed payments for food products from a business competitor directly to the respondent’s bank account.

The applicant had previously applied for and obtained an order against the respondent for pre-action disclosure of the respondent’s DBS bank statements in HC/OA 679/2023 (“**OA 679**”). However, as the respondent did not produce these, the applicant then applied to the court for disclosure of the bank statements from DBS bank as a non-party, pursuant to s 175(1) of the EA and/or O 11 r 1 of the Rules of Court 2021.

The Court’s Decision

The court allowed the application as the applicant had met the requirements of s 175(1) of the EA. In coming to a decision, the court made the following salient points:

- Bank statements would constitute “*entries in a banker’s book*” for the purpose of s 175(1) of the EA.

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- OA 679 was a “*legal proceeding*” within the meaning of s 175(1) of the EA. The applicant had demonstrated a substantive right to the bank statements through the order for pre-action discovery against the respondent obtained in OA 679.
- The phrase “*for any of the purposes of such proceedings*” included the purpose of enabling the applicant to carry out the necessary investigations for its contemplated causes of action of conversion and/or unjust enrichment.
- In exercising its discretion to make an order under s 175(1) of the EA, the court would have regard to: (a) the **relevancy** of the documents to the “underlying proceeding”; (b) the applicant’s **prior efforts** in seeking disclosure of the documents; and (c) the applicant’s **good faith** in seeking disclosure.

Key Takeaway

Pre-action and third-party discovery are powerful tools in the litigator’s toolbox. Such orders can help a party to obtain important evidence to support its claims or defences. DennisMathiew can assist by reviewing the facts underlying a dispute and advising on the use of these and other tools to obtain the most favourable outcome.

Written with the assistance of Abirame Subramanian

How DennisMathiew can help

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