Woo Koon Chee *v* Scandinavian Boiler Service (Asia) Pte Ltd and others [2010] SGCA 35

Case Number : Civil Appeal No 21 of 2010

Decision Date : 24 September 2010

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA

Counsel Name(s) : Raymond Lye Hoong Yip and Yeo Wen Si Cheryl-Ann (Citilegal LLC) for the Appellant; Adrian Tan Gim Hai and Aaron Kok Ther Chien (Drew & Napier LLC) for the 2nd - 6th and 8th - 11th Respondents; Sarbjit Singh Chopra (Lim & Lim) for the 1st and 7th Respondents.

Parties : Woo Koon Chee — Scandinavian Boiler Service (Asia) Pte Ltd and others

Civil Procedure

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2010] SGHC 66.]

24 September 2010

Chao Hick Tin JA (delivering the grounds of decision of the court):

1 This interlocutory appeal raised a procedural issue arising from a dispute concerning the completion of the sale and purchase of shares, owned by the Appellant in the 1st Respondent, to the Respondents.

2 Pursuant to certain legal proceedings (Suit No 53 of 2008) which we need not go into, Woo Bih Li J ordered on 27 April 2009, by consent of the parties ("the Consent Order"), that the "2nd [Respondent] and/or the 3rd [Respondent] and/or the 4th [Respondent] and/or their respective nominees purchase the [Appellant's] shares in the 1st [Respondent] at [a] fair value" to be determined by an independent valuer, whose valuation report ("Valuation Report") setting out the fair value of the Appellant's shares in the 1st Respondent would be final and binding on all parties. [note: 1]

3 The valuer, Stone Forest Corporate Advisory Pte Ltd ("Valuer") was appointed on 27 May 2009. The Consent Order prescribed that the completion of the sale and purchase of the Appellant's shares was to take place within three weeks after the Valuer had furnished its Valuation Report to the parties. The Valuation Report was finally released on 8 December 2009. However, on 29 December 2009, three weeks after the release of the Valuation Report, the sale and purchase of the shares had still not taken place. This was despite the fact that the solicitors for the 2nd, 3rd, 4th, 5th, 6th, 8th, 9th, 10th and 11th Respondents ("Relevant Respondents") had written to the Appellant's solicitors on 11 December 2009 and 22 December 2009 offering to tender a cashier's order as payment for the shares and requesting for completion of the sale and purchase.

4 On 30 December 2009, the Appellant's newly appointed solicitors wrote to the Relevant Respondents' solicitors requesting for more time to respond to the latter's letter of 22 December 2009. The Relevant Respondents agreed to give the Appellant more time and a fresh request was sent by the Relevant Respondents' solicitors to the Appellant's new solicitors requiring completion of the sale

and purchase of the shares by 5 January 2010. However, when 5 January 2010 arrived, the Appellant's solicitors requested, once again, for more time. Accordingly, the sale and purchase did not take place. On 7 January 2010, the Relevant Respondents applied by way of Summons No 76 of 2010 ("Summons No 76") for a direction that any Assistant Registrar and/or the Registrar of the Supreme Court be authorised to sign the share transfer forms on behalf of the Appellant so as to effect completion of the sale and purchase of the shares as directed under the Consent Order.

The decision below

5 Summons No 76 was heard by a Judicial Commissioner in the High Court ("the Judge"). In opposing the Summons, the Appellant ran three arguments before the Judge:

(a) The filing of Summons No 76 was the wrong procedure to enforce the Consent Order. The Relevant Respondents should have started the enforcement proceeding by way of a fresh originating summons or writ and not by way of a summons under the existing suit (Suit No 53 of 2008).

(b) The Appellant could not accept the valuation of the shares set out in the Valuation Report and was actively engaged with experts to commence legal action to challenge the Valuation Report.

(c) The Relevant Respondents had improperly sought to enforce the Consent Order pursuant to O 45 r 8 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("Rules of Court"), which provided for the enforcement of Mandatory Orders, injunctions and orders for the specific performance of contracts. That rule did not apply to the enforcement of consent orders.

6 The Judge made short shrift of these arguments. With respect to (a), he felt that the authority cited by the Appellant's solicitors, *Indian Overseas Bank v Motorcycle Industries (1973) Pte Ltd & Ors* [1992] 3 SLR(R) 841 ("*IOB v Motorcycle Industries*") ,stood for the uncontroversial principle that a consent order puts an end to proceedings as it supersedes the original cause of action altogether. No further steps could be taken in that action in pursuance of the original cause of action. What was sought in Summons No 76, however, was performance or enforcement of the Consent Order and *not* the original cause of action. Therefore, the Judge did not think that the principles enunciated in *IOB v Motorcycle Industries* precluded the Relevant Respondents from filing Summons No 76. This argument was, in his view, wholly unmeritorious.

7 In connection with (b), the Judge noted that there "(was) no obstacle to the [Appellant] challenging the [V]aluation [R]eport in a separate legal action". And finally, in regard to (c), he was of the view that it could not be the case that a consent order could "only be enforced under O 45 r 8 of the [Rules of Court] by a further action and another court order".

8 Accordingly, the Judge allowed the Relevant Respondents' application in Summons No 76 and granted an order of court in the following terms:

(1) Any Assistant Registrar and/or Registrar of the Supreme Court may sign the share transfer forms to give effect to the completion of the sale and purchase of the Appellant's shares in the 1st Respondent as provided for under the terms of the Consent Order; and

(2) The Appellant is to file a consent to entry of satisfaction within three days of completion of the sale and purchase of the Appellant's shares in the 1st Respondent.

This appeal

This appeal

9 In this appeal, we were primarily concerned with two questions: (a) whether the Relevant Respondents ought to have started a fresh action to enforce the Consent Order; and (b) whether the Relevant Respondents were entitled to relief under O 45 r 8 of the Rules of Court.

Whether the Relevant Respondents ought to have started a fresh action to enforce the Consent Order

10 In *Singapore Court Practice 2009* (Jeffrey Pinsler SC Gen Ed, LexisNexis 2009) ("*Singapore Court Practice 2009*"), the author made the following commentary relating to consent judgments and orders at para 42/1/6:

> *42/1/6. Consent judgments and orders*. The terms of a settlement agreement may be enforced by a separate action, assuming the agreement has the status of a legally binding contract. (See *Green v Rozen* [1955] 1 WLR 741; *Deans Property v Land Estates Apartments* [1994] 2 SLR 198; *Tong Lee Hwa v Chin Ah Kwi* [1971] 2 MLJ 75.) …
>
> However, *the advantage of embodying the terms of the settlement in a consent judgment or order is that it may be automatically enforced in the event of non-compliance (as in the case of any other judgment or order)*:
>
> > A consent judgment or order is meant to be the formal result and expression of an agreement already arrived at between the parties to proceedings embodied in an order of the court. The fact of its being so expressed puts the parties in a different position from the position of those who have simply entered into an ordinary agreement. It is, of course, enforceable while it stands, and a party affected by it cannot, if he conceives he is entitled to relief from its operation, simply wait until it is sought to be enforced against him, and then raise by way of defence the matters in respect of which he desires to be relieved. He must, when once it has been completed, obey it, unless and until he can get it set aside in proceedings duly constituted for the purpose. [Wilding v Sanderson [1897] 2 Ch 534, at 543, per Byrne J]
>
> [emphasis added]

11 On the above proposition of the law, which we endorse, it would follow that the Relevant Respondents were entitled to initiate execution proceedings, like Summons No 76, to enforce the Consent Order. There was no necessity for the Relevant Respondents to institute a fresh action to compel due compliance with the Consent Order.

12 As we saw it, there appeared to be some misunderstanding on the part of the solicitors for the Appellant as to what was decided in *IOB v Motorcycle Industries*, due perhaps, in part, to a certain statement made by the court. In that case, summary judgment was entered into against some of the respondents following a compromise agreement between them and the appellant bank. In accordance with the compromise agreement, the respondents would make an immediate payment to the appellant bank of the sum of $300,000, with the remaining outstanding amount by monthly instalments of $300,000. The appellant bank also agreed in the meantime not to execute or take bankruptcy proceedings on the judgment against the respondents. There was a breach of the compromise agreement. The appellant bank took out a fresh action to enforce the compromise agreement. This Court, in reliance on the following passage in *Halsbury's Laws of England* Vol 37 (Butterworths, 4th Ed) ("*Halsbury's Laws of England*") at para 391:

> … [w]here the parties settle or compromise pending proceedings, whether before, at or during the trial, the settlement or compromise constitutes a new and independent agreement between them made for good consideration. Its effects are (1) to *put an end to the proceedings*, for they are thereby spent and exhausted; (2) to *preclude the parties from taking any further steps in the action*, except where they have provided for liberty to apply to enforce the agreed terms; and (3) to *supersede the original cause of action altogether … An agreement for a compromise may be enforced or set aside on the same grounds and in the same way as any other contract* …
>
> [emphasis added]

held that (at [21] in *IOB v Motorcycle Industries*):

> [t]he result was to compromise the bank's claim against the respondents. It is immaterial that a summary judgment was entered. In the event the respondents defaulted in the payments they agreed to make under the agreement concluded on 9 March 1978 the bank's remedy would be to take action to enforce the agreement concluded on 9 March 1978 and not to execute the judgment which on our view of the law was rendered otiose by the agreement concluded on 9 March 1978.

13 There were some aspects in this passage which may require clarification. This related to the statement in the passage that the summary judgment was rendered otiose by the compromise agreement. Factually the summary judgment followed the compromise agreement. Presumably the parties thought there was some usefulness in having a consent judgment notwithstanding that under the compromise agreement the appellant agreed not to execute the judgment so as to allow the respondents to pay up by instalments. We have understood the statement that the summary judgment was rendered otiose by the earlier compromise agreement to mean that obtaining the summary judgment would not have served any purpose whatsoever. However, it seems to us that the appellant bank, in obtaining the summary judgment, was not obtaining something of completely no value. Admittedly under the compromise agreement the appellant bank had agreed to withhold execution until full payment had been made. Should the appellant bank had wanted to execute on the summary judgment when there was no default on the part of the respondents, the appellant bank would be met by the plea that the compromise agreement would estop the appellant bank from proceeding with execution. However, if the respondents should be in breach of their payment obligations under the compromise agreement (which breach was not in dispute), the appellant bank could well be entitled to enforce and levy execution on the summary judgment.

14 We agreed that, following the passage from *Halsbury's Laws of England* (see [12] above), once a suit was compromised by a subsequent agreement (unless something different was set out therein), the original cause of action would have ceased to exist. It would then be substituted by the compromise agreement and, barring any express provision to the contrary (see *The "Dilmun Fulmar"* [2004] 1 SLR(R) 140 at [7]), either party could only sue on the compromise agreement, if there was any non-compliance of the latter. However, if the compromise agreement was incorporated as a consent judgment or order of the court (as distinct from a Tomlin order – see [19] below), then the party in whose favour such a judgment or order was made should be able to enforce it. It should make no difference whether a judgment or order was made by the court pursuant to a contested hearing or by consent of the parties. Its effect or nature would and should not change on that account. There should be no necessity to institute a fresh action to enforce the judgment or order, whether it was obtained by consent or otherwise. In this regard, we would hasten to add one rider. It does not necessarily follow that a party in whose favour a consent judgment or order was given would be precluded from instituting a fresh action to enforce the compromise agreement.

15 In the present case, the Consent Order made by Woo Bih Li J incorporated *all* the terms of the settlement within it. [note: 2] There were no external "terms" to be enforced by "a separate action". Accordingly, the Consent Order could have been enforced *automatically* in much the same way as a party could enforce any other judgment or order of the court when there was non-compliance.

16 At para 38 of the Appellant's Case, the Appellant advanced the following two-stage argument:

> (a) As in [*IOB v Motorcycle Industries*], it [was] immaterial that the parties' agreement [was] in the form of a consent order of court, as the consent order cannot stand independently from the parties' settlement agreement.
>
> (b) What the Relevant Respondents [had] sought to do in [Summons No 76 was], effectively, to *enforce the settlement agreement*, which gave rise to a new cause of action.
>
> [emphasis added]

17 In making this argument, it seemed to us that the Appellant had perhaps, inadvertently, failed to note an essential difference between the fact situation in the present case and that in *IOB v Motorcycle Industries*. The Consent Order in this case set out the entire agreement of the parties. There was nothing external to the Consent Order which the Relevant Respondents had sought to enforce. In contrast, in *IOB v Motorcycle Industries*, the summary judgment entered against the respondents did not set out all the terms of the compromise agreement, either in the main body of the consent order itself or as an annex thereto. This was evident from the court's remark at [21] that "any judgment that was entered should have had as a schedule attached to it the agreement concluded [earlier]" Moreover, in view of the fact that in *IOB v Motorcycle Industries*, the appellant bank agreed under the compromise agreement not to levy execution while the respondents were making payment by instalments, the appellant bank was not entitled to enforce the summary judgment unless it could show a breach.

18 By Summons No 76, the Relevant Respondents were clearly seeking to enforce their rights under the Consent Order and not under Suit 53 of 2008, which cause (consistent with the principle enunciated in *IOB v Motorcycle Industries* at 12] above) had been merged with and superseded by the Consent Order. Indeed, the Appellant had impliedly acknowledged this when he stated that "the Court no longer had jurisdiction with respect to the original suit" (see [19] below). The Judge was therefore correct in finding the Appellant's submission to be unmeritorious because "[w]hat is sought in this application by summons is the performance of the Consent Order and not the original cause of action" (see the grounds of decision of the Judge ("the GD") at [2010] SGHC 66 at [6]).

Tomlin Order

19 We now turn to consider an aspect of argument raised by the Appellant which concerned what is known as the Tomlin Order. This point was set out in paras 36 – 38 of the Appellant's Case as follows:

> 36. In *Chitty on Contracts Vol. 1* (27th ed 1994) … it is stated at paragraph 22-021 that:
>
> > "A compromise may by consent be made the subject of a judgment or order of the court. A consent judgment will ordinarily extinguish by merger the contract of compromise, but a consent order will not have this effect. It does not itself constitute a contract, but it is sufficient evidence of the contract of compromise on which it is based, and such contract is no less a contract and subject to the incidents of a contract because there is superadded

the command of a judge. Where an action has been commenced and a compromise has been reached on agreed terms, the usual form of order sought by consent is a Tomlin order, which provides that all further proceedings in the action be stayed, except for the purpose of carrying such terms into effect, with liberty to apply as to carrying such terms into effect …"

37. The Court of Appeal should note that in this case the Order of Court dated 27 April 2009 was arrived at by consent. It states that the parties reached a full and final settlement of Suit No. 53 of 2008/D against all the [Respondents] on a without admission basis. It further states that the parties agreed to record the terms of settlement. There was no adjudication by the Court of the claims in the Suit. The said Order of Court is not a *Tomlin* order.

38. It is submitted that based on the reasoning in *IOB [v Motorcycle Industries]* … upon the parties entering into the settlement agreement, *the terms of which are set out in the Order of Court dated 27 April 2009*, the original cause/s of action in Suit No. 53 of 2008D were compromised and superseded by the parties' agreement. *The court no longer had jurisdiction with respect to the original suit*.

[emphasis added]

20 It was not entirely clear to us what the Appellant's counsel's point was in stating that the Consent Order was not a Tomlin Order. Indeed, it could not be argued that the Consent Order was a Tomlin Order and the Relevant Respondents had not suggested that. A Tomlin Order is a court order in the English civil justice system under which a court action is stayed, on terms which have been agreed in advance between the parties and which are included in a schedule to the order. It is a form of consent order, and permits either party to apply to court to enforce the terms of the order, avoiding the need to start fresh proceedings. The order is named after the English High Court judge Mr Justice Tomlin (as he then was) from his ruling in *Dashwood v Dashwood* [1927] WN 276, delivered on 1 November 1927, that such an order kept the proceedings alive only to the extent necessary to enable a party to enforce the terms of the settlement.

2 1 *Singapore Court Practice 2009* offers the following commentary on Tomlin Orders at para 42/1/6:

The standard 'Tomlin' order is in the following form: 'And the plaintiff and the defendant having agreed to the terms set forth in the schedule hereto, it is ordered that all further proceedings be stayed except for the purpose of carrying such terms into effect.' *The 'Tomlin' order is not a consent judgment because it does not actually order the parties to carry out the terms of the settlement*. In fact, the judge is not really concerned about approving or disapproving the terms of the settlement in these circumstances … *What the order does is to impose a stay of further proceedings which is operative as long as the terms in the schedule are observed. If any breach is committed, the other party may apply to the court pursuant to the qualification in the order: 'except for the purpose of carrying such terms into effect'. The court may then make the appropriate order requiring the party in breach to comply with the terms of the agreement*.

[emphasis added]

22 It was obvious that the Consent Order was not a Tomlin Order. It did not contain the essential characteristic of that order. The position here was that the terms of the settlement between the Appellant and the Relevant Respondents were in fact *incorporated* into the Consent Order, unlike what is usually countenanced under a Tomlin Order (or, for that matter, what had been the case in *IOB v Motorcycle Industries*, as per M Karthigesu J (see [12] above)) – a separate schedule to the

order, furnishing the precise terms that parties have agreed to. As stated at [15] above, the present Consent Order did not countenance any external "terms" listed in a schedule annexed to it to be enforced by applying to the judge who recorded the order.

23 Here, the Relevant Respondents were not only in agreement with the Appellant that the Consent Order was not a Tomlin Order, they also agreed that the original cause which they had against the Appellant in Suit No 56 of 2008 had been extinguished and merged into the compromise agreement and, consequently, the Consent Order. While a Tomlin Order "does not actually order the parties to carry out the terms of the settlement", the present Consent Order, by its very terms, set out what needed to be done by the parties- the sale of the shares by the Appellant and the purchase by the Relevant Respondent. There was no necessity for the Relevant Respondents, in the face of the Appellant's persistent non-compliance with the Consent Order, to initiate any fresh proceedings to compel the Appellant to comply with the Consent Order. The Consent Order was *automatically enforceable* in the same way as any other judgment or order of the court may be enforced. In this regard, the Relevant Respondents appeared correct to say that "the Consent Order is better than a Tomlin Order as it specifically orders the parties to carry out the terms of the settlement contained therein". [note: 3]

Judgment or Order: Any real distinction?

24 Next, we wish to make some observations on the distinction between a "judgment" and an "order" and in turn a "consent judgment" and a "consent order". At [19] above, the Appellant was quoted as arguing the following:

> In *Chitty on Contracts Vol. 1* (27th ed 1994) … it is stated at paragraph 22-021 that:
>
> > "A compromise may by consent be made the subject of a judgment of order of the court. A *consent judgment* will ordinarily extinguish by merger the contract of compromise, but a *consent order* will not have this effect. It does not itself constitute a contract …"
> >
> > [emphasis added]

25 From Singapore case law, the distinction between these two phrases does not appear to be clear or even useful. Indeed, in the case of *Diversey (Far East) Pte Ltd v Chai Chung Ching Chester and others* [1992] 3 SLR(R) 412, the Court of Appeal did not appear to mind adopting the terminology of a "consent judgment order". In some cases the court seemed to suggest that there would first be an order, and if that was not complied with, a judgment would be extracted. As an illustration of this perception we would refer to the recent case of *Nim Minimaart (a firm) v Management Corporation Strata Title Plan No 1079* [2010] 2 SLR 1 where the High Court said at [8]-[9]:

> 8 *After the Consent Order was recorded, the defendants wrote to inform the Registrar of the Subordinate Courts that the plaintiff had breached the terms of the settlement and sought leave to extract the judgment ("the Judgment")*. The draft Judgment was sent to the plaintiff for approval. However, it was not approved because the plaintiff disputed the contents of the draft. …
>
> 9 By this time, the defendants were already aware that the plaintiff had applied to set aside the Consent Order and that the application was pending to be heard. Despite the pending application and the objections from the plaintiff, the defendants wrote to the Subordinate Courts on 6 May 2009 to extract the Judgment as drafted. *The plaintiff then applied to set aside the Judgment on the ground that it was irregularly extracted. This is a separate and distinct matter from the*

application to set aside the Consent Order. …

[emphasis added]

26 It seems to us that there is, in substance and even in form, no real difference between an "order" or a "judgment". In terms of legal consequences, they are effectively the same. Each represents the ruling of the court in the matter in dispute. It would appear that in practice, a ruling of the court in a writ action would ordinarily be regarded as giving rise to a judgment. In all other cases, it would give rise to an order of court. But this is hardly a matter of principle; more a matter of preference. The two terms could, indeed, be used interchangeably and are often so used. At this juncture, it would be pertinent to refer to *Singapore Civil Procedure 2007* (Sweet & Maxwell Asia, 2007) where the author states at para 42/5/4:

Orders enforceable like judgments –

... an order may be enforced in the same manner as a judgment … *It is doubtful whether there is still any distinction between a "judgment" and an "order"* (see *per* Lord Esher M.R. in *Onslow v. Commissioners of Inland Revenue* (1890) 25 Q.B.D. 465, CA: *"A judgment is a decision obtained in an action, and every other decision is an order"*: *Ex p. Chinery* (1884) 12 Q.B.D. 342, CA; *Ex. p. Moore* (1885) 14 Q.B.D. 627; *cf. Shaw v. Hertfordshire County Council* [1899] 2 Q.B. 282, CA.

[emphasis added]

27 Equally pertinent is the instructive passage from the 2009 edition of the *Singapore Court Practice* (quoted at [10] above) where the two terms are treated as being akin. For convenience, we set out the passage again:

42/1/6. *Consent judgments and orders*. The terms of a settlement agreement may be enforced by a separate action, assuming the agreement has the status of a legally binding contract. (See *Green v Rozen* [1955] 1 WLR 741; *Deans Property v Land Estates Apartments* [1994] 2 SLR 198; *Tong Lee Hwa v Chin Ah Kwi* [1971] 2 MLJ 75.) …

However, *the advantage of embodying the terms of the settlement in a consent judgment or order is that it may be automatically enforced in the event of non-compliance (as in the case of any other judgment or order)*:

> *A consent judgment or order is meant to be the formal result and expression of an agreement already arrived at between the parties to proceedings embodied in an order of the court. The fact of its being so expressed puts the parties in a different position from the position of those who have simply entered into an ordinary agreement. It is, of course, enforceable while it stands*, and a party affected by it cannot, if he conceives he is entitled to relief from its operation, simply wait until it is sought to be enforced against him, and then raise by way of defence the matters in respect of which he desires to be relieved. He must, when once it has been completed, obey it, unless and until he can get it set aside in proceedings duly constituted for the purpose. [*Wilding v Sanderson* [1897] 2 Ch 534, at 543, per Byrne J]

[emphasis added]

28 To recap, whether one uses the term "judgment" or "order", both signify a ruling or determination of the court in the matter in dispute. And for the reasons alluded to in [26] above, the

character and legal effect of a judgment or order is the same and it should make no difference whether a judgment or order was obtained from the court after a contested hearing or by consent of the parties. The essential pre-requisite is that the "judgment" or "order" must be made by the court. The basis upon which the court made the judgment or order cannot alter its characteristics or legal effect. At this juncture, we would again refer to *Chitty on Contract Vol* 1 (London: Sweet and Maxell, 27th Ed, 1994) at para 22-021, which is quoted at [24] above, and where the author states:

> A compromise may by consent be made the subject of a judgment or order of the court. A consent judgment will ordinarily extinguish by merger the contract of compromise, but a consent order will not have this effect.

To the extent that this statement would seem to suggest that there is a real substantive difference between a "judgment" and an "order", we would like to record our reservations. However, we note that in the later part of this passage (see [19] above for the full quotation) there is a reference to the Tomlin order. If the statement "a consent order will not have this effect" is referring only to a Tomlin order, then we do not demur.

Whether the Relevant Respondents were entitled to relief under O 45 r 8 of the Rules of Court

29 To better appreciate the scope and effect of O 45 r 8 of the Rules of Court, we shall first set out its terms:

> *Court may order act to be done at expense of disobedient party* (O. 45, r. 8)
>
> 8. If a Mandatory Order, an *injunction* or a *judgment* or *order for the specific performance of a contract* is not complied with, then, without prejudice to its powers under section 14 of the Supreme Court of Judicature Act (Chapter 322), where applicable, and its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.
>
> [emphasis added]

30 The Appellant argued that O 45 r 8 was not applicable to the present case because the Consent Order was not a Mandatory Order, an injunction or a judgment/order for the specific performance of a contract. Specifically, the Appellant contended that O 45 r 8 applied only where *equitable relief* had been granted by way of (a) a Mandatory Order or (b) an injunction or (c) a judgment or order for specific performance. Since "the stringent tests which the Court requires to be satisfied before it grants such equitable relief were never met [here]", [note: 4] the Appellant submitted that the Judge was wrong to have made the order which he did under O 45 r 8 to assist the Relevant Respondents in enforcing the Consent Order.

31 In order to understand what is it that O 45 r 8 seeks to provide, one must consider the rule as a whole. It bears noting that it refers to s 14 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Edn), which provides that where there is a judgment or order for the execution of a deed, or the signing of a document, or the endorsement of a negotiable instrument, and the party required to do the act is absent, or neglects or refuses to do so, an interested party is entitled to carry out that act by tendering the document or instrument to the court for execution. It also states that the

rule is without prejudice to s 14. It seems clear to us that the thrust of the rule is really to reiterate and reinforce what is provided in s 14 and, in particular, to confer upon the court the power to require the defaulting party to bear whatever expenses that may be incurred arising from the court authorising the interested party or a third party to execute the act on behalf of the defaulting party. It is a facilitative provision and should be construed accordingly.

32 The primary issue before the court here was, therefore, this: was the Consent Order a "Mandatory Order" or an "injunction" or a "judgment or order for the specific performance of a contract" (hereinafter referred to as the first, second and third limbs of O 45 r 8 respectively). As mentioned in [15] above, the Consent Order effectively encapsulated the settlement agreement between the parties. Paragraph 4 of the Consent Order specifically provided that the Relevant Respondents were to purchase and the Appellant to sell the shares within three weeks after the Valuation Report had been furnished to them. The Consent Order was clearly an order requiring the *specific performance* of the settlement agreement or *contract* between the Appellant and the Relevant Respondents within the specified timeframe. However, we would agree with the Appellant that the term "Mandatory Order" (which *is* set out in the rule in capital letters) should be confined to what was previously known as the Order of Mandamus (indeed the footnote to that term has expressly so provided), which is now under the Rules of Court known as a "Mandatory Order" – see Order 53 of the Rules of Court. No Mandatory Order may be granted unless leave of court is first applied for and obtained. Since it was not in dispute that before the Consent Order was granted, no leave of court was first obtained, the Consent Order could not therefore be a Mandatory Order within the first limb of O 45 r 8.

33 Next, we will consider the second and the third limbs together. It is trite law that an injunction could be in either the mandatory or prohibitive terms. Most often injunctions are used to prohibit the infringement of a negative stipulation under a contract. But an injunction could also be granted to enforce positive contractual obligations. In *Injunctions and Similar Orders* by L A Sheridan (Barry Rose Law Publishers Ltd, 1999) at p 430, the author states the following:

> Mandatory injunctions are granted to enforce positive contractual obligations when no other suitable remedy is available. For example, a mandatory injunction may enforce a contract between A and B that A will transfer a sum of money to C to hold on trust for A and B or a contract for the supply of goods, not being a contract of which the court would grant specific performance, where the failure to supply them would put the plaintiff out of business.

34 However, in the context of the Consent Order we would be hesitant to say that it constituted a mandatory injunction. It was more in the nature of the third limb, "a judgment or order for the specific performance of a contract". Quite clearly the settlement agreement evidenced a contract for the sale of the shares from the Appellant to the Relevant Respondents. In pursuance thereof, the Consent Order, and particularly paragraph 4 thereof, required the Relevant Respondents to purchase and the Appellant to sell the shares. The Appellant had refused to comply with this order to complete the transaction notwithstanding reminders.

35 In the circumstances, we held that the Judge was well entitled to make the order authorising the Registrar or an Assistant Registrar to execute the share transfer form on behalf of the Appellant. The only authority cited by the Appellant to oppose the grant of the relief under O 45 r 8 was *PJ Holdings Inc v Ariel Singapore Pte Ltd* [2009] 3 SLR(R) 582 ("*PJ Holdings*"), a case of the High Court which made an entirely separate point that committal proceedings were a measure of last resort, and that where a party had obtained an order for specific performance, it ought to resort to alternative methods of securing compliance instead of immediately taking out proceedings for committal. There is nothing in *PJ Holdings* which could help advance the Appellant's interpretation of O 45 r 8.

36 Before we conclude our consideration of O 45 r 8, we would note in passing that the Appellant, the Relevant Respondents and the Judge appear to have been involved in some semantic fisticuffs over the interpretation of a particular aspect of the opening phrase of O 45 r 8, *viz*, "If a Mandatory Order, an injunction or a judgment or order for the specific performance of a contract is not complied with …" [note: 5]. There was disagreement as to whether O 45 r 8 applied to *judgments* per se (a disjunctive reading of the final "or", preferred by the Relevant Respondents and the Judge), or only to judgments for specific performance (a conjunctive reading of that same "or", preferred by the Appellant).

37 In light of our foregoing discussion at [32]-[35], however, little turned in this case on this particular point. The Consent Order, as we have seen, could be viewed as either a mandatory injunction or (more likely) as an order requiring the specific performance of a contract, thereby bringing it squarely within the purview of O 45 r 8. However, we agreed with the Appellant's interpretation of that rule. Throughout the rest of O 45, the words "judgment or order" are used together in a conjunctive fashion. The wording of the disputed phrase and the placement of commas also point towards a conjunctive reading. Most persuasively, if the word "judgments" was to be read as a disjunctive standalone, its generality would render the remaining three categories countenanced by O 45 r 8 redundantly specific. Moreover, as we have pointed out earlier, the words "judgment" and "order" *do* really mean the same thing and are being used interchangeably. It will make no sense to give the word "judgment" a standalone meaning and yet, for the word "order", a qualification by the phrase "for the specific performance of a contract". In any event, the resolution of this point in the Appellant's favour would not have aided the Appellant in any way whatsoever.

Conclusion

38 Finally, due to various administrative reasons, the parties have agreed that paragraph 2 of the Order of Court dated 26 January 2010 (see [8] above) should be set aside. In the light of this concession by the Respondents, this appeal was allowed partially in that paragraph 2 of the said Order of Court was set aside. The rest of the Order of Court was to stand. In the premises, we ordered that the parties were to bear their own costs of this appeal, and that the costs order made by the court below was to remain.

[note: 1] See Order of Court dated 27 April 2009, Appellant's Core Bundle ("ACB") Vol II at pp 43-46.

[note: 2] ACB Vol II at pp 43-46.

[note: 3] Respondents' Case ["RC"] at para 66.

[note: 4] See Appellant's Case at para 62.

[note: 5] See the GD at [9], RC at paras 83-85 and AC at paras 57-59.