IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 15

Civil Appeal Nos 147 and 148 of 2019

Between

Retrospect Investment (S) Pte Ltd

… *Appellant*

And

(1) Lateral Solutions Pte Ltd
(2) Low Yoon Keong

… *Respondents*

EX TEMPORE JUDGMENT

[Courts and Jurisdiction] — [Jurisdiction] — [Powers]
[Companies] — [Oppression]

TABLE OF CONTENTS

INTRODUCTION.....1

PROCEDURAL HISTORY 1

WHETHER THE HIGH COURT HAD THE JURISDICTION OR POWER TO AMEND THE CONSENT ORDER IN SUIT 236 AFTER ITS DISCONTINUANCE.....4

CONCLUSION.....9

Retrospect Investment (S) Pte Ltd
v
Lateral Solutions Pte Ltd and another

[2020] SGCA 15

Court of Appeal — Civil Appeal Nos 147 and 148 of 2019
Steven Chong JA, Belinda Ang Saw Ean J and Woo Bih Li J
6 March 2020

6 March 2020

Steven Chong JA (delivering the judgment of the court *ex tempore*):

Introduction

1 Does the court have the jurisdiction or power to substantively amend a consent order *after* the action has been discontinued? This is an issue which was raised by this court arising from the circumstances which led to the present appeals. Before we turn to that issue, we begin by setting out the procedural history which gave rise to this issue in these appeals.

Procedural history

2 In Suit No 236 of 2017 ("Suit 236"), the Appellant commenced a minority oppression action under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) against the Respondents, among other defendants. The parties were shareholders in Sei Woo Technologies Pte Ltd ("SWTPL").

3 Prior to the commencement of the trial, the Respondents agreed to buy out the Appellant's shares in SWTPL. Accordingly, Suit 236 was compromised and a consent order was recorded before the High Court judge ("the Judge") on 20 August 2018 ("the Consent Order"). On the same day, leave was also granted to the Appellant to discontinue Suit 236 with no order as to costs. The Notice of Discontinuance was served by the Appellant on 27 August 2018 and filed on 31 August 2018. The Respondents and the other defendants in Suit 236 consented to the discontinuance. Suit 236 was thus discontinued under those circumstances.

4 However, it later transpired that the parties could not agree on the reference date for the valuation of the Appellant's shareholding in SWTPL ("the valuation date"). The parties thus filed cross-applications *ie*, Originating Summons Nos 1350 ("OS 1350") and 1409 of 2018 ("OS 1409"), for the court to determine the applicable valuation date. The Respondents' position was that the valuation date ought to be the date of the Consent Order, 20 August 2018. The Appellant, on the other hand, contended that the valuation date ought to be 31 December 2015. In essence, the Appellant's case was that the Respondents had on 8 April 2016 set up another company, LSW Pte Ltd ("LSW") which *competed* with a wholly-owned subsidiary of SWTPL, Sei Woo Polymer Technologies Pte Ltd ("SWP"). It was alleged that this oppressive conduct damaged the value of the Appellant's shareholding in SWTPL and that in all the circumstances, it would be unfair for the valuation date to be the date of the Consent Order.[1]

---

1 GD at [4]–[5].

5 The parties appeared before the Judge on 10 January 2019. On that occasion, the Judge pointed out to the parties that the Consent Order did not provide for any right to enable the parties to seek the court's determination on the valuation date. The parties agreed to amend the Consent Order.

6 Accordingly, the parties, by way of a consent summons, filed an application to amend the Consent Order in Suit 236. Specifically, the parties sought to include the following paragraph in the Consent Order:

> In the event that parties are unable to come to an agreement on the reference date for the valuation of the [Appellant's] shares in [SWTPL], the parties shall be at liberty to refer the matter to the Court for determination, which determination shall be final.

7 On 29 January 2019, the Assistant Registrar granted the application in terms. Unfortunately, neither party addressed their mind to the issue of whether the Consent Order could be amended in this manner in light of the discontinuance.

8 Thereafter, on 8 March 2019, the parties appeared before the Judge for directions. It was agreed that for the purposes of the cross-applications, the valuation date would either be the date of the Consent Order, or the date when the first customer was allegedly siphoned to LSW from SWP or SWTPL. The parties were to file further affidavits and their witnesses were to be cross-examined. The parties also agreed that the issues would be limited in scope and the cross-applications were not intended to be a re-litigation of Suit 236. It is thus clear that the court's jurisdiction to hear OS 1350 and OS 1409 was premised on the amended Consent Order which was granted in the discontinued Suit 236.

9 Having considered the evidence, the Judge found no reason on the facts to depart from the general rule that the date of the Consent Order was the valuation date. The Judge found that the incorporation of LSW did not cause a drop in or negatively affected the value of SWTPL's shares. The Appellant failed to show how LSW was in competition with SWP's business as LSW was *not* doing what SWP was doing, and there was no evidence that SWP or SWTPL intended or would have entered into the business that LSW was involved in.[2] She accordingly granted the Respondents' application in OS 1350 and dismissed the Appellant's application in OS 1409.

10 The Appellant appealed against the Judge's decisions in OS 1350 and OS 1409. While the parties had agreed that this was the sole issue in the appeals, in the course of reviewing the record, this court observed that the Consent Order, which formed the very premise of the cross-applications, was amended *after* Suit 236 was discontinued. In the circumstances we directed the parties to address us on the following issue:

> Whether the High Court had the jurisdiction or power to amend the consent order in [Suit 236] notwithstanding the discontinuance of the Suit and if not, what are the orders that the Court should make in the circumstances.

Whether the High Court had the jurisdiction or power to amend the Consent Order in Suit 236 after its discontinuance

11 In our judgment, the starting point is that the High Court was *functus officio* once Suit 236 was discontinued (see *Tan Kim Hai and Sons Enterprises Sdn Bhd & Ors v Tam Kim San and Sons Sdn Bhd & Ors (Hiap Lee (Choong*

---

2 GD at [39].

Leong & Sons) Brickmakers Sdn Bhd & Anor, Interveners) [1996] 5 MLJ 593 at 600).

12 Nonetheless, it is well established that the court possesses the inherent jurisdiction and power to clarify the terms of its orders and to give consequential directions (see *Godfrey Gerald QC v UBS AG and others* [2004] 4 SLR(R) 411 ("*Godfrey Gerald*") at [18] and Goh Yihan, 'The Inherent Jurisdiction and Inherent Powers of the Singapore Courts: Rethinking the Limits of their Exercise' [2011] SJLS 178 ("*Goh*") at 186).

13 In this regard, we refer to the following principles set out by the High Court in *Godfrey Gerald* at [18]–[19] (and endorsed by this court in *Muhammad bin Kadar and another v Public Prosecutor and another matter* [2011] 4 SLR 791 at [5]):

> 18 The Latin term *functus officio* is an abbreviated reference to a facet of the principle of finality in dispute resolution. *Functus officio* means that the office, authority or jurisdiction in question has served its purpose and is spent. A final decision, once made, cannot be revisited. In dispute resolution, this principle may manifest itself in the guise of *res judicata*, *functus officio* or issue estoppel. This principle of finality is intended to embody fairness and certainty. It is not to be invoked merely as a sterile and mechanical rule in matters where there are *minor oversights, inchoateness in expression and/or consequential matters that remain to be fleshed out.* Given that the court is always at liberty to attend to such axiomatic issues, various judicial devices such as the *"slip" rule and the implied "liberty to apply" proviso* are invoked from time to time to redress or clarify such issues. In short, both the High Court and the Court of Appeal retain a *residual inherent jurisdiction* even after an order is pronounced, to clarify the terms of the order and/or to give consequential directions.
>
> 19 That such inherent jurisdiction exists, has never been doubted. In point of fact, it is regularly invoked and exercised by the court: see O 92 r 4 of the RSC and the helpful and incisive conspectus in Professor Jeffrey Pinsler's article "Inherent Jurisdiction Re-Visited: An Expanding Doctrine"

> [2002] 14 SAcLJ 1 and the commentary in Singapore Court Practice 2003 at paras 1/1/7 and 1/1/8. This inherent jurisdiction is a virile and necessary one that a court is invested with to dispense procedural justice as a means of achieving substantive justice between parties in a matter. The power to *correct or clarify* an order is inherent in every court. This power necessarily extends to ensuring that the spirit of court orders are appropriately embodied and correctly reflected to the letter. Indeed, to obviate any pettifogging arguments apropos the existence of such inherent jurisdiction, the RSC was amended in 1995 to include O 92 r 5, which expressly states:
>
> > Without prejudice to Rule 4, the Court may make or give such further orders or directions *incidental* or consequential to any judgment or order as may be *necessary* in any case.
>
> By dint of this rule, the court has an unassailable broad discretion and jurisdiction to give effect to the intent and purport of any relief and/or remedy that may be necessary in a particular matter. Admittedly, while the rule sets out in stark terms the court's wide inherent jurisdiction in this area of procedural justice, I should add for completeness, that the power to "make or give such further orders or directions incidental or consequential to …" *does not prima facie extend to correcting substantive errors and/or in effecting substantive amendments or variations to orders that have been perfected.*
>
> [emphasis added]

14 We also refer to the following extract from Jeffrey Pinsler, *Principles of Civil Procedure* (Academy Publishing, 2013) at para 21.007:

> The possibility of a dispute over the terms of a judgment or order is recognised by Order 92 rule 5 of the Rules of Court, which states: "Without prejudice to Rule 4 [which concerns the courts inherent power], the court may make or give such further orders or directions incidental or consequential to any judgment or order as may be necessary in any case." This rule encapsulates the post-judgment role of the court in the form of a general principle of broad discretion. It should be noted, however, that as a rule of procedure it is subject to statutory law and may not be utilised to create new substantive rights. It follows that an order of court which provides for "liberty to apply" does not mean that the substance of the order may be changed. It has been identified as "a judicial device intended to supplement the main orders in form and convenience only so that the main orders may be carried out". Put another way, this

> clause is intended to enable the parties to effectuate the actual terms of the order. The reference in Order 92 rule 5 to Order 92 rule 4 (which concerns the court's inherent power) underlines the court's entitlement (as the manager of its own process) to give effect to the intent and purpose of any judgment or order which it gives or makes. *This discretion extends to the clarification of the terms of a consent judgment or order.*
>
> [emphasis added]

15 In short, the *functus officio* doctrine exists to ensure *finality* in litigation. However, notwithstanding this, the court is able to make non-substantive amendments to its orders after the conclusion of the matter, as contemplated by O 92 r 5 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). This is not an uncommon occurrence (see for example, *Thu Aung Zaw v Ku Swee Boon (trading as Norb Creative Studio)* [2018] 4 SLR 1260 ("*Thu Aung Zaw*") at [23]).

16 We pause to note that the High Court in both *Godfrey Gerald* and *Thu Aung Zaw* had referred to the court's "inherent jurisdiction" to clarify the terms of its orders, as opposed to its "inherent powers". We also note the observation made by Prof Goh Yihan that properly construed, it is the court's inherent *powers* that are being engaged rather than its inherent *jurisdiction* (*Goh* at 186). As stated by this court in *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 at [33], there is a distinction between the two concepts as the former relates to the court's inherent authority to *hear* the matter, while the latter concerns its inherent capacity to *give effect* to its determination by making or granting the relevant orders or reliefs. Nonetheless, nothing in this judgment turns on whether it is the court's inherent jurisdiction or power that is engaged, as in our judgment, the court has *neither* the jurisdiction nor power to substantively amend a consent order after an action has been discontinued. In this regard, the fact that both parties *consented* to the amendment is immaterial, as it is well

established that the parties cannot by consent confer on the court a jurisdiction which does not exist or which it ceases to have (*Wilkinson v Barking Corporation* [1948] 1 KB 721 at 725).

17 In the present case, the amendment made by the parties to the Consent Order on 29 January 2019, after Suit 236 was discontinued, could not be described as a non-substantive amendment. The text of the original Consent Order was unambiguous and did not contemplate that the parties would refer matters that they could not agree on to the court. Indeed, at the time when the Consent Order was originally recorded, the parties specifically informed the Judge that the parties would not be referring any "substantive issues" to the court after the discontinuance including the applicable valuation date and the approach to be adopted by the independent valuer. In our judgment, it was clear to the parties that any determination of the valuation date by the court would involve a substantive amendment to the Consent Order.

18 Before us, the Respondents also submitted that in the event that the High Court did not have the jurisdiction or power to amend the consent order, the Judge, in determining the valuation date, was acting *extra cursum curiae* with the consent of the parties.

19 We do not accept the Respondents' submission. In *Singapore Civil Procedure 2020* vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 2020) at para 57/1/22, the *extra cursum curiae* doctrine is described in the following terms: "where, at the request of the parties, a judge decides a question outside the regular course of judicial proceedings … no appeal lies". In other words, the essence of the doctrine is that no appeal shall lie against any decision so rendered. In the present case, there was no such request by the parties for the

Judge to decide the valuation date outside the regular course of judicial proceedings. In our judgment, it is crystal clear that the parties had proceeded on the basis that the valuation date was to be decided in the regular course of judicial proceedings, albeit erroneously. The Judge heard the evidence, considered the parties' submissions and certainly would not have regarded her decision as not being subject to appeal. There is no suggestion that the parties intended for the Judge's decision to be final in the sense that they would waive their right of appeal against the decision (see *Liew Kit Fah and others v Koh Keng Chew and others* [2019] SGCA 78 at [27]). In fact, the conduct of the parties in the appeals is itself contrary to the applicability of the doctrine in this case.

20 We thus hold that the High Court had neither the jurisdiction nor the power to amend the Consent Order on 29 January 2019. It must therefore also follow that the High Court also lacked the jurisdiction or power to decide on OS 1350 and OS 1409 arising from the amended Consent Order and hence the orders made thereunder were nullities in the circumstances.

Conclusion

21 Given our finding that the High Court did not have the jurisdiction or power to amend the Consent Order, we set aside the following:

(a) the Order of Court dated 29 January 2019 (HC/ORC 705/2019), where it was ordered that the Consent Order be amended; and

(b) the Orders of Court dated 27 June 2019 (HC/ORC 4433/2019 and HC/ORC 4434/2019) where it was ordered that the valuation date was the date of the consent order, and the costs orders therein.

22 As HC/ORC 4433/2019 and HC/ORC 4434/2019 have been set aside, the appeals can no longer be proceeded with and hence are dismissed accordingly. We make no order on Summons Nos 1 and 2 of 2020. Having regard to all the circumstances, we order the parties to bear their own costs here and below. The usual consequential orders, if any, shall apply.

Steven Chong	Belinda Ang Saw Ean	Woo Bih Li
Judge of Appeal	Judge	Judge

Boey Swee Siang, Lee Wei Han Shaun and Teo Yi Hui (Bird & Bird ATMD LLP) for the appellant;
Kok Chee Yeong Jared and Kwong Kam Yin (Rajah & Tann Singapore LLP) for the respondents.