IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 286

District Court Appeal No 1 of 2023

Between

Tan Meow Hiang t/a Chip Huat

… *Appellant*

And

Ong Kay Yong t/a Wee Wee Laundry Service

… *Respondent*

In the matter of District Court Suit No 3616 of 2016

Between

Tan Meow Hiang t/a Chip Huat

… *Plaintiff*

And

Ong Kay Yong t/a Wee Wee Laundry Service

… *Defendant*

JUDGMENT

[Civil Procedure — Costs — Instalment order]

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v
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Goh Yihan J
4, 11 September 2023

10 October 2023 Judgment reserved.

Goh Yihan J:

1 This is my decision in relation to the appropriate costs order following the decision in relation to the substantive appeal, which can be found in *Tan Meow Hiang (trading as Chip Huat) v Ong Kay Yong (trading as Wee Wee Laundry Service)* [2023] SGHC 218 ("*Tan Meow Hiang*"). Apart from the usual submissions on costs, the defendant has prayed for instalment orders in relation to the costs order for the appeal and the judgment sum arising from the underlying suit. Because there are only a handful of local decisions on instalment orders, I provide the reasons for my decision in this judgment.

Procedural history

2 I begin with the brief procedural history. The underlying suit involved a dispute between relatives over the ownership of one Wee Wee Laundry Service ("WWLS"). The plaintiff claimed for: (a) a sum of $140,000, which the

defendant allegedly agreed to pay her; or, in the alternative, (b) the defendant to transfer the ownership of WWLS to her. The defendant counterclaimed for: (a) a sum of $127,500, which the plaintiff allegedly agreed to pay pursuant to a consultancy agreement; and (b) a sum of $72,200, which the defendant expended on employing additional labour to carry out the plaintiff's duties.

3 The learned district judge (the "DJ") gave her judgment in *Tan Meow Hiang t/a Chip Huat v Ong Kay Yong* [2023] SGDC 29. The DJ granted the plaintiff's claim for the ownership of WWLS and the defendant's counterclaim for $72,200 (with additional interest payable at 5.33% per annum). However, the DJ dismissed the plaintiff's alternative claim for $140,000, as well as the defendant's counterclaim for $127,500. The appeal that I heard was brought by the plaintiff against two parts of the DJ's decision: (a) the award of $72,200 to the defendant; and (b) the order that each party shall bear their own costs.

4 After hearing the parties on 18 July 2023, I gave judgment on 11 August 2023 in favour of the plaintiff. More specifically, I allowed the plaintiff's appeal and overturned the DJ's decision to award the defendant $72,200. I then directed the parties to file written submissions on the appropriate costs order if they were unable to agree on such an order. On 4 September 2023, the parties filed their respective written submissions on the appropriate costs order. The defendant also requested instalment orders in respect of the costs of the appeal as well as the judgment sum arising from the DJ's decision below, which amounts to $95,879.98 (including interest). I directed the plaintiff to file a reply to this request, which she did on 11 September 2023.

What is the appropriate costs order?

The parties' submissions

5 I begin with the appropriate costs order for the appeal before me and the proceedings below. In this regard, the plaintiff argues for costs of $75,000 all-in for the following reasons: (a) the plaintiff is the overwhelmingly successful party in the appeal and the proceedings below;[1] (b) the defendant's conduct, including his failure to pay the judgment sum to date, warrants a higher costs order;[2] and (c) the defendant unsuccessfully raised two issues in the appeal.[3]

6 In response, the defendant makes the following points: (a) the litigation in the proceedings below was wholly avoidable as the parties are in a familial relationship with each other;[4] (b) the plaintiff's main claim below was factually and legally unsustainable and costs should be discounted;[5] (c) the plaintiff ultimately succeeded only in her alternative claim for a transfer of WWLS;[6] and (d) the issue on which the appeal turned, that is, whether the counterclaim was founded on a reasonable cause of action, was not raised below.[7] Therefore, the defendant argues for costs of $30,000 all-in, or $40,000 all-in but to be paid over 10 instalments.[8]

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1 Appellant's Costs Submissions dated 4 September 2023 ("ACS") at paras 6–8.

2 ACS at para 9(c).

3 ACS at para 10.

4 Respondent's Costs Submissions dated 4 September 2023 ("RCS") at para 5.

5 RCS at para 6.

6 RCS at para 7.

7 RCS at para 8.

8 RCS at para 2.

My decision on the appropriate costs order

7 Pursuant to O 59 r 2(2) of the Rules of Court (2014 Rev Ed) (the "ROC 2014"), a court has the discretion to determine by whom and to what extent costs are to be paid. In exercising this discretion, a court would apply the following principles:

(a) First, in line with O 59 r 3(2) of the ROC 2014, costs will generally follow the event. As Tan Siong Thye SJ observed in the High Court decision of *Crescendas Bionics Pte Ltd v Jurong Primewide Pte Ltd* [2023] SGHC 209 (at [32]), citing Vinodh Coomaraswamy J's views in the High Court decision of *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2022] 5 SLR 525 ("*Comfort Management*") (at [27]–[28]), this requires the court to "ascertain the overall outcome of the litigation as well as which party in substance and reality won the litigation, looking at its outcome in a realistic and commercially sensible way".

(b) Second, in line with O 59 r 5 of the ROC 2014, a court, in exercising its discretion as to costs, shall consider the following matters: (i) any payment of money into court and the amount of such payment; (ii) the conduct of all the parties, including conduct before and during the proceedings; (iii) the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution; and (iv) the extent to which the parties have followed any relevant pre-action protocol or practice direction for the time being issued by the Registrar.

(c) Third, in line with O 59 r 6A of the ROC 2014, where a party has failed to establish any claim or issue which he has raised in any

> proceedings, and has thereby unnecessarily or unreasonably protracted, or added to the costs or complexity of those proceedings, the court may order that the costs occasioned by that claim or issue be paid to the other party regardless of the outcome of the cause or matter.

8 Having regard to all the circumstances, I am of the view that the plaintiff should be awarded costs at the middle range stipulated in the Guidelines for Party-and-Party Costs Awards in the Supreme Court of Singapore found in Appendix G of the Supreme Court Practice Directions 2013 ("Appendix G"). First, it is clear that the plaintiff is the successful party in these proceedings. This follows my decision to disallow the defendant's counterclaim, leaving the plaintiff as the only party to obtain anything in the present case. Although the plaintiff failed in one of her heads of claim, this does not detract from the conclusion that she is the successful party. In this regard, in the High Court decision of *Comfort Management*, Coomaraswamy J found that the plaintiff was nevertheless the successful party although the plaintiff secured an unqualified success on only two of the six issues in the proceedings, and therefore recovered only 26% out of its $1.5m claim. This was for the following reasons (at [38]):

> But, in my view, all of that is outweighed by the fact that the result of this litigation is that the first defendant must pay a substantial sum to the plaintiff. The plaintiff could not have recovered that or any other sum if it had not commenced action against the first defendant and succeeded. It is for that reason that I find that the plaintiff is the successful party in this litigation despite the entirely valid points which the first defendant advances about the qualified nature of the plaintiff's success.

In the present case, the plaintiff successfully established one of her two heads of claim. In contrast, the defendant not only failed to defend against that head of claim, but also failed in his counterclaim. Accordingly, even if the plaintiff

failed in one of her heads of claim, this does not make the defendant – who failed to defend against the plaintiff's successful claim and failed to establish any counterclaim at all – the more successful party. The upshot of this must be that the plaintiff is the successful – or at the very least, more successful – party in these proceedings.

9 Second, I am satisfied that the defendant's conduct in these proceedings shows a disregard for the procedural rules, which may, among other things, have led to an increase in time and costs. For example, the defendant was late in the filing of his submissions for the appeal. More importantly, the defendant has failed to pay the plaintiff the judgment sum of $95,879.98 to date, which has certainly deprived the plaintiff the fruits of her litigation. However, as against these points, I consider that the appeal was not too complicated as it involved a foundational point of law that ought to have been dealt with below. I therefore find that the defendant's disregard for the procedural rules, while undesirable, did not drastically increase the time and costs incurred in these proceedings.

10 As such, I award the plaintiff costs of $35,000 all-in for the proceedings below and the appeal. More specifically, bearing in mind the daily tariff of $6,000 to $16,000 for trials in the Supreme Court concerning commercial disputes (see Appendix G at p 5), and applying the appropriate discount for this being a State Courts matter, I award $10,000 in costs per day for the two-day trial before the DJ below. As for the appeal, I award the plaintiff $15,000 in costs, being in the middle end of the recommended range of $5,000 to $35,000 (see Appendix G at p 9). This therefore adds up to a global costs order of $35,000 all-in for the proceedings below and the appeal.

Is this an appropriate case to make instalment orders in respect of the costs order and the judgment sum?

The parties' submissions

11 I turn now to the defendant's request for instalment orders to be made in respect of the costs order for the appeal, as well as in respect of the judgment sum. The defendant makes several points in support of this request. First, the court, by which I understand to mean the General Division of the High Court ("General Division"), has the power to order instalment payments.[9] In this regard, the defendant acknowledges that s 43(1) of the State Courts Act 1970 (2020 Rev Ed) (the "SCA"), which expressly deals with instalment orders, does not directly apply to the present appeal. However, the defendant submits that s 43(1) of the SCA "provides the [c]ourt with a discretion to order instalment payments, and does not proscribe or limit the additional powers of the General Division to 'award costs' and 'to enforce a judgment of the court in any manner which may be prescribed by any written law'" [emphasis in original omitted], referring to the First Schedule of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the "SCJA").[10] Second, there are sufficient reasons for instalment orders in the present case because the defendant "is a businessman and he is unshielded from the risks of poor economic conditions".[11] In particular, it was stated in the written submissions (and not in an affidavit) that the defendant had to sell his personal residence in 2019 to repay his creditors and remains in debt to date.

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9 RCS at para 15.

10 RCS at para 16.

11 RCS at para 18.

12 The plaintiff objects to the defendant's request for instalment orders in respect of the costs order and the judgment sum. First, the defendant's reliance on s 43(1) of the SCA and the First Schedule of the SCJA is wrong. Instead, the more relevant provision should be s 22(2) of the SCJA, which provides that the General Division deciding an appeal "has all the powers and duties, as to amendments or otherwise, of the court from which the appeal was brought".[12] Second, even taking s 22(2) of the SCJA into account, the defendant's request for the instalment orders should be denied because, among other things, the defendant had endorsed the draft order of court that the plaintiff had circulated.[13] As such, as at 5 September 2023, the judgment has already been extracted and perfected. Third, there are no special circumstances of hardship that make it just and equitable to make the instalment orders sought.[14]

My decision on the appropriateness of making instalment orders

The General Division does not have the power to make instalment orders generally but can do so on appeal from the State Courts

(1) The General Division does not have the power to make instalment orders generally

13 With the parties' submissions in mind, I begin with a preliminary point concerning the General Division's power to make instalment orders. To begin with, I agree with the parties that there is no statutory provision that deals *directly* with the General Division's power to do this in relation to judgments and orders for payment of money generally. Indeed, the closest that the SCJA

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12 Appellant's Reply Costs Submissions dated 11 September 2022 ("ARCS") at paras 3–6.

13 ARCS at paras 7–8.

14 ARCS at para 10.

comes to prescribing such a power is at paragraph 17 of the First Schedule, which provides for the General Division's "[p]ower to order damages assessed in any action for personal injuries to be paid in periodic instalments rather than as a lump sum". However, as is clear from this paragraph, this power is specifically in relation to damages awarded in respect of an action for personal injuries, as opposed to being generally in relation to monetary damages (which I have used to be the equivalent shortform for "judgments and orders for payment of money", as the phrase appears in the heading to s 43 of the SCA).

14 In contrast, s 43(1)(*b*) of the SCA sets out the State Courts' power to make instalment orders in respect of judgments and orders for the payment of money generally (see also Jeffrey Pinsler, *Singapore Civil Practice, Vol 1* (LexisNexis, 2022) at para 35-117):

> **Satisfaction of judgments and orders for payment of money**
>
> **43.**—(1) Where a judgment is given or an order is made by a District Court under which any sum of money is payable, whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise, the Court may, as it thinks fit, order the money to be paid either —
>
> (*a*) in one sum, whether immediately or within a period fixed by the Court; or
>
> (*b*) by the instalments payable at the times fixed by the Court.

15 The absence of an express provision like s 43(1)(*b*) of the SCA in the SCJA raises the question of whether the General Division has the power to make instalment orders *generally*, that is, with respect to *all* monetary awards.

16 As a starting point, it is unclear why s 43(1)(*b*) is not replicated similarly in the SCJA. This appears to be a long-standing situation. As summarised by Deputy Registrar Chua Wei Yuan ("DR Chua") in *Aver Asia (S) Pte Ltd v*

RJS Engineering and Marine Services Pte Ltd [2017] SGMC 24 ("*Aver Asia*") (at [24]–[27]), the predecessors to s 43 of the SCA: (a) provided that instalment orders can be made only in judgments for the payment of money where the amount sued for does not exceed $500; or (b) were expressed to apply only to judgments of the District Court. Indeed, Soh Kee Bun had noted in an academic commentary published in 1994 that "[t]he reason for the absence of the power in the High Court is not clear" and suggested that this may be because the power "was originally intended for poor judgment debtors who could not pay in full, and for whom proceedings like seizure and sale or bankruptcy were not considered meaningful" (see Soh Kee Bun, "The Powers of the Supreme Court of Singapore in Awarding Damages and Interest" [1994] Sing JLS 91 at 99). However, apart from this suggestion, there is nothing in the legislative material to explain why there is no equivalent of s 43(1)(*b*) of the SCA in the SCJA.

17 I am not quite convinced that these reasons explain why there is no equivalent of s 43(1)(*b*) of the SCA in the SCJA. Indeed, rather than pursue bankruptcy proceedings against a judgment debtor, a judgment creditor may actually obtain more of the judgment debt if an instalment order is in place. This may especially be so for the higher quantum of claims commenced in the General Division. However, while there may be good policy reasons for the General Division to be vested with the power to make instalment orders *generally* with respect to *all* monetary awards, I am constrained by paragraph 17 of the First Schedule to the SCJA from reaching such a conclusion. This is because paragraph 17 clearly provides for the General Division's "[p]ower to order damages assessed in any action for personal injuries to be paid in periodic instalments rather than as a lump sum". Given that Parliament has seen fit to expressly restrict the General Division's power to make instalment orders to this very specific context concerning an action for personal injuries, it would not be

proper for a court to read into the SCJA a more general power. It would not be proper because a court would be stretching the limits of judicial interpretation when Parliament has plainly not provided for the General Division's exercise of such a power generally and has, in fact, chosen to confine it to a specific context. As a matter of statutory interpretation, a court should be slow to infer a general power from Parliament's explicit provision of one or several specific powers. The presumptive explanation, for why Parliament has not provided for a general power while having provided for explicit powers, is simply that it did not intend to provide for such a general power (see also the High Court decision of *TG Master Pte Ltd v Tung Kee Development (Singapore) Pte Ltd and another* [2023] SGHC 64 at [30] for a similar application of this principle). I accordingly conclude that the General Division does not have the power to make instalment orders *generally*.

(2) The General Division, however, has the power to make instalment orders on appeal from the State Courts

18 However, the General Division has the power to make instalment orders when it is exercising its appellate jurisdiction in relation to an appeal from the State Courts. In this regard, I agree with the plaintiff that the appropriate provision is s 22(2) of the SCJA. This section provides that "[i]n hearing and deciding an appeal, the General Division has all the powers and duties, as to amendment or otherwise, of the court from which the appeal was brought". As such, if s 43(1)(*b*) of the SCA applies to the lower court, then, by virtue of s 22(2) of the SCJA, the General Division hearing an appeal from the State Courts would possess the power to make instalment orders generally with respect to *all* monetary awards.

19 In the present case, since the appeal was brought from the District Court, s 43(1) of the SCA applies to confer on the General Division the power to make instalment orders in respect of costs and the judgment sum. This does not mean that a court will always exercise this power to make instalment orders, since this is a matter within the court's discretion. Indeed, I will later consider whether to exercise this power in the present case. But before I do that, I make a few observations on the seeming incongruence of the General Division not having the power to make instalment orders generally (at least, when it is not exercising its appellate jurisdiction on an appeal from the State Courts).

(3) Parliament may wish to consider giving the General Division the power to make instalment orders generally

20 I would respectfully suggest that Parliament may wish to consider giving the General Division the power to make instalment orders generally with respect to *all* monetary awards. This is principally because the General Division has the power to make instalment orders in certain *specific* situations. There does not appear to be any cogent reason why the General Division's power to make instalment orders should be restricted to these situations, when the State Courts have an unrestricted power to make such orders pursuant to s 43(1) of the SCA.

21 First, as I already alluded to above, paragraph 17 of the First Schedule provides that the General Division can make instalment orders in relation to monetary damages, albeit in the specific situation concerning the assessment of damages from an action for personal injuries. As I have suggested above, there does not appear to be any cogent policy reason for the General Division to be vested with such a power for a particular type of case but not for others. Indeed, there is also no clear policy reason why this power should be granted especially for the assessment of damages from an action for personal injuries.

22 Second, paragraph 8 of the First Schedule to the SCJA, read with O 45 r 1 of the ROC 2014 and s 6 of the Debtors Act (Cap 73, 2014 Rev Ed) (the "DA"), provide that the General Division can make instalment orders in relation to an unpaid judgment debt where the judgment debtor has been arrested. To elaborate on this, s 6 of the DA provides that the court "may order that the judgment debt be *paid by instalments* of such amount and at such times as it thinks fit" [emphasis added]. However, the court's power in this regard is limited to "[w]here a judgment for the payment of money remains wholly or in part unsatisfied" and "there is probable reason for believing, having regard to his conduct, or the state of his affairs, or otherwise, that he is likely to leave Singapore with a view to avoiding payment of such money or to avoiding examination in respect of his affairs" (see s 3 of the DA). In other words, the General Division's power to make instalment orders is not a freestanding power and may only be exercised in the specific context where a judgment debtor has been arrested. But the broader point remains that the General Division is empowered to make instalment orders generally in respect to all monetary damages, albeit in the specific situation where the judgment debtor has been arrested. There is, as with the situation in paragraph 17 of the First Schedule, no cogent reason why the General Division's power should be restricted in such a manner. Indeed, if a judgment debtor is unable to satisfy the judgment debt at the time when judgment was entered, the court should have the power to make an instalment order immediately, rather than wait for time to lapse and for the judgment debtor to be arrested.

23 Third, there is at least one provision in the ROC 2014 (and the later Rules of Court 2021) that allows the General Division to order the payment of money to be done in instalments. In this regard, O 29 r 13 of the ROC 2014, which pertains to an order to make interim payment pending trial, provides in

r 13(3) that "[a]n interim payment may be ordered to be made in one sum or by such instalments as the [c]ourt thinks fit". O 29 r 13 has been simplified in the ROC 2021 as O 13 r 8(5), which provides that "[t]he [c]ourt may order interim payment to be made in instalments or at periodic intervals". As such, while not pertaining to an award of monetary damages, the General Division clearly has the power to order that interim payment pending trial be paid in instalments. I can see no cogent reason why the General Division should be vested with such a power in respect of interim payment but not in respect of monetary damages generally.

24 For completeness, I note that jurisdictions like the UK and Australia have also statutorily provided for their courts' powers to make instalment orders, whether in relation to an award of costs or monetary damages.

(a) In the UK, s 75 of the Magistrates' Courts Act 1980 (c 43) (UK) empowers a magistrates' court, when ordering a fine or some other sum to be paid, to order payment by instalments. Rule 40.11(a) of the Civil Procedure Rules 1998 (SI 1998 No 3132 (L.17)) (UK) (the "UK CPR"), which applies to the High Court, states that "[a] party must comply with a judgment or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order", unless "the judgment or order specifies a different date for compliance (including specifying payment by instalments)".

(b) In New South Wales, r 37.2 of the Uniform Civil Procedure Rules 2005 (New South Wales) provides that "[a] judgment debtor may apply to the court for an instalment order with respect to the amount owing under the judgment debt".

(c) In Victoria, s 5(1) of the Judgment Debt Recovery Act 1984 (Victoria) allows the court, "in giving judgment … of its own motion or on the application of a party order that the judgment debt be paid by instalments". This power extends to specifying "the amount of each instalment payable and the times at which instalments shall be paid" (see s 5(2)). If an instalment order was not granted by the court in its judgment, a judgment creditor or judgment debtor may also apply for an instalment order after judgment is given (see s 6).

25 In interpreting the court's powers to make instalment orders under the UK CPR, the English Court of Appeal in *Loson v Stack and another* [2018] EWCA Civ 803 held that the court has the power "to provide for the judgment sum to be paid by way of instalments when making the original order" (at [17]). However, if the original order was for the judgment debt to be paid as a single sum, the *variation* of the order must be made pursuant to r 3.1(7) of the UK CPR, which generally requires there to be a material change of circumstances, and there is no unqualified jurisdiction to vary what would otherwise be final order of the court (at [17]).

26 In sum, given the inconsistency between the presence of s 43(1) of the SCA in relation to the State Courts, and the absence of an equivalent provision in the SCJA in relation to the General Division, I would respectfully suggest that Parliament considers an amendment to bring the two statutes in line with each other on this issue. Indeed, there does not appear to be any sensible policy reason why the State Courts should have this power but not the General Division. This inconsistency is exacerbated by the presence of other legislative provisions that confer on the General Division the power to make instalment orders in specific areas. There is, once again, no sensible policy for restricting the General Division's power in this manner when, as a matter of principle, the

General Division is not precluded from making instalment orders in certain prescribed situations.

The relevant factors in deciding whether to make instalment orders

27 Having decided that the General Division has the power in the present case to make instalment orders (because it is on appeal from the State Courts), I come now to the relevant factors that should inform the court in deciding whether to exercise that power. In this regard, I can do no better than to refer to the comprehensive and articulate judgment in *Aver Asia*, where DR Chua referred to the equally important decision of Magistrate Earnest Lau Chee Chong in *Khoo Wai Keong Ronnie v Hanam Andrew J* [2003] SGMC 41 ("*Ronnie Khoo*").

28 For present purposes, it is not necessary to repeat the comprehensive analysis that DR Chua undertook in *Aver Asia*. It suffices for me to reproduce three key paragraphs from *Aver Asia* that capture the essence of his analysis (at [5]–[7]):

> 5. An instalment order is meant to be "concessionary towards judgment debtors who are mired in circumstances of serious hardship" (*Khoo Wai Keong Ronnie v Hanam Andrew J* [2003] SGMC 41 ("*Ronnie Khoo*") at [29]) and, in my view, not meant to be an indulgence granted at whim. The power to grant such an order points to "the policy of the law in not permitting a man to be stripped of all means of livelihood and entirely pauperized" (*M P L A Peyna Carpen Chitty v Max J D'Souza (R Wildman, garnishee)* [1893] 1 SSLR 64 at 65 *per* Wood ACJ).
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> 6. Fundamentally, the court must ascertain whether there are special circumstances of hardship that make it just and equitable to make such an order. The threshold to invoke the court's power is not an easy one to cross. An instalment order has been described as "a definite derogation from the legal right of the decree holder to immediate execution, and must only be made in exceptional circumstances" (*Muthupalaniappa Chettiar v Mohamed Yusof bin Haji Ahmad Ee Tin* [1931-1932] FMSLR 231 ("*Muthupalaniappa Chettiar*") at 232 *per* Burton J). The lone

> fact that a defendant is "hard pressed" (interpreted in *Muthupalaniappa Chettiar* at 232 to mean being in a state of "poverty") would not be a "sufficient reason" to make such an order (*Binda Prasad vs Madho Prasad and others* (1880) ILR 2 All 129 (Allahabad High Court) at [9] *per* Oldfield J (with whom Turner J concurred)).
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> 7. The principal considerations include: **(i)** the circumstances giving rise to the cause of action, **(ii)** whether the debtor fully disclosed his assets and liabilities, **(iii)** whether there are circumstances making it inexpedient to enforce the judgment immediately, **(iv)** whether the judgment creditor faces any serious danger of losing the fruits of his judgment, **(v)** the terms of the proposed offer in relation to the size of the judgment debt, and **(vi)** the debtor's conduct. This is ultimately an exercise in common sense that turns on the facts and circumstances of each case. …
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> [emphasis in original]

While the learned DR had made these observations in relation to s 43(1) of the SCA, I hold that these observations apply equally to the General Division when considering whether to make an instalment order on appeal from the State Courts. Indeed, there is no good reason, nor have the parties argued otherwise, for these observations not to apply in the present case.

29 It is clear from the foregoing that the court will only make instalment orders in exceptional circumstances. In this regard, it is helpful for me to discuss some of the cases where the court has considered whether to exercise its discretion to make an instalment order.

(a) In *Ronnie Khoo* (at [9]–[14]) (cited in the Court of Appeal decision of *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 at [93]–[95] for a separate issue of when committal proceedings will not be an appropriate enforcement mechanism when a judgment debtor had genuine difficulties complying with an instalment order), the court allowed the judgment debtor to pay the judgment debt over ten monthly instalments of $100 until he completed his national service. The court

ordered as such because the judgment debtor was a full-time national serviceman who could not earn any income apart from his monthly allowance of $417.50. Upon the end of his national service, *ie*, at the end of the ten-month period, the judgment debtor would be able to find a job "earning a salary significantly more than his [national service] allowance". Therefore, at that point, he would have to pay the remaining debt in a lump sum, because "[a]ny longer instalment plan would be inequitable" to the judgment creditor.

(b) In the Perak High Court decision of *S P L R M Ramasamy Chettiar v Nordin bin Uda Shukor* [1934] 1 MLJ 299, Howes J amended the instalment order such that the judgment debtor had to pay the judgment debt and costs over monthly instalments of $5. The court considered the following factors. First, the judgment debtor alleged that he had two other creditors whose claims amounted to $150, his only source of income was rubber producing an average output of four katties a day, and he had seven dependents to support. Second, the judgment debt of $135 was relatively small. Therefore, the court held that instalments could be legitimately ordered as long as the judgment creditor's interest is safeguarded. To safeguard this interest, the court ordered that if the judgment debtor defaulted on payment of any instalment, the judgment creditor could proceed to execution.

(c) In the Kuala Lumpur High Court decision of *Phan Pow v Tuck Lee Mining & Co* [1959] 1 MLJ 32, Ong J granted the judgment debtors leave to pay the judgment debt of $3,892.12 (including costs) by monthly instalments of $300 for four reasons. First, the judgment debtors set out in the affidavit that although the tin restriction scheme had immediate detrimental effects on the tin industry which the

> judgment debtors worked in, the scheme may benefit the tin miners in the long run. Put differently, the judgment debtors should be given some time to pay the judgment debt, so that they can reap the benefits of the tin restriction scheme in the future. Second, the judgment debtors made full disclosure of the firm's assets and liabilities, and other judgment creditors have not pursued their claims. Third, there was no very serious danger of the judgment creditor losing the fruits of his judgment, or any likelihood of his being better off if the judgment debtors should be forced into bankruptcy. Finally, if there was any material change in the circumstances, the judgment creditor could at any time apply to court for variation or rescission of the order.

30 In summary, the power to make instalment orders must be exercised with extreme caution. This accords with the trite principle that the successful litigant should not be deprived of the fruits of litigation. Thus, in the context of an application for a stay of execution, the starting point is that, as the Court of Appeal held in *Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd* [1999] 1 SLR(R) 1053 (at [13]), an appeal does not operate as a stay of execution. The same applies in relation to the grant of instalment orders, which would indeed constitute "a definite derogation from the legal right of the decree holder to immediate execution, and must only be made in exceptional circumstances" (see *Aver Asia* at [6], citing *Muthupalaniappa Chettiar v Mohamed Yusof bin Haji Ahmad Ee Tin* [1931-1932] FMSLR 231 at 232). As such, a court should only make instalment orders when it can be shown that a judgment debtor is at risk of being "pauperised", in the sense of being stripped of all means of livelihood. There must, in other words, be special circumstances of hardship on the part of the judgment debtor. However, it is not enough that a judgment debtor is in a state of poverty. In this regard, the factors that DR Chua

raised in *Aver Asia* (at [7]) are helpful in guiding a court in its decision whether to make instalment orders, although the court will need to consider all the facts and circumstances of the case before it.

It is not appropriate to make instalment orders in the present case

31 With the above principles in mind, I conclude that it is not appropriate to make instalment orders in the present case, whether in relation to the costs order in the appeal or the judgment sum arising from the underlying suit.

32 In the first place, the defendant has not filed an affidavit providing the relevant evidence as to why instalment orders should be made. To be fair, the defendant did say in his written submissions that he "stands ready to file further affidavit(s)".[15] However, rather than leave it to the court to ask him to file an affidavit, the defendant should have sought permission to do so. This must be a necessary step in his request for instalment orders to be made, and indeed, consistent with the court's consideration of whether the defendant debtor fully disclosed his assets and liabilities. Be that as it may, the defendant did explain the reasons for his request for the instalment orders by way of submissions. Thus, rather than put the parties through extra costs and time through the filing of further affidavits, I will take the defendant's submissions on the circumstances that he says justifies the instalment orders as true. In this regard, the defendant submits as follows:[16]

> In the present case, there are sufficient reasons for an instalment order. The Respondent is a businessman and he is unshielded from the risks of poor economic conditions. For this reason, the Respondent's income and ability to pay has been severely diminished. In fact, in 2019 he had to sell his personal

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15 RCS at para 21.

16 RCS at para 18.

> residence in order to repay his creditors, and to-date remains in debt. Given his poor health and lack of experience outside of the laundry industry (which presently is in decline), it is impossible for him to earn other employment income. The Appellant would not be better off forcing the Respondent into bankruptcy since he has no assets or cash to his name, and the Appellant is not unduly prejudiced since she will be at liberty to apply to Court upon default (if any). …

33 In my judgment, even taking these assertions as true despite the lack of a supporting affidavit attesting to the same, they do not justify the making of instalment orders in the present case. First, the fact that the defendant is a businessman does not mean he suffers from greater financial hardship than others in different jobs. Instead, precedent suggests that the court should consider whether the defendant, in his present job, is in a position to pay the judgment debt. Other than asserting that he is "unshielded from the risks of poor economic conditions", the defendant has not explained how this prevents him from paying the judgment debt. To my mind, the defendant must point to a particular instance of economic hardship, rather than the general risk of economic volatility.

34 Second, while the defendant's income has been "severely diminished", I do not read that to mean that the defendant is without means. Indeed, this suggests that the defendant is still earning income, and therefore he should have explained why his diminished income will not allow him to pay the judgment debt immediately.

35 Third, the fact that he has other creditors in addition to the plaintiff does not mean that the plaintiff should be disadvantaged by the instalment orders. This is especially so when the other creditors are apparently being paid off by the defendant's sale of his personal residence. This suggests that the other creditors will not pursue the judgment debt.

36 Fourth, while I empathise with the defendant that he is in poor health, he does not go so far as to state that he cannot work. Rather, the defendant says that it is "impossible for him to earn *other* employment income" [emphasis added].[17] This means that the defendant is earning income now. Finally, as the plaintiff says, she had paid over a part of the judgment sum to the defendant to satisfy the judgment which the DJ made in favour of the defendant. Now that the appeal is allowed, the defendant is simply returning the money that he had received earlier. Thus, it is difficult to see how the defendant would, to paraphrase the words DR Chua used in *Aver Asia*, be stripped of all means of livelihood and entirely pauperised.

37 I therefore conclude that it is not appropriate to make instalment orders in the present case.

Conclusion

38 In summary, for the reasons given above, I award costs in favour of the plaintiff in the sum of $35,000 all-in for the proceedings below and the appeal. I reject the defendant's request to make the instalment order sought in relation to costs of the appeal and the judgment sum arising from the underlying suit.

Goh Yihan
Judge of the High Court

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17 RCS at para 18.

Jheong Siew Yin (Constellation Law Chambers LLC)
for the appellant;
Lim Huat Sing Julian Sebastian and Tay Sheng Xiang Kesmond
(JLim Law Corporation) for the respondent.
